# LAWS AND RESOLUTIONS OF THE STATE OF MONTANA

## Enacted or Adopted by the

## SIXTY-THIRD LEGISLATURE IN REGULAR SESSION

## Held at Helena, the Seat of Government January 7, 2013, through April 24, 2013

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## OFFICERS AND MEMBERS OF THE MONTANA SENATE

**2013**

50 Members

29 Republicans 21 Democrats

### OFFICERS

President ..... Jeff Essmann
President Pro Tempore ..... Debby Barrett
Majority Leader ..... Art Wittich
Majority Whips ..... Llew Jones, Eric Moore, Janna Taylor
Minority Leader ..... Jon Sesso
Minority Whips ..... Robyn Driscoll, Cliff Larsen
Secretary of the Senate ..... Marilyn Miller
Sergeant at Arms ..... Dan Ritter

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## OF THE MONTANA HOUSE OF REPRESENTATIVES

**2013**

100 Members

61 Republicans 39 Democrats

### OFFICERS

Speaker ..... Mark Blasdel
Speaker Pro Tempore ..... Austin Knudsen
Majority Leader ..... Gordon Vance
Majority Whips ..... Christy Clark, Mike Cuffe, Cary Smith, Jeffrey Welborn
Minority Leader ..... Chuck Hunter
Minority Caucus Chair ..... Bryce Bennett
Minority Whips ..... Margaret MacDonald, Edie McClafferty
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34 *(House Bill No. 52; Lieser)* RENAMING THE AGRICULTURE IN MONTANA SCHOOLS PROGRAM AS THE AGRICULTURE LITERACY IN MONTANA SCHOOLS PROGRAM; AND AMENDING SECTIONS 15-30-2388 AND 15-30-2389, MCA . . . . . 57

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36 *(House Bill No. 60; Berry)* TERMINATING THE REQUIRED REVIEW OF PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS IN 2014; AND AMENDING SECTION 4, CHAPTER 330, LAWS OF 2011 . . . . . 61

37 *(House Bill No. 111; Miller)* REPEALING THE TAXABLE VALUE DECREASE FOR EXPANDING INDUSTRIES THAT PROCESS MONTANA RAW MATERIALS OR USE MONTANA SEMIFINISHED PRODUCTS IN MANUFACTURING; REPEALING SECTIONS 15-24-2401, 15-24-2402, 15-24-2403, 15-24-2404, AND 15-24-2405, MCA. 61

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41 *(Senate Bill No. 5; Buttrey)* CLARIFYING THAT ELECTRONIC RECORDS FOR A COUNTY MAY BE STORED AT A LOCATION SEPARATE FROM THE OFFICE OF THE CLERK; AND AMENDING SECTIONS 7-5-2131 AND 7-5-2133, MCA . . . . . 64

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169 *(House Bill No. 22; Dudik)* GENERALLY REVISING INSURANCE LAW; REVISING CONFIDENTIALITY REQUIREMENTS PERTAINING TO WORKING PAPERS; ESTABLISHING THAT THE PRESENTATION OF COUNTERFEIT DOCUMENTS IS A FORM OF INSURANCE FRAUD; REVISING DEPOSITARY OR CUSTODIAL AGREEMENTS REQUIREMENTS; REVISING BYLAWS OF FARM MUTUAL INSURERS WITH RESPECT TO THE TIME OF ANNUAL MEETINGS; MODIFYING MEMBERSHIP REQUIREMENTS FOR THE GUARANTY ASSOCIATION BOARD OF DIRECTORS; MODIFYING THE DEFINITION OF "HOME STATE"; CLARIFYING LICENSING REQUIREMENTS FOR NONRESIDENT ADJUSTERS AND CONSULTANTS; REVISING LICENSE DISPLAY REQUIREMENTS FOR INSURANCE PRODUCERS; MODIFYING THE TYPE OF PLANS SMALL EMPLOYER CARRIERS ARE REQUIRED TO OFFER TO SMALL EMPLOYERS; APPLYING CAPTIVE INSURANCE CAPITAL SURPLUS REQUIREMENTS TO RISK RETENTION GROUPS; AUTHORIZING ANY CAPTIVE INSURANCE COMPANY TO MAKE LOANS TO ITS AFFILIATES; REVISING REQUIREMENTS FOR BUSINESS WRITTEN BY A PROTECTED CELL CAPTIVE INSURANCE COMPANY; ESTABLISHING REQUIREMENTS FOR A PROTECTED CELL CAPTIVE INSURANCE COMPANY'S REINSURED BUSINESS; ELIMINATING THE REQUIREMENT THAT INSURERS AND HEALTH SERVICE CORPORATIONS OFFER GROUP UNIFORM HEALTH BENEFIT COVERAGE; AMENDING SECTIONS 33-1-409, 33-1-1202, 33-2-604, 33-2-606, 33-2-611, 33-2-612, 33-2-1303, 33-3-401, 33-4-302, 33-10-104, 33-17-102, 33-17-214, 33-17-301, 33-17-503, 33-17-505, 33-17-1101, 33-22-1811, 33-22-2002, 33-28-104, 33-28-202, AND 33-28-301, MCA; REPEALING SECTION 33-22-522, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 522

170 *(House Bill No. 194; Ingraham)* INCREASING THE CONTRACT AMOUNT FOR WHICH A LOCAL GOVERNMENT PROJECT MUST BE PUT TO A BID IF THE PROJECT IS FUNDED WITH GASOLINE TAXES; AMENDING 15-70-101, MCA; AND PROVIDING AN EFFECTIVE DATE 544

171 *(House Bill No. 314; Kary)* REVISING LAWS GOVERNING SPECIAL DISTRICTS; ALLOWING A GOVERNING BODY TO ORDER A REFERENDUM ON THE CREATION OF A SPECIAL DISTRICT; REVISING THE REQUIREMENTS FOR INITIATING THE CREATION OF A SPECIAL DISTRICT BY PETITION; INCREASING THE AMOUNT OF TIME A CLERK OF A GOVERNING BODY HAS TO CERTIFY OR REJECT A PETITION; REQUIRING THAT MAPS OF PROPOSED BOUNDARIES BE MADE AVAILABLE TO THE PUBLIC AT A CERTAIN TIME; CLARIFYING WHO MUST RECEIVE NOTICE OF PASSAGE OF A RESOLUTION OF INTENT TO CREATE A SPECIAL DISTRICT; REVISING THE DEADLINE FOR PROTESTING A PROPOSED DISTRICT AND SUFFICIENCY OF PROTEST; REQUIRING A PROTEST FORM TO BE SENT TO PROPERTY OWNERS IN THE PROPOSED DISTRICT; REQUIRING A REFERENDUM UNDER CERTAIN CIRCUMSTANCES; REQUIRING CREATION OF A SPECIAL DISTRICT UNDER CERTAIN CIRCUMSTANCES; REVISING THE DEADLINE BY WHICH THE GOVERNING BODY MUST ESTIMATE COSTS OF A SPECIAL DISTRICT; LIMITING THE AMOUNT A GOVERNING BODY MAY CHARGE TO ADMINISTER A SPECIAL DISTRICT; REVISING SPECIAL DISTRICT COST ESTIMATE AND ASSESSMENT DATES; AMENDING SECTIONS 7-11-1003, 7-11-1006, 7-11-1007, 7-11-1008, 7-11-1011, 7-11-1013, 7-11-1021, 7-11-1023, AND 7-11-1025, MCA; AND

PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 546

172 *(House Bill No. 323; Cuffe)* ADDING LIVESTOCK LOSSES DUE TO GRIZZLY BEAR PREDATION TO THE LIVESTOCK LOSS PROGRAMS; AND AMENDING SECTIONS 2-15-3110, 2-15-3111, 2-15-3112, 2-15-3113, AND 81-1-110, MCA . . . . . 554

173 *(House Bill No. 65; Pomnichowski)* GENERALLY REVISING THE MONTANA CONSUMER LOAN ACT; REVISING DEFINITIONS; REVISING EXEMPTIONS FROM LICENSING; REVISING THE SUBMISSION METHOD FOR LICENSE AND LICENSE RENEWAL APPLICATION FEES; REVISING REQUIREMENTS FOR THE ISSUANCE, DENIAL, SURRENDER, REVOCATION, OR SUSPENSION OF LICENSES; REVISING FEES THAT MAY BE CHARGED TO LOAN CONSUMERS; ELIMINATING THE CAP ON CIVIL PENALTIES FOR A SINGLE ADMINISTRATIVE ACTION; CLARIFYING INSTALLMENT AND BALLOON PAYMENT REQUIREMENTS; PROVIDING THAT COMPLIANCE WITH FEDERAL LAW DOES NOT CONSTITUTE AUTHORIZATION TO MODIFY THE INTEREST OR FEES THAT MAY BE CHARGED TO LOAN CONSUMERS UNDER MONTANA LAW; CLARIFYING RECORDKEEPING REQUIREMENTS; PROVIDING THAT A CONSUMER LOAN BORROWER MAY VOLUNTARILY CONFESS JUDGMENT ON A LOAN IN DEFAULT; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO PARTICIPATE IN A NATIONWIDE LICENSING SYSTEM FOR LICENSING CONSUMER LOAN LICENSEES; GRANTING RULEMAKING AUTHORITY; PROHIBITING PRECOMPUTED INTEREST ON CONSUMER LOANS; AMENDING SECTIONS 32-5-102, 32-5-103, 32-5-201, 32-5-202, 32-5-205, 32-5-207, 32-5-301, 32-5-302, 32-5-303, 32-5-304, 32-5-305, AND 32-5-308, MCA; REPEALING SECTION 32-5-204, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . . . . . 558

174 *(House Bill No. 463; Bennett)* GENERALLY REVISING LAWS RELATED TO NONFERROUS METAL; REVISING THE DEFINITION OF "SALVAGE METAL DEALER"; CREATING THE OFFENSE OF THEFT OF NONFERROUS METAL; PROVIDING PENALTIES; AMENDING SECTION 30-22-101, MCA; AND PROVIDING AN APPLICABILITY DATE . . . . . 565

175 *(House Bill No. 38; Ingraham)* TRANSFERRING THE ADMINISTRATION OF CERTAIN GEOGRAPHIC INFORMATION SYSTEMS FROM THE DEPARTMENT OF ADMINISTRATION TO THE STATE LIBRARY; AMENDING SECTIONS 7-11-1014, 7-11-1029, 76-6-212, 90-1-403, 90-1-404, 90-1-405, 90-1-406, 90-1-410, 90-1-411, AND 90-1-413, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 567

176 *(House Bill No. 68; MacDonald)* ESTABLISHING A STATEWIDE MULTIAGENCY REENTRY TASK FORCE FOR RELEASED OFFENDERS AT HIGH RISK OF RECIDIVISM; SPECIFYING DEPARTMENT OF CORRECTIONS DUTIES; AND PROVIDING AN EFFECTIVE DATE . . . . . 573

177 *(House Bill No. 72; MacDonald)* PROVIDING THAT IN A CRIMINAL PROCEEDING A SENTENCING JUDGE MAY REQUIRE AS A CONDITION OF A DEFERRED OR SUSPENDED SENTENCE THAT THE OFFENDER PARTICIPATE IN A RESTORATIVE JUSTICE PROGRAM IF THE PROGRAM ACCEPTS THE OFFENDER; REQUIRING THE OFFENDER TO PAY A PARTICIPATION FEE; AMENDING SECTIONS 46-18-104 AND 46-18-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 574

178 *(House Bill No. 105; Steenberg)* GENERALLY REVISING PROVISIONS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM, THE JUDGES' RETIREMENT SYSTEM, THE HIGHWAY PATROL OFFICERS' RETIREMENT SYSTEM, THE SHERIFFS' RETIREMENT SYSTEM, THE GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM, THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM, THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM, AND THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT; REVISING PROVISIONS RELATED TO RETIREMENT, DISABILITY, AND DEATH BENEFITS AND PAYMENTS; REVISING PROVISIONS RELATED TO OPTIONAL MEMBERSHIP, SERVICE CREDIT, AND REEMPLOYMENT; PROVIDING FOR TRAVEL EXPENSES FOR THE EMPLOYEE INVESTMENT ADVISORY COUNCIL; REVISING DEATH BENEFITS UNDER THE SHERIFFS' RETIREMENT SYSTEM; REVISING CANCELLATION AND REINSTATEMENT OF DISABILITY BENEFITS UNDER THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT; CORRECTING TERMINOLOGY AND INTERNAL REFERENCES; ELIMINATING EXPIRED PROVISIONS; AMENDING SECTIONS 19-2-303, 19-2-403, 19-2-406, 19-2-505, 19-2-706, 19-2-801, 19-2-907, 19-3-412, 19-3-512, 19-3-908, 19-3-1103, 19-3-1106, 19-3-1210, 19-3-1501, 19-3-2133, 19-3-2141, 19-5-601, 19-5-701, 19-5-801, 19-5-802, 19-6-601, 19-7-503, 19-7-601, 19-7-901, 19-7-1001, 19-8-302, 19-8-701, 19-8-801, 19-8-1002, 19-9-710, 19-9-1007, 19-13-104, 19-13-803, AND 19-17-605, MCA; REPEALING SECTION 19-3-1005, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 577

179 *(House Bill No. 210; McClafferty)* APPROPRIATING MONEY FOR THE MONTANA DIGITAL ACADEMY; PROVIDING FOR A REVERSION OF FUNDS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . 609

180 *(House Bill No. 291; Kerns)* CLARIFYING CANAL AND DITCH EASEMENT LAW; AMENDING SECTION 70-17-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 609

181 *(House Bill No. 328; Washburn)* ALLOWING NOTIFICATION OF SPECIAL WILD BUFFALO HUNTING LICENSE RECIPIENTS AS TO WHERE WILD BUFFALO OR BISON ARE LOCATED; AND AMENDING SECTION 87-2-730, MCA . . . . . 610

182 *(House Bill No. 335; Eck)* PROVIDING AUTHORITY TO DISTRICT COURTS TO DESIGNATE SEX OFFENDERS AS LEVEL 1, 2, OR 3 WHEN THOSE SEX OFFENDERS DO NOT HAVE A DESIGNATION; AMENDING SECTION 46-23-509, MCA; AND PROVIDING AN APPLICABILITY DATE . . . . . 610

183 *(House Bill No. 362; Berry)* GENERALLY REVISING LIMITED LIABILITY COMPANY LAWS; AUTHORIZING THE CREATION OF SERIES OF MEMBERS WITHIN A LIMITED LIABILITY COMPANY; PROVIDING THAT EACH SERIES OF MEMBERS MAY HAVE SEPARATE MEMBERS, MANAGERS, ASSETS, LIABILITIES, AND BUSINESS PURPOSES OR INVESTMENT OBJECTIVES; AND AMENDING SECTIONS 35-8-102, 35-8-107, 35-8-108, 35-8-202, 35-8-205, 35-8-208, 35-8-304, 35-8-307, 35-8-503, 35-8-803, 35-8-804, 35-8-901, AND 35-8-902, MCA . . . . . 612

184 *(House Bill No. 402; Hunter)* GENERALLY REVISING LAWS RELATED TO THE DIRECT SHIPMENT OF TABLE WINE TO INDIVIDUAL CONSUMERS; PROVIDING FOR A DIRECT SHIPMENT ENDORSEMENT TO WINERIES FOR SELLING DIRECTLY TO INDIVIDUAL CONSUMERS IN MONTANA; PROVIDING REQUIREMENTS AND FEES FOR A WINERY WITH A DIRECT SHIPMENT ENDORSEMENT; PROVIDING PENALTIES; EXTENDING

RULEMAKING AUTHORITY; REVISING THE CONNOISSEUR'S LICENSE TO ELIMINATE ITS APPLICATION TO WINE; AND AMENDING SECTIONS 16-1-411, 16-3-402, 16-3-411, 16-4-107, 16-4-901, 16-4-902, 16-4-903, 16-4-906, AND 16-6-301, MCA. . . . . 624

185 *(House Bill No. 455; Blyton)* REVISING LAWS RELATING TO REISSUANCE OF CERTIFICATE OF TITLE FOR ABANDONED, WRECKED, AND DISABLED VEHICLES; AND AMENDING SECTION 61-8-913, MCA . . . . . 631

186 *(House Bill No. 462; Jones)* REVISING MONTANA'S AGISTERS' LIEN ENFORCEMENT LAWS TO CONFORM WITH THE DUE PROCESS PROVISIONS OF THE MONTANA AND THE UNITED STATES CONSTITUTIONS; PROVIDING THAT THE PERSON WHO OWNS PROPERTY THAT IS SUBJECT TO THE LIEN BE PROVIDED A PROCESS FOR NOTICE AND AN OPPORTUNITY TO BE HEARD PRIOR TO THE PROPERTY BEING SOLD; AMENDING SECTION 71-3-1203, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 632

187 *(Senate Bill No. 48; Jergeson)* PROVIDING A PROCESS FOR REGIONAL AUTHORITIES TO ESTABLISH AND CHANGE RATES, FEES, AND CHARGES FOR PROVIDING WATER AND WASTEWATER SERVICES; AND AMENDING SECTIONS 7-13-2275, 7-13-2301, 7-13-4307, 69-7-111, 75-6-304, AND 75-6-326, MCA. . . . . 634

188 *(Senate Bill No. 116; Arthun)* REVISING SPECIAL FUEL USER PERMIT LAWS; REPEALING THE SPECIAL FUEL USER'S PERMIT; PROVIDING THAT CERTAIN NONRESIDENTS OBTAIN CERTAIN SPECIAL FUEL USER'S TEMPORARY PERMITS; CLARIFYING THE APPLICABILITY OF THE TAX ON SPECIAL FUEL AND VOLATILE LIQUIDS; AMENDING SECTIONS 15-70-301, 15-70-311, 15-70-314, 15-70-321, 15-70-330, 15-70-356, AND 15-70-372, MCA; REPEALING SECTIONS 7-5-2316, 7-5-4316, 15-70-302, 15-70-303, 15-70-304, 15-70-305, 15-70-306, 15-70-307, 15-70-317, 15-70-323, 15-70-325, 15-70-327, 15-70-328, 15-70-329, 15-70-331, 15-70-332, 15-70-333, 15-70-334, 15-70-335, 15-70-336, 20-6-630, AND 60-2-118, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 639

189 *(Senate Bill No. 165; Caferro)* ALLOWING A SCHOOL TO MAINTAIN A STOCK SUPPLY OF EPINEPHRINE TO BE USED IN THE EVENT OF AN ACTUAL OR PERCEIVED ANAPHYLAXIS EMERGENCY; AMENDING SECTION 20-5-420, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 646

190 *(Senate Bill No. 176; Peterson)* GENERALLY REVISING VOTING REQUIREMENTS AND PROCEDURES FOR NONPROFIT ORGANIZATIONS; PROVIDING FOR ELECTRONIC AND REMOTE COMMUNICATIONS TO BE USED FOR ATTENDING MEETINGS AND VOTING; AND AMENDING SECTIONS 35-2-114, 35-2-115, 35-2-119, 35-2-233, 35-2-520, 35-2-526, 35-2-527, 35-2-533, 35-2-535, 35-2-539, 35-2-542, AND 35-2-911, MCA. . . . . 648

191 *(Senate Bill No. 185; Sesso)* REVISING VETERANS' PREFERENCE HIRING LAWS; ALLOWING PUBLIC EMPLOYERS TO EXTEND A JOB INTERVIEW TO A VETERAN FOR EXISTING JOB VACANCIES FOR WHICH THE VETERAN QUALIFIES; INCLUDING A DISABLED VETERAN AS A PERSON WITH A DISABILITY; CLARIFYING THE ORDER OF PREFERENCES BETWEEN DISABLED VETERANS, PEOPLE WITH DISABILITIES, AND OTHERS ELIGIBLE FOR A HIRING PREFERENCE; EXTENDING RULEMAKING; AND

AMENDING SECTIONS 39-29-102, 39-29-103, 39-29-112, 39-30-103, 39-30-107, AND 39-30-201, MCA . . . . . 658

192 *(Senate Bill No. 194; Blewett)* PROVIDING THAT STRIP SEARCHES AND BODY CAVITY SEARCHES MAY BE DONE ONLY WHEN REASONABLE SUSPICION EXISTS. . . . . 662

193 *(Senate Bill No. 259; Arntzen)* ALLOWING A COURT TO VACATE CERTAIN CONVICTIONS WHEN THE OFFENDER WAS A VICTIM OF TRAFFICKING FOR COMMERCIAL SEXUAL ACTIVITY . . . . . 662

194 *(Senate Bill No. 314; Wanzenried)* REVISING DRIVER LICENSING LAWS; AUTHORIZING DRIVER'S TEST WAIVERS PURSUANT TO A RECIPROCITY AGREEMENT WITH A FOREIGN COUNTRY; CLARIFYING PROCEDURES FOR ANATOMICAL GIFT OR LIVING WILL DECLARATIONS ON DRIVER'S LICENSES AND IDENTIFICATION CARDS; CLARIFYING REPORTING STANDARDS FOR TRAFFIC CONVICTIONS; AMENDING SECTIONS 61-5-110, 61-5-301, AND 61-11-101, MCA; AND PROVIDING EFFECTIVE DATES 663

195 *(Senate Bill No. 316; Fielder)* REVISING SUBDIVISION AND LOCAL BOARD OF HEALTH LAWS RELATED TO ENCROACHMENT ONTO PRIVATE PROPERTY; PROHIBITING LOCAL APPROVAL OF A PROPOSED SUBDIVISION IF A WELL ISOLATION ZONE OR OTHER FEATURES AND IMPROVEMENTS OF THE SUBDIVISION ENCROACH ONTO PRIVATE PROPERTY; REQUIRING DEPARTMENT OF ENVIRONMENTAL QUALITY SANITATION IN SUBDIVISION RULES TO PROVIDE FOR EVIDENCE THAT WELL ISOLATION ZONES ARE LOCATED WHOLLY WITHIN THE BOUNDARIES OF A PROPOSED SUBDIVISION; REQUIRING LOCAL BOARD OF HEALTH RULES TO ADDRESS WELL ISOLATION ZONES UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTIONS 50-2-116, 76-3-608, 76-4-102, AND 76-4-104, MCA. . . . . 667

196 *(Senate Bill No. 319; Sonju)* GENERALLY REVISING MOTOR VEHICLE LAWS RELATED TO THE USE OF AUTHORIZED AGENTS IN THE PROCESSING OF VEHICLE TITLES, REGISTRATION, AND LICENSING; AMENDING SECTIONS 61-3-116, 61-3-205, 61-3-211, 61-3-225, 61-3-303, 61-3-311, 61-3-331, 61-3-338, 61-3-414, 61-3-415, 61-3-465, 61-3-467, 61-3-480, 61-4-111, 61-4-112, AND 61-11-105, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 673

197 *(Senate Bill No. 327; Olson)* EXEMPTING CERTAIN COMPETITIVE ELECTRICITY SUPPLIERS FROM THE REQUIREMENTS OF THE MONTANA RENEWABLE POWER PRODUCTION AND RURAL ECONOMIC DEVELOPMENT ACT; AMENDING SECTION 69-3-2004, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 683

198 *(Senate Bill No. 332; Tutvedt)* GENERALLY REVISING OPENCUT MINING LAWS; REQUIRING NOTICE OF INSPECTIONS; REVISING NOTICE AND HEARING PROVISIONS; REQUIRING FEE FOR MATERIALS MINED ILLEGALLY; AND AMENDING SECTIONS 7-14-2124, 82-4-403, 82-4-425, 82-4-427, 82-4-431, 82-4-432, 82-4-433, AND 82-4-437, MCA . . . . . 686

199 *(House Bill No. 79; Berry)* SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE IV, SECTION 8, ARTICLE VI, SECTIONS 1, 2, 3, 4, 6, AND 7, AND ARTICLE X, SECTION 4, OF THE MONTANA CONSTITUTION TO CHANGE THE NAME OF THE STATE AUDITOR TO THE COMMISSIONER OF SECURITIES AND INSURANCE. . . . . 695

200 *(House Bill No. 66; Hoven)* ALLOWING THE DEPARTMENT OF REVENUE TO SERVE AND CONSENT TO SERVICE OF NOTICES OF LEVY BY ELECTRONIC MEANS; PROVIDING FOR RULEMAKING AUTHORITY; AND AMENDING SECTIONS 15-1-706 AND 25-13-402, MCA. . . . . 698

201 *(House Bill No. 84; Noonan)* ESTABLISHING IN STATUTE THE 72-HOUR PRESUMPTIVE ELIGIBILITY PROGRAM FOR ADULT CRISIS STABILIZATION SERVICES THAT IS PROVIDED FOR IN ADMINISTRATIVE RULE; REVISING THE RULE REQUIREMENTS IN ORDER TO ALLOW REIMBURSEMENT FOR TWO PSYCHIATRIC DIAGNOSTIC INTERVIEWS IN A 72-HOUR PERIOD; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN EFFECTIVE DATE 700

202 *(House Bill No. 124; O'Hara)* CLARIFYING EXEMPTIONS FOR A SCHOOL DISTRICT AND SPECIAL DISTRICT IN ELECTIONS; EXEMPTING CERTAIN POLITICAL COMMITTEES FROM CAMPAIGN PRACTICES REQUIREMENTS; LIMITING THE CONTRIBUTIONS CERTAIN CANDIDATES AND POLITICAL COMMITTEES MAY ACCEPT IN SCHOOL DISTRICT AND SPECIAL DISTRICT ELECTIONS; AND AMENDING SECTION 13-37-206, MCA . . . . . 702

203 *(House Bill No. 127; Berry)* REVISING UNEMPLOYMENT INSURANCE TO IMPROVE THE UNEMPLOYMENT INSURANCE SYSTEM'S INTEGRITY; PROVIDING INCENTIVES FOR EMPLOYERS TO PROVIDE TIMELY AND COMPLETE INFORMATION RELATED TO CLAIMS; CLARIFYING THE DISTRIBUTION OF PENALTIES FOR MAKING FALSE STATEMENTS TO OBTAIN OR INCREASE BENEFITS; EXTENDING RULEMAKING AUTHORITY; CLARIFYING INTERACTION OF UNEMPLOYMENT LAWS WITH CERTAIN CHILD SUPPORT LAWS; PROVIDING A LIMIT TO TEMPORARY SEPARATIONS FROM EMPLOYMENT FOR CHILD SUPPORT LAWS; AMENDING SECTIONS 39-51-401, 39-51-1125, 39-51-1212, 39-51-1214, 39-51-3106, 39-51-3201, AND 40-5-901, MCA; AND PROVIDING A CONTINGENT TERMINATION DATE. . . . . 703

204 *(House Bill No. 170; Galt)* CREATING A 3-DAY NONRESIDENT UPLAND GAME BIRD LICENSE; ESTABLISHING TERMS OF USE; GRANTING RULEMAKING AUTHORITY; PROVIDING FOR DISPOSITION OF REVENUE; AMENDING SECTIONS 87-1-246 AND 87-1-270, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. . . . . 709

205 *(House Bill No. 388; Cuffe)* LIMITING LOANS FROM MONEY REPAID TO THE DISTRESSED WOOD PRODUCTS INDUSTRY REVOLVING LOAN ACCOUNT TO INDIVIDUALS OR SMALL BUSINESSES RELATED TO WOOD PROCESSING; AND AMENDING SECTION 90-1-501, MCA . . 710

206 *(House Bill No. 451; Galt)* REVISING LAWS GOVERNING FIREWARDENS; ALLOWING FOR APPOINTMENT OF A COUNTY FIREWARDEN; ESTABLISHING A COUNTY FIREWARDEN'S DUTIES; REMOVING COUNTY CONFIRMATION OF FIREWARDENS APPOINTED BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AND AMENDING SECTION 76-13-104, MCA . . . . 712

207 *(House Bill No. 465; Blyton)* INCREASING AND ESTABLISHING CERTAIN FEES CHARGED BY COUNTY CLERKS; AMENDING SECTION 7-4-2631, MCA; AND PROVIDING AN EFFECTIVE DATE. . 713

208 *(House Bill No. 502; Brodehl)* GENERALLY REVISING LAWS RELATED TO FARM MUTUAL INSURANCE; PROVIDING A MANAGING GENERAL AGENT WAIVER TO CERTAIN PERSONS HANDLING RISK FOR FARM MUTUAL INSURERS; ALLOWING FARM MUTUAL

INSURERS TO RETAIN A PORTION OF THEIR LIABILITY LIMIT ON RISKS; AND AMENDING SECTIONS 33-2-1501 AND 33-4-502, MCA . 714

209 *(Senate Bill No. 11; Caferro)* GENERALLY REVISING CRIMINAL JUSTICE SYSTEM LAWS RELATED TO OFFENDERS WITH MENTAL ILLNESS; REVISING REQUIREMENTS FOR PAROLE AND PROBATION OFFICERS AND MEMBERS OF THE BOARD OF PARDONS AND PAROLE; REVISING LAWS RELATED TO CONDITIONS OF RELEASE, BAIL, AND PAROLE OF OFFENDERS WITH MENTAL ILLNESS; REVISING THE DEFINITION OF "MENTAL DISEASE OR DEFECT"; AMENDING SECTIONS 2-15-2302, 46-9-108, 46-9-301, 46-14-101, 46-23-201, AND 46-23-1003, MCA; AND PROVIDING AN APPLICABILITY DATE . . . . . 718

210 *(Senate Bill No. 18; Hamlett)* PROVIDING FOR THE OWNERSHIP OF A CHANNEL AND FORMER CHANNEL OF A NAVIGABLE RIVER OR STREAM FOLLOWING AN AVULSION; CREATING A PROCESS TO CLARIFY OWNERSHIP AFTER AN AVULSION OF ABANDONED BEDS OF RIVERS AND STREAMS NOT ADJUDICATED FOR TITLE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 77-1-102, MCA; REPEALING SECTION 70-18-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 722

211 *(Senate Bill No. 120; Buttrey)* INCREASING FROM ONE TO THREE THE NUMBER OF CERTAIN LIQUOR LICENSES THAT AN INDIVIDUAL MAY POSSESS FOR ON-PREMISES CONSUMPTION OR OFF-PREMISES CONSUMPTION; LIMITING EXPANSION TO OWNERSHIP OF 50% OR LESS OF THE ALLOWABLE LICENSES IN A QUOTA AREA; AND AMENDING SECTIONS 16-4-205 AND 16-4-401, MCA. . . . . 724

212 *(Senate Bill No. 122; Facey)* REVISING NONPARTISAN PRIMARY ELECTION LAWS FOR POLITICAL SUBDIVISIONS; REQUIRING AN ELECTION ADMINISTRATOR TO CONDUCT LOCAL NONPARTISAN PRIMARY ELECTIONS ONLY WHEN THE NUMBER OF CANDIDATES SEEKING THE OFFICE IS SUFFICIENT; AND AMENDING SECTION 13-14-115, MCA . . . . . 728

213 *(Senate Bill No. 136; Larsen)* INCREASING THE AMOUNT OF FUNDS AVAILABLE FROM THE PERMANENT COAL TAX TRUST FUND FOR THE MONTANA VETERANS' HOME LOAN MORTGAGE PROGRAM; AMENDING SECTIONS 17-6-308 AND 90-6-603, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 729

214 *(Senate Bill No. 239; Buttrey)* GENERALLY REVISING TAX INCREMENT FINANCING DISTRICT LAWS; PROVIDING FOR CREATION OF TARGETED ECONOMIC DEVELOPMENT DISTRICTS; ALLOWING COUNTIES TO CREATE TARGETED ECONOMIC DEVELOPMENT DISTRICTS AND TO USE TAX INCREMENT FINANCING; REMOVING PROVISIONS FOR CREATION OF AND BONDING IN TECHNOLOGY DISTRICTS, AEROSPACE TRANSPORTATION AND TECHNOLOGY DISTRICTS, AND INDUSTRIAL DISTRICTS; AMENDING SECTIONS 7-15-4282, 7-15-4283, 7-15-4284, 7-15-4285, 7-15-4286, 7-15-4287, 7-15-4288, 7-15-4289, 7-15-4290, 7-15-4291, 7-15-4292, 7-15-4293, 7-15-4294, 7-15-4301, 7-15-4302, 7-15-4304, 7-15-4305, 7-15-4306, 7-15-4322, AND 7-15-4324, MCA; REPEALING SECTIONS 7-15-4295, 7-15-4296, 7-15-4297, 7-15-4298, 7-15-4299, AND 17-5-820, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 731

215 *(House Bill No. 9; Hollandsworth)* ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECTS GRANT AWARDS;

APPROPRIATING MONEY FOR CULTURAL AND AESTHETIC GRANTS; AND PROVIDING AN EFFECTIVE DATE . . . . . 743

216 *(House Bill No. 117; Eck)* GENERALLY REVISING THE REGULATION OF ESCROW BUSINESSES ACT; CHANGING REFERENCES FROM DIRECTOR TO DEPARTMENT; LIMITING THE EXEMPTION FOR MORTGAGE INDUSTRY LICENSEES SERVICING OTHER TYPES OF CONTRACTS; ADDING AN EXEMPTION FOR LOAN CLOSERS; DELETING AUTOMATIC LICENSE REVOCATION FOR ADMINISTRATIVE VIOLATIONS; CHANGING ENTITY CONTROL REQUIREMENTS; REQUIRING AN ANNUAL FINANCIAL STATEMENT; REVISING ENFORCEMENT AND PENALTY PROVISIONS; CHANGING THE LICENSE YEAR TO COINCIDE WITH THE CALENDAR YEAR AND PROVIDING FOR TRANSITION; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO PARTICIPATE IN A NATIONWIDE LICENSING SYSTEM FOR ESCROW BUSINESSES; EXPANDING RULEMAKING AUTHORITY; AMENDING SECTIONS 32-7-102, 32-7-103, 32-7-108, 32-7-109, 32-7-110, 32-7-111, 32-7-115, 32-7-121, 32-7-122, 32-7-123, AND 32-7-124, MCA; AND PROVIDING EFFECTIVE DATES . . . . . 746

217 *(House Bill No. 287; Salomon)* PROVIDING FOR AN ADDITIONAL CIVIL PENALTY FOR A VIOLATION OF THE MONTANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT OF 1973 IF THE VICTIM IS AN OLDER PERSON OR DEVELOPMENTALLY DISABLED; PROVIDING FOR DISPOSITION OF FINES; AND AMENDING SECTION 30-14-143, MCA . . . . . 753

218 *(House Bill No. 513; McChesney)* EXEMPTING PERMITS FOR OVERSIZE VEHICLES FROM ENVIRONMENTAL REVIEW UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTION 61-10-121, MCA . . . 754

219 *(House Bill No. 566; Woods)* CREATING NEXT-OF-KIN SPECIAL LICENSE PLATES; AND AMENDING SECTION 61-3-458, MCA . . . . 755

220 *(Senate Bill No. 149; Thomas)* REVISING COLLABORATIVE PRACTICE LAWS FOR PHARMACY IMMUNIZATIONS; ALLOWING LICENSED PHARMACISTS TO, WITHOUT A COLLABORATIVE PRACTICE AGREEMENT IN PLACE, ADMINISTER LIMITED IMMUNIZATIONS TO INDIVIDUALS WHO ARE 12 YEARS OF AGE OR OLDER OR IMMUNIZATIONS TO ADULTS; REVISING THE DEFINITION OF "PRACTICE OF PHARMACY"; AND AMENDING SECTIONS 37-7-101 AND 37-7-105, MCA . . . . . 757

221 *(Senate Bill No. 258; Wittich)* NAMING THE JUSTICE BUILDING AFTER JOSEPH P. MAZUREK; REVISING THE CAPITOL COMPLEX MASTER PLAN SO THAT THE STATE BUILDING NAMING PROVISIONS AND OTHER RESTRICTIONS DO NOT APPLY TO THE JUSTICE BUILDING; ALLOWING A PLAQUE AND MEMORIAL COMMEMORATING JOSEPH P. MAZUREK TO BE PLACED ON THE CAPITOL COMPLEX GROUNDS IF PRIVATE FUNDS ARE USED TO CONSTRUCT AND MAINTAIN THE PLAQUE AND MEMORIAL; AMENDING SECTIONS 2-17-807 AND 2-17-808, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 762

222 *(House Bill No. 182; Ballance)* ADDING TO LEGISLATIVE GOALS FOR PUBLIC SCHOOLS AN EMPHASIS ON LITERACY AND NUMERACY, STRATEGIC REASONING, AND AN UNDERSTANDING OF POLITICAL, SOCIAL, AND ECONOMIC SYSTEMS OF THE UNITED STATES AND THE WORLD; AMENDING SECTION 20-1-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 765

223 *(House Bill No. 488; Gursky)* REQUIRING THE DEPARTMENT OF JUSTICE TO CREATE A POSTER TO PROVIDE INFORMATION REGARDING THE NATIONAL HUMAN TRAFFICKING RESOURCE CENTER HOTLINE; PROVIDING THAT THE DEPARTMENT ESTABLISH BY RULE PERSONS AND ENTITIES THAT SHOULD RECEIVE COPIES OF THE POSTER FOR DISPLAY; AND REQUIRING THE DEPARTMENT OF TRANSPORTATION TO DISPLAY THE POSTER . . . . . 766

224 *(Senate Bill No. 88; Barrett)* ADOPTING THE UPPER MISSOURI RIVER BREAKS NATIONAL MONUMENT COMPACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 767

225 *(Senate Bill No. 107; Facey)* REVISING LAWS RELATING TO DEVIATE SEXUAL CONDUCT; REVISING THE DEFINITION OF "DEVIATE SEXUAL CONDUCT"; AND AMENDING SECTIONS 27-2-216, 41-3-102, 45-1-205, 45-2-101, 45-5-505, 46-1-502, AND 52-3-803, MCA . . . . . 775

226 *(Senate Bill No. 245; Arthun)* REVISING INVESTMENT PROVISIONS FOR FIRE RELIEF ASSOCIATIONS; AMENDING SECTION 19-18-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 791

227 *(Senate Bill No. 278; Peterson)* ADOPTING THE CHARLES M. RUSSELL NATIONAL WILDLIFE REFUGE COMPACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 791

228 *(Senate Bill No. 306; Olson)* REVISING THE DEFINITION OF "PARTNERS" UNDER THE OFFENSE OF PARTNER OR FAMILY MEMBER ASSAULT; AMENDING SECTION 45-5-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 803

229 *(House Bill No. 146; Hansen)* PROHIBITING THE DEPARTMENT OF ENVIRONMENTAL QUALITY FROM COLLECTING ANNUAL LICENSE FEES FOR A SOLID WASTE FACILITY UNTIL THE FACILITY RECEIVES SOLID WASTE; AMENDING SECTION 75-10-115, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 805

230 *(House Bill No. 256; Hoven)* REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO PROVIDE WRITTEN NOTICE DISCLOSING THE AVAILABILITY OF AN ENVIRONMENTAL ASSESSMENT TO OWNERS OF PROPERTY WITHIN A 1-MILE-WIDE FACILITY SITING CORRIDOR FOR CERTAIN FACILITIES UNDER THE MAJOR FACILITY SITING ACT; REQUIRING THAT A CERTIFICATE ISSUED UNDER THE MAJOR FACILITY SITING ACT MUST INCLUDE CONFIRMATION THAT NOTICE OF THE ENVIRONMENTAL REVIEW WAS PROVIDED; AMENDING SECTION 75-20-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 806

231 *(House Bill No. 459; Kerns)* PROHIBITING A HEALTH CARE PROVIDER OR HEALTH CARE FACILITY FROM REFUSING OR CONDITIONING THE PROVISION OF HEALTH CARE IF A PERSON REFUSES TO PROVIDE INFORMATION RELATING TO FIREARM OWNERSHIP, POSSESSION, OR USE . . . . . 809

232 *(Senate Bill No. 209; Arthun)* AUTHORIZING RESORT AREA DISTRICTS TO ISSUE BONDS AND PROVIDE FOR REPAYMENT; AMENDING SECTIONS 7-6-1506, 7-6-1541, AND 7-6-1542, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 809

233 *(Senate Bill No. 271; Thomas)* REVISING LAWS GOVERNING DISSOLUTION OF WATER AND SEWER DISTRICTS; ALLOWING A

PROCESS OF DISSOLUTION TO BE INITIATED BY A DISTRICT BOARD AND REFERRED TO THE ELECTORS OF A DISTRICT UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTION 7-13-2351, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 811

234 *(House Bill No. 23; Bennett)* REVISING ETHICS VIOLATION LAWS FOR THE OFFICE OF THE COMMISSIONER OF POLITICAL PRACTICES; PROHIBITING THE COMMISSIONER FROM ENGAGING IN PRIVATE BUSINESS DURING THE OFFICE HOURS OF THE COMMISSIONER; PROVIDING FOR THE RESOLUTION OF CHARGES OF ETHICS VIOLATIONS BY THE COMMISSIONER OF POLITICAL PRACTICES; AND AMENDING SECTIONS 2-2-136, 13-37-108, AND 13-37-111, MCA 813

235 *(House Bill No. 24; Ankney)* CREATING THE STATE PARKS AND RECREATION BOARD; PROVIDING POWERS AND DUTIES; GRANTING RULEMAKING AUTHORITY; RENAMING THE FISH, WILDLIFE, AND PARKS COMMISSION; AMENDING SECTIONS 2-15-3110, 2-15-3113, 2-15-3401, 2-15-3402, 2-15-3404, 23-1-101, 23-1-102, 23-1-106, 23-1-108, 23-1-110, 23-1-121, 23-1-122, 23-2-301, 23-2-403, 23-2-404, 23-2-408, 23-2-410, 37-47-310, 75-1-220, 77-1-405, 85-2-102, 87-1-101, 87-1-106, 87-1-202, 87-1-209, 87-1-218, 87-1-301, 87-1-303, 87-1-401, 87-1-622, AND 87-4-432, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 816

236 *(House Bill No. 37; McChesney)* ALLOWING A TEMPORARY CHANGE OF USE OF A WATER RIGHT THROUGH A LEASE; ESTABLISHING REQUIREMENTS FOR A TEMPORARY LEASE; REQUIRING PUBLIC NOTICE; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE . . . . . 844

237 *(House Bill No. 71; MacDonald)* CLARIFYING THE INTENT AND DEFINITION OF RESTORATIVE JUSTICE; ELIMINATING THE OFFICE OF RESTORATIVE JUSTICE; AMENDING SECTIONS 2-15-2012, 2-15-2013, AND 46-15-411, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 846

238 *(House Bill No. 78; Regier)* REVISING BREAK-IN-SERVICE REQUIREMENTS FOR POSTRETIREMENT EMPLOYMENT IN A POSITION REPORTABLE TO THE TEACHERS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-20-731 AND 19-20-733, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE . . 849

239 *(House Bill No. 95; Wilmer)* IMPROVING THE ACTUARIAL UNFUNDED LIABILITY OF THE PUBLIC EMPLOYEES', SHERIFFS', AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS BY REQUIRING EMPLOYER AND STATE CONTRIBUTIONS FOR WORKING RETIREES IN THOSE SYSTEMS; AMENDING SECTIONS 19-7-1101 AND 19-13-1101, MCA; AND PROVIDING AN EFFECTIVE DATE . . . 852

240 *(House Bill No. 122; Bennett)* GENERALLY REVISING PROVISIONS RELATED TO FEDERAL TAX QUALIFICATION OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM, THE JUDGES' RETIREMENT SYSTEM, THE HIGHWAY PATROL OFFICERS' RETIREMENT SYSTEM, THE SHERIFFS' RETIREMENT SYSTEM, THE GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM, THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM, THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM, AND THE DEFERRED COMPENSATION PROGRAM; REVISING THE DEFINITION OF "NORMAL RETIREMENT AGE" TO COMPLY WITH FEDERAL LAW; REVISING MAXIMUM COMPENSATION AND MAXIMUM BENEFIT PROVISIONS, LIMITATIONS ON ELIGIBLE ROLLOVER DISTRIBUTIONS, MILITARY SERVICE CREDIT, AND

ELIGIBILITY FOR SERVICE RETIREMENT TO COMPLY WITH FEDERAL LAW; AMENDING SECTIONS 19-2-303, 19-2-405, 19-2-1001, 19-2-1011, 19-2-1014, 19-3-901, 19-5-501, 19-6-501, 19-7-501, 19-8-601, 19-9-801, 19-13-701, AND 19-50-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . . . . 853

241 *(House Bill No. 187; Flynn)* ALLOWING AND DEFINING OUTFITTER'S ASSISTANTS; PROVIDING RULEMAKING AUTHORITY; REVISING DUTIES AND RESPONSIBILITIES; MODIFYING EXEMPTIONS FROM OVERTIME COMPENSATION; PROVIDING FOR DOCUMENTATION; AMENDING SECTIONS 37-47-101, 37-47-201, 37-47-401, 37-47-403, 37-47-404, 39-3-406, AND 87-6-702, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE . . . . . 868

242 *(House Bill No. 189; Lenz)* INCREASING THE MAXIMUM AMOUNT OF HAIL INSURANCE; REDUCING THE PERCENTAGE OF FEES RETAINED BY THE DEPARTMENT OF REVENUE FOR ADMINISTRATIVE COSTS; IMPOSING A LIMIT ON THE AMOUNT OF FEES COLLECTED THAT ARE TRANSFERRED TO THE GENERAL FUND; AND AMENDING SECTIONS 80-2-208 AND 80-2-232, MCA . . 877

243 *(House Bill No. 195; Ingraham)* CLASSIFYING CERTAIN PARCELS OF GROWING TIMBER AS CLASS TEN PROPERTY FOR PROPERTY TAX PURPOSES; AND AMENDING SECTION 15-6-143, MCA . . . . . 878

244 *(House Bill No. 203; Clark)* REVISING STATE AID TO LIBRARIES; PROVIDING A FORMULA FOR ESTABLISHING THE AMOUNT OF STATE AID; PROVIDING A STATUTORY APPROPRIATION; PROVIDING A COORDINATION INSTRUCTION REGARDING APPROPRIATIONS FOR AID TO PUBLIC LIBRARIES; AMENDING SECTIONS 17-7-502 AND 22-1-327, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE . . . . . 878

245 *(House Bill No. 250; Bangerter)* PROVIDING FOR NAVIGATOR AND PRODUCER CERTIFICATION AND TRAINING RELATED TO HEALTH INSURANCE SOLD ON AN EXCHANGE; PROVIDING TRAINING REQUIREMENTS FOR OTHER PEOPLE WHO ASSIST THOSE SIGNING UP FOR THE EXCHANGE; PROVIDING NAVIGATOR QUALIFICATIONS AND DUTIES; SETTING NAVIGATOR CERTIFICATION FEES; AMENDING SECTIONS 33-2-708, 33-17-102, 33-17-220, AND 33-17-231, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 880

246 *(House Bill No. 299; Warburton)* ESTABLISHING THE PATRICK A. PYETTE MEMORIAL HIGHWAY BETWEEN CHINOOK AND ZURICH ALONG U.S. HIGHWAY 2; ESTABLISHING THE JOSHUA THOMAS "JOSH" RUTHERFORD MEMORIAL HIGHWAY BETWEEN ZURICH AND THE BOUNDARY OF THE FORT BELKNAP RESERVATION ALONG U.S. HIGHWAY 2; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 889

247 *(House Bill No. 344; Hoven)* REVISING LAWS RELATING TO AGRICULTURAL COMMODITY DEALERS; AND PROVIDING PRODUCER PROTECTIONS IN CASE OF BANKRUPTCY . . . . . 890

248 *(House Bill No. 352; Fitzpatrick)* CLARIFYING PROVISIONS RELATED TO THE APPOINTMENT OF ACTING JUSTICES OF THE PEACE; AMENDING SECTION 3-10-231, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 891

249 *(House Bill No. 410; Washburn)* CREATING THE MONTANA THIRD-PARTY VOTER REGISTRATION INTEGRITY ACT; AND

ESTABLISHING REQUIREMENTS FOR THIRD-PARTY REGISTRARS CONCERNING MAILING OUT AND RETURNING VOTER REGISTRATION AND ABSENTEE BALLOT APPLICATIONS . . . . . 892

250 *(House Bill No. 446; Schwaderer)* REVISING THE OFFENSE OF DISORDERLY CONDUCT; PROVIDING THAT DISCHARGING FIREARMS IS NOT DISORDERLY CONDUCT; AND AMENDING SECTION 45-8-101, MCA . . . . . 893

251 *(House Bill No. 448; Brodehl)* REVISING DEADLINES FOR COMMUNITY COLLEGE TRUSTEE CANDIDACY FILINGS; AND AMENDING SECTIONS 20-15-219 AND 20-15-221, MCA . . . . . 893

252 *(House Bill No. 461; Lieser)* INCREASING THE PENSION BENEFIT AMOUNT THAT THE BOARD OF TRUSTEES OF A FIRE DEPARTMENT RELIEF ASSOCIATION MAY SET FOR MEMBERS OF THE ASSOCIATION WHO ARE VOLUNTEERS; AMENDING SECTION 19-18-602, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 894

253 *(House Bill No. 485; Lavin)* REVISING LANDLORD TENANT LAWS TO PROVIDE THAT JUSTICES' COURTS HAVE CONCURRENT JURISDICTION WITH THE DISTRICT COURTS WITHIN THEIR RESPECTIVE COUNTIES IN ACTIONS PERTAINING TO RESIDENTIAL TENANTS' SECURITY AND RENT DEPOSITS AND ACTIONS BASED ON THE MONTANA RESIDENTIAL MOBILE HOME LOT RENTAL ACT; AMENDING SECTION 3-10-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 896

254 *(House Bill No. 508; Edmunds)* ALLOWING THE DEPARTMENT OF JUSTICE TO WAIVE THE COMMERCIAL DRIVER'S LICENSE SKILLS TEST FOR VETERANS WITH MILITARY COMMERCIAL MOTOR VEHICLE EXPERIENCE; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION 61-5-110, MCA. . . . . 896

255 *(House Bill No. 510; Ingraham)* REPLACING MANDATORY ANNUAL ABSENTEE BALLOT LIST ADDRESS CONFIRMATION PROCEDURES FOR ELECTION ADMINISTRATORS WITH BIENNIAL PROCEDURES; AMENDING THE STANDARD VOTER REGISTRATION AND ABSENTEE BALLOT REQUEST APPLICATION; ALLOWING ELECTORS TO REQUEST REMOVAL FROM THE ABSENTEE BALLOT LIST; AND AMENDING SECTIONS 13-1-210, 13-13-212, AND 13-21-210, MCA. . . . . 898

256 *(House Bill No. 546; Hollandsworth)* SETTING AERONAUTIC SAFETY STANDARDS FOR METEOROLOGICAL EVALUATION TOWERS; REQUIRING REPORTS AND PUBLIC NOTIFICATION; PROVIDING THAT A VIOLATION OF THE STANDARDS FOR METEOROLOGICAL EVALUATION TOWERS IS A MISDEMEANOR; PROVIDING A TRANSITION PERIOD FOR COMPLIANCE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 900

257 *(House Bill No. 552; Neill)* REVISING THE LAWS REGARDING LEGISLATIVE BROADCASTING AND TELEVISION MONTANA; AND AMENDING SECTIONS 5-11-1101, 5-11-1102, AND 5-11-1111, MCA . . 902

258 *(Senate Bill No. 43; Wittich)* REVISING LAWS GOVERNING THE INVESTIGATION OF ALLEGED MISTREATMENT, NEGLECT, OR ABUSE OF RESIDENTS AT A RESIDENTIAL FACILITY; REQUIRING THAT REPORTS BE SUBMITTED TO THE STATE PROTECTION AND ADVOCACY PROGRAM; PROVIDING THAT INVESTIGATIONS BE CONDUCTED BY THE DEPARTMENT OF JUSTICE; AND AMENDING SECTION 53-20-163, MCA . . . . . 903

259 *(Senate Bill No. 106; Jergeson)* REVISING THE DEFINITION OF "ELIGIBLE RENEWABLE RESOURCE" FOR THE PURPOSES OF ADMINISTERING THE RENEWABLE PORTFOLIO STANDARD; AMENDING SECTION 69-3-2003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 905

260 *(Senate Bill No. 112; Blewett)* CREATING THE DYLAN STEIGERS PROTECTION OF YOUTH ATHLETES ACT; PROMOTING SAFETY FOR YOUTH ATHLETES; PROVIDING DEFINITIONS; REQUIRING EACH SCHOOL DISTRICT TO ADOPT A POLICY ADDRESSING THE DANGERS OF CONCUSSIONS; PROVIDING MINIMUM REQUIREMENTS FOR THE CONTENTS OF A SCHOOL DISTRICT POLICY; REQUIRING THAT A YOUTH ATHLETE WHO EXHIBITS SIGNS, SYMPTOMS, OR BEHAVIORS CONSISTENT WITH A CONCUSSION BE REMOVED FROM PARTICIPATION AND THAT MEDICAL CLEARANCE BE OBTAINED PRIOR TO RETURNING TO PARTICIPATION; CLARIFYING THAT THE ACT DOES NOT CREATE A NEW CAUSE OF ACTION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 907

261 *(Senate Bill No. 161; Tropila)* CHANGING THE REQUIREMENTS FOR ESTABLISHING A SPECIAL SPEED ZONE; AND AMENDING SECTION 61-8-309, MCA . . . . . 910

262 *(Senate Bill No. 199; Thomas)* PROVIDING THAT CLOUD COMPUTING SERVICES FOR TECHNOLOGY INFRASTRUCTURE, PLATFORM, SOFTWARE, NETWORK, STORAGE, SECURITY, DATA, DATABASE, TEST ENVIRONMENT, CURRICULUM, OR DESKTOP VIRTUALIZATION PURPOSES AND RELATED TECHNOLOGIES ARE SUBJECT TO THE PROVISIONS OF THE TECHNOLOGY ACQUISITION AND DEPRECIATION FUND OF A SCHOOL DISTRICT; LIMITING THE DURATION OF ANY TECHNOLOGY LEVY TO 10 YEARS; AMENDING SECTION 20-9-533, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 911

263 *(Senate Bill No. 207; Van Dyk)* GENERALLY REVISING PROPERTY PARTITION LAWS; ADOPTING THE UNIFORM PARTITION OF HEIRS PROPERTY ACT; REQUIRING A COURT TO DETERMINE WHETHER PROPERTY TO BE PARTITIONED IS HEIRS PROPERTY; REQUIRING HEIRS PROPERTY TO BE PARTITIONED UNDER THE UNIFORM PARTITION OF HEIRS PROPERTY ACT; PROVIDING FOR INCONSISTENCIES IN EXISTING PARTITION LAWS TO BE RESOLVED IN FAVOR OF THE UNIFORM LAW; PROVIDING FOR NOTICE BY PUBLICATION AND POSTING; IMPOSING CERTAIN CONDITIONS ON REFEREES APPOINTED BY THE COURT; PROVIDING PROCEDURES FOR DETERMINING THE VALUE OF HEIRS PROPERTY; PROVIDING A PROCEDURE FOR COTENANT BUYOUTS; PROVIDING PARTITION ALTERNATIVES; PROVIDING CONSIDERATIONS FOR PARTITIONS IN KIND; PROVIDING PROCEDURES FOR OPEN-MARKET SALE, SEALED BIDS, OR AUCTIONS; PROVIDING FOR UNIFORMITY OF APPLICATION AND CONSTRUCTION; ADDRESSING CERTAIN FEDERAL ACTS; AND PROVIDING AN APPLICABILITY DATE . . . . . 913

264 *(Senate Bill No. 251; Wittich)* GENERALLY REVISING LAWS RELATED TO TRUSTS; REPLACING THE TRUST CODE WITH THE MONTANA UNIFORM TRUST CODE; INCLUDING SUBSTITUTED JUDGMENT PROVISIONS WITHIN THE UNIFORM PROBATE CODE; PROVIDING APPLICATION INSTRUCTIONS; AMENDING SECTIONS 31-2-209, 32-1-102, 32-3-506, 35-2-118, 72-1-103, 72-1-310, 72-1-311, 72-1-312, 72-6-206, 72-6-214, 72-16-1001, 72-34-424, 72-34-446, 72-36-206, 77-1-219,

77-1-229, 77-2-364, AND 82-1-304, MCA; REPEALING SECTIONS 72-6-122, 72-6-215, 72-33-101, 72-33-102, 72-33-103, 72-33-104, 72-33-105, 72-33-106, 72-33-107, 72-33-108, 72-33-201, 72-33-202, 72-33-203, 72-33-204, 72-33-205, 72-33-206, 72-33-207, 72-33-208, 72-33-209, 72-33-210, 72-33-211, 72-33-216, 72-33-217, 72-33-218, 72-33-219, 72-33-220, 72-33-301, 72-33-302, 72-33-303, 72-33-304, 72-33-305, 72-33-306, 72-33-401, 72-33-402, 72-33-403, 72-33-406, 72-33-407, 72-33-408, 72-33-409, 72-33-411, 72-33-412, 72-33-413, 72-33-414, 72-33-415, 72-33-416, 72-33-501, 72-33-502, 72-33-503, 72-33-504, 72-33-601, 72-33-602, 72-33-603, 72-33-604, 72-33-611, 72-33-612, 72-33-613, 72-33-616, 72-33-617, 72-33-618, 72-33-619, 72-33-620, 72-33-621, 72-33-622, 72-33-626, 72-33-627, 72-33-628, 72-33-629, 72-33-630, 72-33-631, 72-33-632, 72-33-701, 72-33-702, 72-33-703, 72-33-704, 72-33-705, 72-34-101, 72-34-102, 72-34-103, 72-34-105, 72-34-106, 72-34-107, 72-34-108, 72-34-109, 72-34-110, 72-34-111, 72-34-112, 72-34-113, 72-34-114, 72-34-115, 72-34-116, 72-34-117, 72-34-118, 72-34-124, 72-34-125, 72-34-126, 72-34-127, 72-34-128, 72-34-129, 72-34-130, 72-34-201, 72-34-202, 72-34-203, 72-34-204, 72-34-205, 72-34-206, 72-34-207, 72-34-301, 72-34-302, 72-34-303, 72-34-304, 72-34-306, 72-34-307, 72-34-308, 72-34-309, 72-34-310, 72-34-311, 72-34-316, 72-34-317, 72-34-318, 72-34-319, 72-34-320, 72-34-321, 72-34-322, 72-34-323, 72-34-326, 72-34-327, 72-34-328, 72-34-329, 72-34-330, 72-34-331, 72-34-332, 72-34-336, 72-34-337, 72-34-338, 72-34-339, 72-34-340, 72-34-341, 72-34-342, 72-34-343, 72-34-501, 72-34-502, 72-34-503, 72-34-504, 72-34-506, 72-34-507, 72-34-508, 72-34-509, 72-34-511, 72-34-512, 72-34-513, 72-34-514, 72-34-515, 72-34-516, 72-34-517, 72-34-601, 72-34-602, 72-34-603, 72-34-604, 72-34-605, 72-34-606, 72-34-607, 72-34-608, 72-34-609, 72-34-610, 72-35-101, 72-35-102, 72-35-103, 72-35-104, 72-35-105, 72-35-106, 72-35-107, 72-35-201, 72-35-202, 72-35-203, 72-35-206, 72-35-207, 72-35-208, 72-35-209, 72-35-301, 72-35-302, 72-35-303, 72-35-306, 72-35-307, 72-35-308, 72-35-311, 72-35-312, 72-35-313, 72-35-314, 72-35-315, 72-35-401, 72-35-402, 72-35-403, 72-35-404, 72-35-405, 72-35-406, 72-35-501, 72-35-502, 72-35-503, 72-35-504, 72-35-505, 72-35-506, 72-35-507, 72-35-508, 72-36-101, 72-36-102, 72-36-103, 72-36-104, 72-36-105, 72-36-106, 72-36-201, 72-36-202, 72-36-203, 72-36-301, AND 72-36-302, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 919

265 *(Senate Bill No. 292; Tutvedt)* REVISING MEDICAL PEER REVIEW LAWS TO CLARIFY THE MEANING OF THE TERMS "DATA" AND "INCIDENT REPORT" OR "OCCURRENCE REPORT"; AND AMENDING SECTIONS 37-2-401 AND 50-16-201, MCA . . . . . 983

266 *(Senate Bill No. 340; Brenden)* REQUIRING SCHOOL DISTRICTS TO DISPLAY AMERICAN-MADE UNITED STATES FLAGS IN EVERY CLASSROOM AND TO MAKE COPIES OF CERTAIN GOVERNMENT DOCUMENTS AVAILABLE IN EVERY GRADE 7 THROUGH 12 CLASSROOM; AMENDING SECTION 20-3-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 986

267 *(Senate Bill No. 351; Olson)* REVISING LAWS RELATED TO CRIMINAL BACKGROUND CHECKS; PROVIDING FOR CRIMINAL BACKGROUND CHECKS OF RESIDENTS IN HOMES WHERE A POTENTIAL EMERGENCY PLACEMENT MAY BE MADE; PROVIDING REQUIREMENTS FOR EMERGENCY PLACEMENT OF A CHILD IN A HOME; PROVIDING REQUIREMENTS FOR CONDUCTING BACKGROUND CHECKS; AND PROVIDING RULEMAKING AUTHORITY . . . . . 989

268 *(Senate Bill No. 361; Tutvedt)* REVISING THE NAMES OF THE "CORPORATION LICENSE TAX" AND THE "CORPORATION INCOME TAX"; CHANGING THE NAME OF THE "CORPORATION LICENSE TAX" TO THE "CORPORATE INCOME TAX"; CHANGING THE NAME OF THE "CORPORATION INCOME TAX" TO THE "ALTERNATIVE CORPORATE INCOME TAX"; AMENDING SECTIONS 5-4-104, 15-1-121, 15-1-205, 15-6-138, 15-30-2110, 15-30-2328, 15-30-3301, 15-30-3312, 15-30-3313, 15-31-101, 15-31-102, 15-31-111, 15-31-112, 15-31-113, 15-31-114, 15-31-115, 15-31-117, 15-31-125, 15-31-143, 15-31-161, 15-31-401, 15-31-402, 15-31-404, 15-31-406, 15-31-511, 15-31-522, 15-31-523, 15-31-531, 15-31-543, 15-31-551, 15-32-107, 15-50-207, 15-68-815, 20-9-630, 33-17-407, AND 33-27-103, MCA; AND PROVIDING AN APPLICABILITY DATE . . . . . 990

269 *(Senate Bill No. 408; Olson)* GENERALLY REVISING ELECTION LAWS; PROVIDING THAT THE TWO CANDIDATES WHO RECEIVE THE MOST VOTES IN CERTAIN PRIMARY ELECTIONS FOR PARTISAN OFFICES ADVANCE TO THE GENERAL ELECTION IRRESPECTIVE OF PARTY AFFILIATION; ELIMINATING SEPARATE PARTY BALLOTS AND PROVIDING FOR ONE PRIMARY BALLOT CONTAINING ALL PRIMARY RACES; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AMENDING SECTIONS 2-16-615, 5-2-402, 5-2-403, 5-2-404, 5-2-406, 7-2-2219, 7-3-176, 7-3-218, 7-3-313, 7-3-412, 7-3-512, 7-3-704, 7-3-1256, 7-4-2106, 7-4-2206, 7-4-2302, 7-4-2310, 7-4-4112, 13-1-101, 13-1-103, 13-4-102, 13-10-201, 13-10-203, 13-10-204, 13-10-209, 13-10-211, 13-10-301, 13-10-325, 13-10-326, 13-10-327, 13-10-402, 13-10-403, 13-10-404, 13-10-405, 13-10-501, 13-10-504, 13-10-505, 13-12-201, 13-12-202, 13-12-203, 13-12-205, 13-12-207, 13-13-214, 13-13-225, 13-13-241, 13-14-111, 13-14-112, 13-14-113, 13-14-114, 13-14-115, 13-14-117, 13-14-118, 13-15-201, 13-15-205, 13-15-206, 13-15-208, 13-15-405, 13-15-406, 13-15-507, 13-16-101, 13-16-201, 13-16-211, 13-16-412, 13-16-418, 13-16-419, 13-16-501, 13-17-103, 13-19-205, 13-21-205, 13-25-101, 13-25-201, 13-25-205, 13-25-303, 13-35-106, 13-35-205, 13-35-206, 13-35-207, 13-35-214, 13-35-218, 13-35-221, 13-35-225, 13-35-226, 13-36-101, 13-36-102, 13-36-103, 13-36-104, 13-36-201, 13-36-202, 13-36-203, 13-36-206, 13-36-207, 13-36-209, 13-36-210, 13-36-211, 13-36-212, 13-37-127, 13-37-216, 13-37-218, 13-38-101, AND 13-38-201, MCA; REPEALING SECTIONS 13-10-302, 13-10-303, 13-10-305, 13-10-311, 13-10-502, 13-10-503, 13-10-507, 13-10-601, 13-10-602, 13-10-604, AND 13-38-204, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 1019

270 *(Senate Bill No. 405; Olson)* PROTECTING THE INTEGRITY OF MONTANA ELECTIONS BY ENDING LATE VOTER REGISTRATION ON THE FRIDAY BEFORE ELECTION DAY AND ELIMINATING ELECTION DAY REGISTRATION; ENSURING COMPLIANCE WITH THE NATIONAL VOTER REGISTRATION ACT; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA AT THE GENERAL ELECTION TO BE HELD IN NOVEMBER 2014; AMENDING SECTIONS 13-2-301, 13-2-304, 13-19-207, AND 61-5-107, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 1071

271 *(House Bill No. 104; Regier)* CREATING CRIMINAL OFFENSES INVOLVING THE DEATH OF A FETUS OF ANOTHER AND PROVIDING EXCEPTIONS; AND AMENDING SECTIONS 45-5-102 AND 45-5-103, MCA . . . . . 1074

272 *(House Bill No. 336; Gibson)* GENERALLY REVISING THE HIGHWAY PATROL OFFICERS' RETIREMENT SYSTEM; DECREASING THE

GUARANTEED ANNUAL BENEFIT ADJUSTMENT FOR NEW MEMBERS; REQUIRING NEW MEMBERS TO WAIT 3 YEARS BEFORE RECEIVING THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT; INCREASING THE YEARS OF MEMBERSHIP SERVICE NEEDED FOR A NEW MEMBER TO PURCHASE SERVICE CREDIT AND TO RECEIVE A RETIREMENT BENEFIT; INCREASING EMPLOYEE CONTRIBUTIONS FOR EXISTING MEMBERS AND NEW HIRES; INCREASING THE STATE EMPLOYER CONTRIBUTION; INCREASING THE BENEFIT MULTIPLIER FOR ALL MEMBERS; RESTRICTING THE USES OF THE SPECIAL STATE REVENUE FUND TO FUND THE HIGHWAY PATROL OFFICERS' SALARIES; AMENDING SECTIONS 19-2-303, 19-6-301, 19-6-402, 19-6-404, 19-6-502, 19-6-503, 19-6-601, 19-6-707, 19-6-710, 19-6-711, 19-6-801, 19-6-803, AND 19-6-804, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1075

273 *(Senate Bill No. 182; Sonju)* GENERALLY REVISING MONTANA AUTOMOBILE DEALER FRANCHISE LAW; CLARIFYING WHICH PARTIES ARE ENTITLED TO PROTEST ADDITIONAL FRANCHISE LOCATIONS; CLARIFYING THAT A DESIRE FOR FEWER FRANCHISE LOCATIONS IS NOT GOOD CAUSE FOR TERMINATION OF A FRANCHISE; ALLOWING FRANCHISEES TO PURCHASE CERTAIN GOODS AND SERVICES UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 61-4-206, 61-4-207, AND 61-4-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1088

274 *(Senate Bill No. 290; Arntzen)* PROVIDING A PROCESS FOR NOTIFICATION OF NEARBY MUNICIPAL PROPERTY OWNERS WHEN A CHANGE IN USE IN CERTAIN COUNTY ZONING DISTRICTS OCCURS; AND REQUIRING THE COUNTY TO HOLD A PUBLIC HEARING UNDER CERTAIN CIRCUMSTANCES . . . . . 1092

275 *(House Bill No. 61; Lynch)* TO ADD GAMBLING DEPENDENCE FOR PURPOSES OF ADDICTION COUNSELOR LICENSURE LAWS; AND AMENDING SECTION 37-35-102, MCA . . . . . 1093

276 *(House Bill No. 86; O'Hara)* CREATING THE STRENGTHENING CAREER AND TECHNOLOGY STUDENT ORGANIZATIONS PROGRAM; AND PROVIDING AN EFFECTIVE DATE. . . . . 1093

277 *(House Bill No. 116; Eck)* GENERALLY REVISING THE MONTANA DEFERRED DEPOSIT LOAN ACT; EXTENDING THE TIME TO REQUEST A HEARING; ADDING PENALTIES INCLUDING FORFEITURE OF LOAN PRINCIPAL FOR LOANS MADE BY UNLICENSED PERSONS; ELIMINATING THE CAP ON CIVIL PENALTIES FOR A SINGLE ADMINISTRATIVE ACTION; REVISING LICENSING AND REPORTING REQUIREMENTS; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO PARTICIPATE IN A NATIONWIDE LICENSING SYSTEM FOR PURPOSES OF LICENSING DEFERRED DEPOSIT LOAN LICENSEES; GRANTING RULEMAKING AUTHORITY; AMENDING SECTIONS 31-1-705, 31-1-706, 31-1-707, 31-1-712, 31-1-713, AND 31-1-714, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1095

278 *(House Bill No. 118; Eck)* REPEALING THE MONTANA TITLE LOAN ACT; AMENDING SECTIONS 31-1-106, 31-1-111, 31-1-112, 31-1-401, AND 32-5-103, MCA; REPEALING SECTIONS 31-1-801, 31-1-802, 31-1-803, 31-1-804, 31-1-805, 31-1-810, 31-1-811, 31-1-812, 31-1-813, 31-1-815, 31-1-816, 31-1-817, 31-1-818, 31-1-819, 31-1-820, 31-1-821, 31-1-822, 31-1-825, 31-1-826, 31-1-827, 31-1-828, 31-1-829, 31-1-841, 31-1-842, AND 32-5-102, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . . . . . 1099

279 *(House Bill No. 258; Smith)* REVISING CIRCUMSTANCES UNDER WHICH A LOCAL GOVERNMENT IS CONSIDERED TO HAVE COMPLIED WITH CERTAIN REQUIREMENTS FOR PUBLICATION OF NOTICE; AMENDING SECTIONS 7-1-2121 AND 7-1-4127, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1103

280 *(House Bill No. 286; Brockie)* EXPANDING THE ELIGIBILITY FOR TUITION AND FEE WAIVERS TO INCLUDE RESIDENTS OF MONTANA WHO ARE ENROLLED MEMBERS OF A STATE-RECOGNIZED OR FEDERALLY RECOGNIZED INDIAN TRIBE LOCATED WITHIN THE BOUNDARIES OF THE STATE OF MONTANA; AMENDING SECTION 20-25-421, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 1105

281 *(House Bill No. 313; Schreiner)* REVISING SCHOOL TRUANCY LAWS; CLARIFYING CONSEQUENCES TO A TRUANT CHILD AND THE CHILD'S PARENT OR GUARDIAN; CLARIFYING THAT A HABITUALLY TRUANT CHILD MAY BE REFERRED TO YOUTH COURT; AMENDING SECTIONS 20-5-104, 20-5-105, 20-5-106, AND 41-5-103, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 1107

282 *(House Bill No. 320; Bennett)* RENAMING THE OPTIONAL RETIREMENT PROGRAM; AND AMENDING SECTIONS 19-2-511, 19-3-112, 19-3-2101, 19-3-2106, 19-3-2112, 19-3-2113, 19-20-208, 19-20-302, 19-20-426, 19-20-621, 19-20-731, 19-21-101, 19-21-102, 19-21-211, AND 19-21-212, MCA . . . . . 1113

283 *(House Bill No. 433; O'Hara)* REVISING LAWS RELATED TO REGISTRATION OF SEXUAL OR VIOLENT OFFENDERS; PROVIDING THAT OFFENDERS MUST REGISTER WHEN THEY ARE LOCATED IN A COUNTY THAT IS NOT THEIR COUNTY OF RESIDENCE FOR MORE THAN 10 DAYS; REQUIRING OFFENDERS TO REGISTER IN ANY COUNTY WHERE THEY REMAIN FOR 24 HOURS UNTIL THEY RETURN TO THEIR COUNTY OF RESIDENCE; AMENDING SECTION 46-23-505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1123

284 *(House Bill No. 560; Pierson)* REVISING THE LAWS REGARDING THE LEGISLATIVE BRANCH COMPUTER SYSTEM PLANNING COUNCIL; CHANGING THE NAME OF THE PLANNING COUNCIL; PROVIDING FOR AN ENTERPRISE ARCHITECTURE PROGRAM, TECHNOLOGY STANDARDS, AND PRINCIPLES; AMENDING SECTIONS 2-15-1021, 2-17-518, 5-11-401, 5-11-402, 5-11-403, 5-11-404, 5-11-405, 5-11-406, AND 5-11-407, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1124

285 *(House Bill No. 605; Schwaderer)* PROVIDING A PROCESS FOR ANNEXATION OF PROPERTY INTO A RESORT AREA DISTRICT; REQUIRING A PROPOSAL FOR ANNEXATION AND A REVIEW FEE TO BE SUBMITTED TO THE DEPARTMENT OF COMMERCE FOR DESIGNATION AS A RESORT AREA; REQUIRING AN ELECTION IN THE AREA PROPOSED TO BE ANNEXED; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1128

286 *(Senate Bill No. 20; Jent)* PROVIDING FOR REGISTRATION OF MULTILEVEL DISTRIBUTION COMPANIES; ESTABLISHING WHAT CONSTITUTES FRAUDULENT OR PROHIBITED PRACTICES FOR MULTILEVEL DISTRIBUTION COMPANIES; DEFINING "DIRECT SELLING ASSOCIATION"; REVISING THE DEFINITION OF "MULTILEVEL DISTRIBUTION COMPANY"; DEFINING "TRANSACTING BUSINESS"; CLARIFYING WHICH FUNDS MUST BE PLACED IN THE SECURITIES RESTITUTION ASSISTANCE FUND; AMENDING SECTIONS 30-10-301, 30-10-303, 30-10-324, AND

30-10-1004, MCA; REPEALING SECTION 30-10-326, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1129

287 *(Senate Bill No. 127; Buttrey)* REVISING THE DEFINITION OF "MISCONDUCT" FOR UNEMPLOYMENT INSURANCE PURPOSES; AND AMENDING SECTION 39-51-201, MCA. . . . . 1135

288 *(Senate Bill No. 154; Vincent)* REQUIRING A NEW ANNUAL SUSTAINABLE YIELD DETERMINATION FOR TIMBER HARVEST ON FORESTED STATE LANDS; REMOVING THE REQUIREMENTS FOR THE ANNUAL TIMBER SALE TARGET; AMENDING SECTIONS 77-5-222 AND 77-5-223, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1139

289 *(Senate Bill No. 179; Kaufmann)* REVISING FILING REQUIREMENTS FOR PASS-THROUGH ENTITIES; REQUIRING PARTNERSHIPS WITH MORE THAN 100 MEMBERS TO FILE RETURNS AND REPORTS ELECTRONICALLY; PROVIDING FOR PENALTY PAYMENTS FOR FAILURE TO FILE; GRANTING RULEMAKING AUTHORITY; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. 1140

290 *(Senate Bill No. 242; Sesso)* ESTABLISHING A MONTANA AWARD OF VALOROUS SERVICE TO HONOR MONTANA'S FALLEN HEROES WHO WERE MEMBERS OF THE UNITED STATES ARMED FORCES AND WERE KILLED OR CLASSIFIED AS MISSING IN ACTION WHILE SERVING IN COMBAT OR MILITARY OPERATIONS; SPECIFYING ELIGIBILITY CRITERIA AND THE PROCESS FOR AWARDING THE MEDAL; AUTHORIZING THE DEPARTMENT OF MILITARY AFFAIRS TO ACCEPT AND SPEND PRIVATE DONATIONS TO FUND THE AWARD; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . 1141

291 *(Senate Bill No. 345; Vincent)* REVISING LAWS RELATED TO LIABILITY FOR FOREST OR RANGE FIRES; ESTABLISHING A LIMITATION ON REAL AND PERSONAL PROPERTY DAMAGES FOR FOREST OR RANGE FIRES CAUSED BY NEGLIGENT OR UNINTENTIONAL ACTS OR OMISSIONS; AMENDING SECTION 50-63-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 1142

292 *(House Bill No. 521; Bennett)* REQUIRING PARENTAL CONSENT PRIOR TO AN ABORTION FOR A MINOR; PROVIDING FOR JUDICIAL WAIVER OF THE CONSENT REQUIREMENT; PROVIDING PENALTIES; REPEALING PRIOR STATUTES RELATED TO PARENTAL NOTIFICATION; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AMENDING SECTIONS 41-1-405 AND 47-1-104, MCA; REPEALING SECTIONS 50-20-221, 50-20-222, 50-20-223, 50-20-224, 50-20-225, 50-20-228, 50-20-229, 50-20-232, AND 50-20-235, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 1143

293 *(House Bill No. 3; Ankney)* APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2013; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1151

294 *(House Bill No. 4; Ankney)* APPROPRIATING MONEY THAT WOULD USUALLY BE APPROPRIATED BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2013; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE INTO STATE AND FEDERAL FISCAL YEARS 2014 AND 2015; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1152

295 *(House Bill No. 64; Ingraham)* REQUIRING CERTAIN STATE DISTRICT AND LOCAL CANDIDATES AND CERTAIN POLITICAL COMMITTEES

TO CONTINUE FILING REPORTS OF CONTRIBUTIONS AND EXPENDITURES UNTIL FILING A CLOSING REPORT; AND AMENDING SECTION 13-37-226, MCA . . . . . 1162

296 *(House Bill No. 157; Connell)* ALLOWING SPLIT WEIGHING OF COMMODITIES; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO ADOPT RULES TO IMPLEMENT THE SPLIT WEIGHING OF COMMODITIES; AMENDING SECTIONS 30-12-306 AND 30-12-406, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . 1164

297 *(Senate Bill No. 200; Vincent)* REVISING LAWS RELATED TO WOLF MANAGEMENT; GRANTING RULEMAKING AUTHORITY; AUTHORIZING THE ISSUANCE OF MULTIPLE LICENSES TO HUNT AND TRAP WOLVES; AUTHORIZING LANDOWNERS AND THEIR AGENTS TO KILL WOLVES ON PRIVATE PROPERTY WITHOUT A HUNTING LICENSE; REQUIRING REPORTS TO THE ENVIRONMENTAL QUALITY COUNCIL; REDUCING THE PRICE OF A NONRESIDENT WOLF LICENSE; PROVIDING AN EXCEPTION TO THE REQUIREMENT THAT HUNTERS WEAR ORANGE; AMENDING SECTIONS 87-2-104, 87-2-523, 87-2-524, 87-6-401, AND 87-6-414, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1165

298 *(House Bill No. 401; Welborn)* REVISING CERTAIN HUNTING LICENSE APPLICATION FEES; ALLOWING PER SPECIES COLLECTION OF THE PREFERENCE SYSTEM APPLICATION FEE; AMENDING SECTIONS 87-2-113 AND 87-2-730, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . . . . . 1169

299 *(House Bill No. 533; Cook)* EXPANDING THE SCOPE OF THE BULL TROUT AND CUTTHROAT TROUT SPECIES ENHANCEMENT PROGRAM TO INCLUDE NATIVE MONTANA FISH SPECIES; CLARIFYING A REFERENCE TO FUNDING FOR EMERGENCY INSTREAM FLOWS; AND AMENDING SECTIONS 87-1-283 AND 87-1-274, MCA . . . . . 1170

300 *(House Bill No. 630; Williams)* REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, THE DEPARTMENT OF AGRICULTURE, AND THE DEPARTMENT OF LIVESTOCK TO CONDUCT A PROJECT EXAMINING AND RECOMMENDING UPDATES FOR MONTANA FOOD LAWS; REQUIRING THE DEPARTMENTS TO COORDINATE WITH STAKEHOLDERS AND REPORT TO THE ECONOMIC AFFAIRS INTERIM COMMITTEE; REQUIRING THE ECONOMIC AFFAIRS INTERIM COMMITTEE TO REVIEW A FINAL REPORT OF THE PROJECT AND RECOMMEND APPROPRIATE LEGISLATION; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. . . . . 1171

301 *(Senate Bill No. 301; Murphy)* REVISING COUNTY NOXIOUS WEED CONTROL LAWS; CLARIFYING PROCEDURES; REVISING TIME PERIODS FOR COMPLIANCE; AMENDING SECTIONS 7-22-2117, 7-22-2144, 7-22-2146, AND 7-22-2148, MCA; REPEALING SECTIONS 7-22-2123 AND 7-22-2124, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1172

302 *(Senate Bill No. 94; Brown)* EXEMPTING THE EXCHANGE OF CERTAIN FOODS AND BEVERAGES FROM FOOD SAFETY REGULATIONS; AND AMENDING SECTION 50-50-102, MCA . . . . . 1177

303 *(Senate Bill No. 158; Thomas)* CREATING THE CERTIFICATES OF INSURANCE MODEL ACT; GRANTING RULEMAKING AUTHORITY TO THE STATE AUDITOR ACTING AS COMMISSIONER OF

INSURANCE; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 1179

304 *(Senate Bill No. 160; Tropila)* CREATING THE OFFENSE OF CRIMINAL CHILD ENDANGERMENT; PROVIDING THAT A PERSON COMMITS THE OFFENSE OF CRIMINAL CHILD ENDANGERMENT IF THE PERSON PURPOSELY, KNOWINGLY, OR NEGLIGENTLY CAUSES SUBSTANTIAL RISK OF DEATH OR SERIOUS BODILY INJURY TO A CHILD UNDER 14 YEARS OF AGE; PROVIDING PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 1181

305 *(Senate Bill No. 191; Brown)* PROVIDING FOR A LEVY TO PAY TUITION AND TRANSPORTATION FOR OUT-OF-DISTRICT ATTENDANCE OF A RESIDENT PUPIL; ALLOWING USE OF THE LEVY TO PROVIDE A FREE APPROPRIATE EDUCATION TO CHILDREN WITH DISABILITIES WHO RESIDE IN THE DISTRICT; PROVIDING LIMITATIONS ON THE AMOUNT OF THE LEVY; AMENDING SECTION 20-5-324, MCA; AND PROVIDING AN EFFECTIVE DATE. . 1182

306 *(House Bill No. 544; Reichner)* REVISING PERMISSIBLE AND MANDATORY PROVISIONS IN PREFERRED PROVIDER AGREEMENTS, INSURANCE POLICIES, AND SUBSCRIBER CONTRACTS; REMOVING REIMBURSEMENT LIMITATIONS IF A PROVIDER NETWORK IS DETERMINED TO BE ADEQUATE; AND AMENDING SECTION 33-22-1706, MCA . . . . . 1184

307 *(House Bill No. 391; Bennett)* REQUIRING PARENTAL CONSENT PRIOR TO AN ABORTION FOR A MINOR; PROVIDING FOR JUDICIAL WAIVER OF THE CONSENT REQUIREMENT; PROVIDING PENALTIES; REPEALING PRIOR STATUTES RELATED TO PARENTAL NOTIFICATION; AMENDING SECTIONS 41-1-405 AND 47-1-104, MCA; REPEALING SECTIONS 50-20-221, 50-20-222, 50-20-223, 50-20-224, 50-20-225, 50-20-228, 50-20-229, 50-20-232, AND 50-20-235, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 1185

308 *(House Bill No. 16; Hill)* REVISING THE STATUTES RELATED TO INVOLUNTARY COMMITMENTS; REVISING WHEN THE RIGHT OF THE RESPONDENT TO BE PHYSICALLY PRESENT AT A HEARING MAY BE WAIVED; ALLOWING EMERGENCY DETENTION OF A PERSON IN CERTAIN CASES; AND AMENDING SECTIONS 53-21-102, 53-21-119, AND 53-21-129, MCA . . . . . 1193

309 *(House Bill No. 233; Lavin)* REVISING THE 24/7 SOBRIETY PROGRAM; EXPANDING THE 24/7 SOBRIETY PROGRAM TO INCLUDE OTHER CRIMES IN WHICH THE ABUSE OF ALCOHOL OR DANGEROUS DRUGS WAS A CONTRIBUTING FACTOR IN THE COMMISSION OF THE CRIME; EXPANDING USE OF THE 24/7 PROGRAM TO ADDITIONAL LOCAL LAW ENFORCEMENT AGENCIES; REQUIRING THE STATEWIDE PROGRAM TO MEET CERTAIN STANDARDS; AUTHORIZING ANY COURT TO UTILIZE THE PROGRAM; AMENDING SECTIONS 44-4-1201, 44-4-1202, 44-4-1203, 44-4-1204, 44-4-1205, 44-4-1206, 46-18-201, 61-8-422, AND 61-8-733, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1196

310 *(House Bill No. 259; Hunter)* REQUIRING PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS AND PROGRAMS TO APPLY RELEVANT EDUCATION, TRAINING, OR SERVICE BY MEMBERS OF THE ARMED FORCES OR RESERVES OF THE UNITED STATES OR THE NATIONAL GUARD OF ANY STATE TO QUALIFICATIONS FOR CERTIFICATION OR LICENSURE; REQUIRING A PROGRESS REPORT; EXTENDING RULEMAKING AUTHORITY; PROVIDING AN

APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1204

311 *(House Bill No. 310; Smith)* PROHIBITING CLAIMS AND DAMAGES BASED ON THE BIRTH OF A CHILD . . . . . 1205

312 *(House Bill No. 355; Clark)* REVISING LAWS REGARDING ALCOHOL- AND DRUG-RELATED DRIVING OFFENSES; RAISING THE 5-YEAR LOOKBACK PROVISION FOR CERTAIN ALCOHOL- AND DRUG-RELATED DRIVING OFFENSES; PROVIDING THAT ALL PRIOR CONVICTIONS ARE COUNTED FOR DETERMINING THE NUMBER OF CONVICTIONS IN THE CASE OF A THIRD OR SUBSEQUENT DUI; AMENDING SECTIONS 61-8-465 AND 61-8-734, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES . . . . . 1205

313 *(House Bill No. 415; Hagan)* CREATING THE GUARANTEED ASSET PROTECTION WAIVER ACT; AMENDING SECTION 33-1-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 1207

314 *(House Bill No. 442; Randall)* INCREASING THE DOLLAR AMOUNT OF PROPERTY DAMAGE THAT MUST BE SUSTAINED IN AN ACCIDENT BEFORE A MOTOR VEHICLE OPERATOR IS REQUIRED TO IMMEDIATELY REPORT THE ACCIDENT; AND AMENDING SECTION 61-7-108, MCA . . . . . 1212

315 *(House Bill No. 498; Hill)* REVISING THE EXPIRATION DATE OF STATE IDENTIFICATION CARDS; AMENDING SECTION 61-12-504, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1212

316 *(House Bill No. 575; Berry)* GENERALLY REVISING 9-1-1 LAWS; REVISING DEFINITIONS; REQUIRING THAT FEES COLLECTED FOR WIRELESS ENHANCED 9-1-1 SERVICES BE REALLOCATED TO WIRELESS 9-1-1 JURISDICTIONS AND WIRELESS PROVIDERS UNDER CERTAIN CIRCUMSTANCES; ESTABLISHING A REALLOCATION PROCESS; AMENDING SECTIONS 10-4-101 AND 10-4-313, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1213

317 *(Senate Bill No. 108; Brown)* REVISING LAWS RELATED TO THE TAX CREDIT FOR CONTRIBUTIONS TO A QUALIFIED ENDOWMENT; EXTENDING THE TERMINATION DATE OF THE TAX CREDIT; SPECIFYING THE MINIMUM ANNUITY RATE FOR DEFERRED CHARITABLE GIFT ANNUITIES; CLARIFYING THE REQUIRED TIMING OF PAYMENTS FOR DEFERRED CHARITABLE GIFT ANNUITIES; APPLYING THE PROVISIONS OF THE UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT TO THE DEFINITION OF "PERMANENT, IRREVOCABLE FUND"; AMENDING SECTION 15-30-2327, MCA; AMENDING SECTION 9, CHAPTER 537, LAWS OF 1997, SECTION 5, CHAPTER 226, LAWS OF 2001, SECTION 7, CHAPTER 4, LAWS OF 2005, AND SECTIONS 2, 3, 4, AND 7, CHAPTER 208, LAWS OF 2007; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE. . . 1217

318 *(Senate Bill No. 139; Walker)* REQUIRING THAT A SMALL BUSINESS IMPACT ANALYSIS BE CONDUCTED PRIOR TO THE ADOPTION OF AN ADMINISTRATIVE RULE; DEFINING "SMALL BUSINESS"; AMENDING SECTION 2-4-102, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE . . . . . 1220

319 *(Senate Bill No. 178; Van Dyk)* ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO RETAIN A PERCENTAGE OF THE CLASS B-10 LICENSE FEE IF AN APPLICANT CHOOSES TO PURCHASE

ONLY A PORTION OF THE LICENSE; AMENDING SECTION 87-2-511, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. . . . . 1223

320 *(Senate Bill No. 183; Arntzen)* REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY AND EACH LICENSING BOARD ATTACHED TO THE DEPARTMENT TO ACCEPT EVIDENCE OF MILITARY TRAINING AND EXPERIENCE TO SATISFY LICENSING OR CERTIFICATION REQUIREMENTS; REQUIRING THE DEPARTMENT AND EACH LICENSING BOARD TO ADOPT RULES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1224

321 *(Senate Bill No. 203; Buttrey)* ADOPTING THE INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN; REQUIRING A REPORT; PROVIDING A FUNDING SOURCE; AND PROVIDING A TERMINATION DATE. . . . . 1225

322 *(Senate Bill No. 275; Buttrey)* PROVIDING FOR A VETERAN DESIGNATION ON STATE DRIVER'S LICENSES AND IDENTIFICATION CARDS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 61-5-111, 61-5-114, AND 61-12-501, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . . . . . 1240

323 *(Senate Bill No. 355; Hamlett)* CREATING A PETITION PROCESS TO JUDICIALLY DETERMINE CLAIMS FOR EXISTING WATER RIGHTS THAT WERE EXEMPT FROM FILING FOR THE ADJUDICATION OF WATER RIGHTS; PROVIDING THAT WITHOUT A DETERMINATION WATER RIGHTS EXEMPT FROM FILING ARE NOT ADMINISTERED BY FIRST IN TIME, FIRST IN RIGHT; AMENDING SECTIONS 85-2-222, 85-2-233, AND 85-2-234, MCA. . . . . 1243

324 *(Senate Bill No. 357; Facey)* REVISING LAWS RELATING TO PREPAID LEGAL INSURANCE; PROVIDING A SEPARATE LICENSE EXAM FOR PREPAID LEGAL INSURANCE; PROVIDING THAT LICENSE EXAMS COVER ONLY THE KINDS OF INSURANCE FOR WHICH THE APPLICANT APPLIES TO BE LICENSED; REVISING CONTINUING EDUCATION REQUIREMENTS FOR INDIVIDUALS LICENSED SOLELY TO SELL PREPAID LEGAL INSURANCE; AND AMENDING SECTIONS 33-17-212 AND 33-17-1203, MCA . . . . . 1248

325 *(House Bill No. 15; McClafferty)* APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO PUBLIC SCHOOL FACILITY PROJECTS THROUGH THE QUALITY SCHOOLS FACILITY GRANT PROGRAM; AUTHORIZING GRANTS FROM THE SCHOOL FACILITY AND TECHNOLOGY STATE SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS UPON GRANTS AND FUNDS; REVISING PRIORITIZATION OF DISTRIBUTIONS MADE FROM THE SCHOOL FACILITY AND TECHNOLOGY ACCOUNT; ALLOWING FOR CERTAIN ADMINISTRATIVE COSTS TO BE PAID FROM THE ACCOUNT; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR EMERGENCY GRANTS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR PLANNING GRANTS; ESTABLISHING A PREFERENCE FOR CERTAIN PROJECTS; TRANSFERRING FUNDS FROM THE ORPHAN SHARE ACCOUNT; AMENDING SECTIONS ~~20-9-343, 20-9-516, 20-9-620,~~ 90-6-802, AND 90-6-811, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 1250

326 *(Senate Bill No. 144; Sesso)* REVISING NOXIOUS WEED MANAGEMENT TRUST FUND LAWS; REQUIRING THE USE OF REVERTED FUNDS FOR FUTURE NOXIOUS WEED MANAGEMENT GRANT AWARDS; PROHIBITING THE DEPARTMENT OF AGRICULTURE FROM APPLYING FOR OR RECEIVING GRANT AWARDS; CLARIFYING

ELIGIBLE ADMINISTRATIVE COSTS AND EXPENDITURES SUBJECT TO THE ADMINISTRATIVE EXPENDITURE LIMITATION APPLICABLE TO THE NOXIOUS WEED MANAGEMENT PROGRAM; AMENDING SECTION 80-7-814, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1255

327 *(Senate Bill No. 294; Arntzen)* AUTHORIZING THE DEPARTMENT OF REVENUE TO ADJUST PENALTIES WITHIN PENALTY RANGES BASED ON MITIGATING AND AGGRAVATING CIRCUMSTANCES ON THE PART OF A LICENSEE VIOLATING A PROVISION OF STATE ALCOHOL LAWS; AND AMENDING SECTION 16-4-406, MCA . . . . . 1257

328 *(Senate Bill No. 325; Olson)* REVISING THE DEFINITION OF "ELIGIBLE RENEWABLE RESOURCE" FOR THE PURPOSES OF ADMINISTERING THE RENEWABLE PORTFOLIO STANDARD; AMENDING SECTION 69-3-2003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1258

329 *(House Bill No. 39; McChesney)* GENERALLY REVISING SCHOOL FINANCE LAWS; CLARIFYING WHICH FUNDS MAY BE TRANSFERRED INTO THE INTERLOCAL COOPERATIVE FUND; REVISING THE ALLOCATION OF EXCESS FUND BALANCE FUNDS; PROHIBITING TRANSFERS FROM THE RETIREMENT FUND OR THE DEBT SERVICE FUND TO ANOTHER FUND; PROHIBITING THE TRANSFER OF STATE TRANSPORTATION REIMBURSEMENT PAYMENTS INTO A SCHOOL DISTRICT'S INVESTMENT ACCOUNT; CLARIFYING THE DISTRIBUTION OF FUNDS FROM THE COUNTY SCHOOL OIL AND NATURAL GAS IMPACT FUND; REVISING THE METHOD FOR ALLOCATING THE SCHOOL FACILITY AND TECHNOLOGY ACCOUNT FUNDS; AMENDING SECTIONS 20-3-363, 20-9-104, 20-9-208, 20-9-235, 20-9-517, 20-9-518, AND 20-9-534, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 1261

330 *(House Bill No. 46; Ingraham)* REVISING CAMPAIGN CONTRIBUTION LIMITATIONS FOR A CANDIDATE WHEN THE OFFICE FOR WHICH THE INDIVIDUAL WILL SEEK NOMINATION OR ELECTION IS NOT KNOWN; AND AMENDING SECTION 13-37-216, MCA . . . . . 1269

331 *(House Bill No. 48; McChesney)* REVISING THE SMALL BUSINESS HEALTH INSURANCE POOL KNOWN AS INSURE MONTANA TO IMPROVE EFFICIENCY; REMOVING IMPEDIMENTS TO FUND TRANSFERS; BASING ELIGIBILITY FOR PREMIUM ASSISTANCE PAYMENTS ON FEDERAL POVERTY LEVELS; AMENDING SECTIONS 33-22-2004, 33-22-2006, 33-22-2007, AND 33-22-2008, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1270

332 *(House Bill No. 74; MacDonald)* REQUIRING THE RELEASE OR DISCLOSURE OF RECORDS OF CHILD ABUSE OR NEGLECT TO CERTAIN LAW ENFORCEMENT, PROSECUTORIAL, AND CHILD WELFARE ENTITIES AND INDIVIDUALS; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT AN IMPLEMENTING RULE; AND AMENDING SECTIONS 41-3-205 AND 41-3-208, MCA . . . . . 1278

333 *(House Bill No. 76; Pease-Lopez)* CREATING AN INDEPENDENT OFFICE OF THE CHILD AND FAMILY OMBUDSMAN; DESCRIBING THE DUTIES AND POWERS OF THE OFFICE; AMENDING SECTION 41-3-205, MCA; PROVIDING FOR CONTINGENT VOIDNESS; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE . . 1281

334 *(House Bill No. 87; Welborn)* REQUIRING THAT RATES FOR HEALTH INSURANCE COVERAGE BE FILED WITH THE COMMISSIONER OF

INSURANCE FOR REVIEW; PROVIDING STANDARDS FOR REVIEW AND NOTICE OF DEFICIENCY; PROVIDING RULEMAKING AUTHORITY; APPROPRIATING AND AUTHORIZING THE USE OF FUNDS FOR IMPLEMENTATION OF THE REVIEW; AMENDING SECTION 33-31-111, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 1286

335 *(House Bill No. 106; Connell)* GENERALLY REVISING WATER LAWS; ELIMINATING REDUNDANT LANGUAGE; CLARIFYING THE PROCESS FOR A PERMIT OR A CHANGE IN APPROPRIATION RIGHT; STREAMLINING PERMIT REQUIREMENTS IN CLOSED BASINS; AMENDING SECTIONS 85-2-102, 85-2-302, 85-2-310, 85-2-311, 85-2-314, 85-2-320, 85-2-360, 85-2-361, 85-2-362, 85-2-369, 85-2-402, AND 85-2-424, MCA; AND REPEALING SECTION 85-2-363, MCA . . . . . 1290

336 *(House Bill No. 120; Ingraham)* GENERALLY REVISING ELECTION LAWS; CLARIFYING PROCEDURES FOR REGISTERING FOR, VOTING BY, AND COUNTING AN ABSENTEE BALLOT; CLARIFYING THE LATE REGISTRATION PROCESS; REQUIRING AN OATH TO BE PLACED IN THE DECLARATION FOR NOMINATION FOR A CANDIDATE IN A PRIMARY CONTEST; REVISING THE BALLOT REQUIREMENTS AND SELECTION PROCESS FOR PRECINCT COMMITTEE POSITIONS; REVISING THE PROCESS FOR COLLECTING A BALLOT FROM CERTAIN DISABLED ELECTORS; REVISING THE PROVISIONS FOR POSTING BONDS REQUIRED FOR CERTAIN RECOUNTS; ELIMINATING THE PROVISION THAT PROHIBITS CERTAIN RELIGIOUS OFFICIALS AND CORPORATE OFFICERS FROM PARTICIPATING IN CERTAIN ELECTION ACTIVITIES; REQUIRING TIE VOTES IN PRECINCT COMMITTEE ELECTIONS TO BE DETERMINED BY THE COUNTY CENTRAL COMMITTEE; AMENDING SECTIONS 5-2-402, 13-1-101, 13-1-210, 13-2-107, 13-2-108, 13-2-112, 13-2-115, 13-2-122, 13-2-207, 13-2-220, 13-2-301, 13-2-304, 13-10-201, 13-10-203, 13-10-209, 13-10-211, 13-10-302, 13-10-404, 13-10-405, 13-10-503, 13-10-507, 13-13-112, 13-13-118, 13-13-201, 13-13-204, 13-13-211, 13-13-212, 13-13-213, 13-13-214, 13-13-225, 13-13-226, 13-13-227, 13-13-228, 13-13-229, 13-13-230, 13-13-241, 13-13-244, 13-13-245, 13-13-301, 13-13-602, 13-13-603, 13-14-112, 13-14-113, 13-15-107, 13-15-108, 13-15-201, 13-15-206, 13-15-401, 13-16-201, 13-16-211, 13-16-417, 13-17-203, 13-17-211, 13-19-102, 13-19-106, 13-19-304, 13-21-210, 13-21-212, 13-35-218, 13-37-126, AND 13-38-201, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . . . . . 1311

337 *(House Bill No. 131; Gursky)* AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO SHARE LIMITED INFORMATION ABOUT AN INVESTIGATION INTO A REPORT OF CHILD ABUSE OR NEGLECT WITH A MANDATORY REPORTER WHO MADE A REQUIRED REPORT OF ALLEGED CHILD ABUSE OR NEGLECT OR INDIVIDUALS DESIGNATED BY THE MANDATORY REPORTER; AND AMENDING SECTIONS 41-3-201 AND 41-3-205, MCA 1348

338 *(House Bill No. 147; Redfield)* REVISING PENALTIES FOR FAILURE TO OBTAIN A LANDOWNER'S PERMISSION FOR HUNTING; AND AMENDING SECTION 87-6-415, MCA . . . . . 1352

339 *(House Bill No. 206; Flynn)* INCREASING FEES IN JUSTICE'S COURT AND SMALL CLAIMS COURT; AMENDING SECTIONS 25-31-112 AND 25-35-608, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 1353

340 *(House Bill No. 254; Cook)* REQUIRING A DISCLAIMER ON ELECTION MATERIALS DISTRIBUTED BY A POLITICAL COMMITTEE THAT

CLAIMS TO BE EXEMPT FROM DISCLOSING THE NAMES OF CONTRIBUTORS . . . . . 1353

341 *(House Bill No. 274; Greef)* REVISING LAWS RELATED TO THE LICENSING OF OUTFITTERS AND GUIDES; ELIMINATING THE PROFESSIONAL GUIDE LICENSE; REVISING POWERS AND DUTIES OF THE BOARD OF OUTFITTERS; REVISING REPORTING REQUIREMENTS; REVISING QUALIFICATIONS AND APPLICATION AND EXAM REQUIREMENTS; CLARIFYING THE LIMIT ON ONE LICENSE PER INDIVIDUAL; REVISING PENALTIES; REVISING RULEMAKING AUTHORITY; AMENDING SECTIONS 37-47-101, 37-47-201, 37-47-301, 37-47-302, 37-47-303, 37-47-304, 37-47-305, 37-47-306, 37-47-307, 37-47-310, 37-47-311, 37-47-341, 37-47-343, 37-47-401, 37-47-402, 37-47-403, 37-47-404, AND 87-6-702, MCA; AND REPEALING SECTIONS 37-47-103, 37-47-316, AND 37-47-318, MCA. . 1354

342 *(House Bill No. 359; Fitzpatrick)* PROVIDING THAT AN ADMINISTRATIVE OR JUDICIAL ORDER MAY BE ADMISSIBLE IN A CIVIL ACTION REGARDING REMEDIAL ACTIONS RELATED TO HAZARDOUS WASTE FACILITIES; AND AMENDING SECTIONS 75-10-706 AND 75-10-711, MCA. . . . . 1363

343 *(House Bill No. 385; Lavin)* GENERALLY REVISING LAWS RELATING TO A TENANT ENGAGING IN OR KNOWINGLY ALLOWING ANY PERSON TO ENGAGE IN ANY ACTIVITY ON RENTAL PREMISES THAT CREATES A REASONABLE POTENTIAL THAT THE PREMISES MAY BE DAMAGED OR DESTROYED OR THAT NEIGHBORING TENANTS MAY BE INJURED; AND AMENDING SECTIONS 70-24-303, 70-24-321, 70-24-422, AND 70-24-427, MCA . . . . . 1366

344 *(House Bill No. 403; Hill)* REVISING FEES COLLECTED BY DISTRICT COURT CLERKS; ESTABLISHING FEES FOR PROVIDING COPIES BY FACSIMILE, E-MAIL, OR OTHER ELECTRONIC MEANS; ESTABLISHING FEES FOR FILING A PLEADING BY FACSIMILE OR E-MAIL; AMENDING SECTIONS 7-4-2516, 25-1-201, 25-10-404, AND 25-10-405, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 1370

345 *(House Bill No. 431; Knudsen)* REVISING NEGOTIATION REQUIREMENTS FOR SURFACE OWNER DAMAGE AND DISRUPTION COMPENSATION FROM OIL AND GAS DEVELOPERS OR OPERATORS; AND AMENDING SECTIONS 82-10-502 AND 82-10-504, MCA . . . . . 1373

346 *(House Bill No. 444; Jacobson)* GENERALLY REVISING STATE LAND LAWS RELATED TO ACCESS; PROVIDING A TAX CREDIT FOR QUALIFIED ACCESS TO STATE LANDS; CREATING THE UNLOCKING STATE LANDS PROGRAM; DEFINING PARCELS NOT PREVIOUSLY DEEMED LEGALLY ACCESSIBLE; PROVIDING CRITERIA FOR PROGRAM PARTICIPATION; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING A DELAYED EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE . . . . . 1374

347 *(House Bill No. 457; Price)* GENERALLY REVISING RECOUNT BOARD LAWS; CREATING A SCHOOL RECOUNT BOARD FOR SCHOOL DISTRICT ELECTIONS; PROVIDING DEFINITIONS; PROVIDING PROCEDURES FOR SCHOOL RECOUNT BOARDS; CLARIFYING FUNDING FOR SCHOOL DISTRICT RECOUNTS; AMENDING SECTIONS 13-1-101, 13-16-101, 13-16-201, 13-16-203, 13-16-204, 13-16-205, 13-16-301, 13-16-417, 13-16-418, AND 13-16-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1376

348 *(House Bill No. 494; Glimm)* REQUIRING THE DEPARTMENT OF TRANSPORTATION TO PERFORM AN INSPECTION WITHIN 30 DAYS OF A CONTRACTOR'S REQUEST FOR AN INSPECTION; REQUIRING THE DEPARTMENT TO NOTIFY CONTRACTORS OF DEFICIENCIES; REQUIRING FINAL PAYMENT FOR CONTRACTS TO BE MADE WITHIN 90 DAYS AFTER THE DEPARTMENT'S FINAL ACCEPTANCE; AND AMENDING SECTION 60-2-115, MCA. . . . . 1384

349 *(House Bill No. 545; Reichner)* ALLOWING EMPLOYERS TO PAY THE TOTAL COST OF THEIR QUALIFYING EMPLOYEES' INDIVIDUAL DISABILITY COVERAGE IN CERTAIN INSTANCES; DEFINING "QUALIFYING EMPLOYEE"; CLARIFYING THAT AN EMPLOYER'S PAYMENT OF THE COST OF INDIVIDUAL DISABILITY COVERAGE FOR ITS QUALIFYING EMPLOYEES IS EXCLUDED FROM THE DEFINITION OF "ADJUSTED GROSS INCOME" FOR INDIVIDUAL INCOME TAX PURPOSES; PROVIDING THAT THE SMALL EMPLOYER HEALTH INSURANCE AVAILABILITY ACT DOES NOT APPLY TO DISABILITY COVERAGE PROVIDED BY SMALL EMPLOYERS FOR QUALIFYING EMPLOYEES; AMENDING SECTIONS 15-30-2110 AND 33-22-1804, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . . . . . 1385

350 *(House Bill No. 555; Hill)* GENERALLY REVISING MEDIATION LAWS; CLARIFYING THE CIRCUMSTANCES IN WHICH A COURT MAY ORDER MEDIATION TO RESOLVE AMENDED PARENTING PLAN DISPUTES; REQUIRING PARTIES TO PROVIDE INFORMED CONSENT BEFORE A COURT CAN AUTHORIZE MEDIATION WHEN THE COURT SUSPECTS PHYSICAL, SEXUAL, OR EMOTIONAL ABUSE; REQUIRING A MEDIATOR TRAINED IN MEDIATING DOMESTIC VIOLENCE CASES TO CONDUCT MEDIATIONS IN CERTAIN CASES; DEFINING "INFORMED CONSENT"; ALLOWING PERSONS WHO ARE NOT ATTORNEYS TO BE PRESENT DURING CERTAIN MEDIATIONS; ALLOWING MEDIATIONS TO BE CONDUCTED BY MEDIATORS WHO ARE TRAINED IN MEDIATING DOMESTIC VIOLENCE CASES; AND AMENDING SECTIONS 40-4-219, 40-4-301, 40-4-302, AND 40-4-307, MCA . . . . . 1391

351 *(House Bill No. 562; Swanson)* REVISING SUBDIVISION LAWS REGARDING SURVEYS AND EXEMPTIONS FROM LOCAL SUBDIVISION REVIEW; AMENDING SECTION 76-3-207, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1394

352 *(House Bill No. 580; Connell)* PROVIDING AN APPROPRIATION FOR THE GREATER SAGE-GROUSE HABITAT CONSERVATION ADVISORY COUNCIL ESTABLISHED BY THE GOVERNOR; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1395

353 *(House Bill No. 583; Cook)* CREATING THE MONTANA SUICIDE REVIEW TEAM; ESTABLISHING MEMBERSHIP REQUIREMENTS; ESTABLISHING A PROCESS FOR OBTAINING AND REVIEWING INFORMATION RELATED TO SUICIDES; PROVIDING CONFIDENTIALITY; PROVIDING PENALTIES; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 50-16-522, 50-16-525, 50-16-804, 50-16-805, AND 53-21-1102, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE . . . . . 1397

354 *(House Bill No. 586; Cuffe)* REVISING LAWS RELATED TO AQUATIC INVASIVE SPECIES; ESTABLISHING A STATEWIDE INVASIVE SPECIES MANAGEMENT AREA; AUTHORIZING USE OF QUARANTINE MEASURES AND CHECK STATIONS AT KEY ENTRY POINTS TO THE STATE; DEFINING AND AUTHORIZING INSPECTION OF EQUIPMENT; REVISING DEPARTMENTAL DUTIES,

INCLUDING DUTIES OF THE DEPARTMENT OF TRANSPORTATION; GRANTING RULEMAKING AUTHORITY; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 80-7-1002, 80-7-1003, 80-7-1004, 80-7-1006, 80-7-1007, 80-7-1008, 80-7-1010, 80-7-1011, AND 80-7-1014, MCA; AND PROVIDING EFFECTIVE DATES . . . . . 1400

355 *(House Bill No. 588; Harris)* REVISING LAWS RELATED TO UNLAWFUL USE OF AIRCRAFT FOR HUNTING-RELATED PURPOSES; PROHIBITING USE OF AN AIRCRAFT TO LOCATE A GAME ANIMAL ON THE SAME DAY IT WILL BE HUNTED; PROHIBITING COMMUNICATION OF THE LOCATION OF A GAME ANIMAL TO ANOTHER PERSON ON THE SAME DAY IT WILL BE HUNTED; REVISING PENALTIES; AND AMENDING SECTION 87-6-207, MCA . 1406

356 *(House Bill No. 591; Osmundson)* INCREASING FEES FOR LICENSING OF WEIGHING DEVICES; AMENDING SECTION 30-12-203, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1409

357 *(House Bill No. 593; Wagoner)* REVISING THE SITE-SPECIFIC INFORMATION THAT IS CONSIDERED IN THE CLASSIFICATION AND APPRAISAL OF AGRICULTURAL LAND OR FOREST LAND FOR PROPERTY TAXATION PURPOSES; REQUIRING THE AGRICULTURAL ADVISORY COMMITTEE TO PROVIDE METHODS FOR ADJUSTING PRODUCTIVITY VALUES; EXPANDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-7-103 AND 15-7-201, MCA; AND PROVIDING AN APPLICABILITY DATE . . . . . 1410

358 *(House Bill No. 607; Lavin)* REVISING THE PILOT PROGRAM FOR ELECTRONIC TITLE, LIEN FILING, AND REGISTRATION TO ALLOW A USER OPTION FOR EXPEDITED SERVICES; ALLOWING THE DEPARTMENT OF JUSTICE TO ESTABLISH A FEE FOR OPTIONAL EXPEDITED SERVICES; AND AMENDING SECTION 61-3-109, MCA . 1413

359 *(House Bill No. 614; Berry)* PROVIDING FOR THE SALE OF TRAVEL INSURANCE BY A TRAVEL RETAILER UNDER THE DIRECTION OF A LIMITED LINES TRAVEL INSURANCE PRODUCER; PROVIDING FOR FEES FOR LICENSURE AND THE MAINTAINING OF REGISTRIES BY THE COMMISSIONER OF INSURANCE; GRANTING RULEMAKING AUTHORITY TO THE COMMISSIONER OF INSURANCE; PROVIDING FOR ENFORCEMENT AND PENALTIES; AND AMENDING SECTION 33-17-212, MCA . . . . . 1413

360 *(Senate Bill No. 28; Thomas)* ADOPTING THE INTERSTATE INSURANCE PRODUCT REGULATION COMPACT; AUTHORIZING THE STATE AUDITOR AS COMMISSIONER OF INSURANCE TO PARTICIPATE IN THE COMPACT; ENSURING THAT PARTICIPATING STATES PROVIDE A COMMON FRAMEWORK FOR REGULATING DESIGNATED INSURANCE PRODUCTS; LEGISLATIVELY OPTING OUT OF CERTAIN UNIFORM STANDARDS; PROVIDING OPT-OUT AUTHORITY; LIMITING GOVERNMENTAL LIABILITY; AND AMENDING SECTIONS 33-1-311 AND 33-1-501, MCA. . . . . 1417

361 *(Senate Bill No. 45; Keane)* REVISING THE DEFINITION OF "ELIGIBLE RENEWABLE RESOURCE" TO INCLUDE HYDROELECTRIC PROJECT EXPANSIONS; PROVIDING THE PUBLIC SERVICE COMMISSION WITH RULEMAKING AUTHORITY WITH RESPECT TO HYDROELECTRIC PROJECT EXPANSIONS; AND AMENDING SECTIONS 69-3-2003 AND 69-3-2006, MCA . . . . . 1434

362 *(Senate Bill No. 69; Walker)* CREATING A FINE FOR RECEIVING ASSETS THAT WERE TRANSFERRED TO QUALIFY AN APPLICANT OR RECIPIENT FOR MEDICAID. . . . . 1440

363 *(Senate Bill No. 84; Kaufmann)* ESTABLISHING STANDARDS FOR PATIENT-CENTERED MEDICAL HOMES; PROVIDING THAT PATIENT-CENTERED MEDICAL HOMES HAVE A STATE PURPOSE THAT PROVIDES STATE ACTION IMMUNITY ON ANTICOMPETITION CONCERNS; ALLOWING THE USE OF PATIENT-CENTERED MEDICAL HOMES IN THE MEDICAID AND HEALTHY MONTANA KIDS PROGRAMS; ALLOWING THE VOLUNTARY PARTICIPATION OF ALL STATE, UNIVERSITY, AND LOCAL GOVERNMENT PLANS, INCLUDING STATE-REGULATED MULTIPLE-WELFARE ARRANGEMENTS, THIRD-PARTY ADMINISTRATORS, AND SELF-INSURED STUDENT HEALTH PLANS AS POTENTIAL HEALTH PLAN PARTICIPANTS IN A PATIENT-CENTERED MEDICAL HOME PROGRAM; PROVIDING RULEMAKING AUTHORITY FOR THE STATE AUDITOR'S OFFICE AND THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AMENDING SECTIONS 20-25-1403, 33-1-102, 33-31-111, 33-35-306, AND 53-6-113, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE . . . . . 1441

364 *(Senate Bill No. 348; Thomas)* RELATING TO MONTANA SCHOOL SAFETY; ADDING PUBLIC SCHOOL BUILDINGS TO THE EXEMPTIONS FROM DISCLOSURE TO PROTECT PUBLIC SAFETY OR SECURITY OF PUBLIC FACILITIES; REQUIRING SCHOOL DISTRICTS TO ADOPT A SCHOOL SAFETY PLAN; REVISING LAWS REGARDING DISASTER DRILLS IN PUBLIC SCHOOLS; REQUIRING SCHOOL DISTRICTS TO ANNUALLY REVIEW SUSPENSION AND EXPULSION POLICIES RELATED TO STUDENTS WITH WEAPONS OR FIREARMS AT SCHOOL; EXPANDING PUBLIC SCHOOL DISTRICT ACCESS TO INFORMATION IN POSSESSION OF LAW ENFORCEMENT REGARDING POTENTIAL CRIMINAL ACTIVITY OF STUDENTS; RENAMING THE COUNTY INTERDISCIPLINARY CHILD INFORMATION AND SCHOOL SAFETY TEAM AND REQUIRING COUNTIES TO FORM A TEAM; REVISING THE REQUIREMENTS FOR A YOUTH COURT TO PROVIDE NOTICE TO A SCHOOL REGARDING YOUTH OFFENDERS; ALLOWING SCHOOL DISTRICTS TEMPORARY AUTHORITY TO TRANSFER FUNDS INTO THE BUILDING RESERVE FUND FOR SCHOOL SAFETY AND SECURITY IMPROVEMENTS; AMENDING SECTIONS 2-6-102, 20-1-401, 20-1-402, 20-5-202, 41-3-205, 41-5-215, 52-2-211, AND 52-2-304, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE . . 1449

365 *(House Bill No. 8; Cook)* APPROVING RENEWABLE RESOURCE PROJECTS AND AUTHORIZING LOANS; REAUTHORIZING RENEWABLE RESOURCE PROJECTS AUTHORIZED BY THE 62ND LEGISLATURE; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING THE ISSUANCE OF COAL SEVERANCE TAX BONDS; AUTHORIZING THE CREATION OF A STATE DEBT AND APPROPRIATING COAL SEVERANCE TAXES FOR DEBT SERVICE; PLACING CERTAIN CONDITIONS UPON LOANS; AND PROVIDING AN EFFECTIVE DATE . . . . . 1459

366 *(House Bill No. 54; Ingraham)* GENERALLY REVISING ADMINISTRATIVE AND FEDERAL TAX QUALIFICATION PROVISIONS OF THE TEACHERS' RETIREMENT SYSTEM; CLARIFYING DEFINITIONS AND TERMINOLOGY RELATED TO TERMINATION OF EMPLOYMENT, POSITIONS REPORTABLE TO THE RETIREMENT SYSTEMS, RETIREMENT STATUS, AND SERVICE CREDIT; SPECIFYING JURISDICTION AND VENUE FOR JUDICIAL

REVIEW OF ADMINISTRATIVE DECISIONS; CLARIFYING TERMINATION PAY PROCEDURES; REVISING CERTAIN NORMAL RETIREMENT AGE AND NONFORFEITABILITY OF BENEFIT PROVISIONS AS REQUIRED FOR FEDERAL TAX QUALIFICATION; AMENDING SECTIONS 19-20-101, 19-20-201, 19-20-409, 19-20-716, 19-20-733, 19-20-801, 19-20-802, 19-20-805, AND 19-20-1101, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 1461

367 *(House Bill No. 129; Gibson)* REVISING CAMPAIGN FINANCE AND DISCLOSURE LAWS; REVISING WHEN PRINTED ELECTION MATERIAL MUST DISCLOSE CONTRASTING VOTES MADE BY A CANDIDATE; REVISING THE POLITICAL-CIVIL LIBEL LAW; AND AMENDING SECTIONS 13-35-225 AND 13-37-131, MCA . . . . . 1474

368 *(House Bill No. 354; Connell)* REVISING THE LAWS GOVERNING THE FIRE SUPPRESSION ACCOUNT; REQUIRING THE CONSIDERATION OF WILDLAND FIRE SUPPRESSION ACTIVITIES IN DETERMINING THE AMOUNT OF THE PROJECTED GENERAL FUND BUDGET DEFICIT; REQUIRING TRANSFER OF THE UNOBLIGATED BALANCE OF THE APPROPRIATION FOR GOVERNOR-DECLARED DISASTERS TO THE FIRE SUPPRESSION ACCOUNT; REQUIRING TRANSFER OF A CERTAIN PERCENTAGE OF UNEXPENDED GENERAL FUND MONEY TO THE FIRE SUPPRESSION ACCOUNT; PROVIDING THAT THE MONEY IN THE FIRE SUPPRESSION ACCOUNT MAY NOT EXCEED $100 MILLION; REQUIRING TRANSFER OF AN EXCESS AMOUNT OF CORPORATION LICENSE TAX REVENUE INTO THE FIRE SUPPRESSION ACCOUNT; STATUTORILY APPROPRIATING THE MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AMENDING SECTIONS 10-3-312, 17-7-140, 17-7-502, AND 76-13-150, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1475

369 *(House Bill No. 395; Wagoner)* REVISING THE MEMBERSHIP OF THE LIVESTOCK LOSS BOARD; REDUCING BOARD MEMBERSHIP; CHANGING MEMBERSHIP REQUIREMENTS; AND AMENDING SECTION 2-15-3110, MCA . . . . . 1480

370 *(House Bill No. 414; Hoven)* ALLOWING A NONRESIDENT WHO HAS AN INTEREST IN REAL PROPERTY IN MONTANA TO REGISTER A MOTOR VEHICLE IN THE COUNTY WHERE THE REAL PROPERTY IS LOCATED; AND AMENDING SECTIONS 61-3-201 AND 61-3-303, MCA 1481

371 *(House Bill No. 417; Flynn)* GENERALLY REVISING EMINENT DOMAIN LAWS; REQUIRING THAT A FINAL WRITTEN OFFER BE REJECTED BEFORE A CONDEMNATION COMPLAINT IS FILED; ALLOWING FOR ADDITIONAL OFFERS; REQUIRING THAT THE CLAIM REQUIRED IN THE CONTENTS OF A COMPLAINT FOR CONDEMNATION BE EQUAL TO THE FINAL WRITTEN OFFER MADE BY THE STATE OR ITS AGENT; AMENDING SECTIONS 70-30-110, 70-30-111, 70-30-203, 70-30-206, AND 70-30-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 1484

372 *(House Bill No. 447; Peppers)* ESTABLISHING A STATE SCHOLARSHIP PROGRAM FOR ELIGIBLE PURPLE HEART RECIPIENTS; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE . . . . . 1487

373 *(House Bill No. 464; Clark)* GENERALLY REVISING LAWS PERTAINING TO PREVAILING WAGES; CLARIFYING THE CEILING FOR WAGE RATES AND FRINGE BENEFIT RATES; REDUCING THE NUMBER OF PREVAILING WAGE RATE DISTRICTS FROM A MAXIMUM OF 10 DISTRICTS TO A MAXIMUM OF 5 DISTRICTS; REVISING THE

METHOD OF DETERMINING PREVAILING FRINGE BENEFITS; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO ESTABLISH THE PREVAILING WAGE RATES FOR HEAVY CONSTRUCTION SERVICES, HIGHWAY CONSTRUCTION SERVICES, AND BUILDING CONSTRUCTION SERVICES ANNUALLY; REVISING PROVISIONS RELATED TO PREVAILING WAGES FOR HEAVY CONSTRUCTION SERVICES AND HIGHWAY CONSTRUCTION SERVICES; ESTABLISHING A METHOD FOR CALCULATING ZONE PAY OR PER DIEM; AND AMENDING SECTIONS 18-2-402, 18-2-411, 18-2-413, AND 18-2-414, MCA. . . . . 1488

374 *(House Bill No. 478; Laszloffy)* REVISING LAWS REGARDING TRAFFICKING OF PERSONS FOR COMMERCIAL SEXUAL ACTIVITY; REVISING PROSTITUTION LAWS; REVISING CERTAIN PENALTIES; ESTABLISHING THE OFFENSES OF SEXUAL SERVITUDE OF A CHILD AND PATRONIZING A CHILD; AMENDING SECTIONS 45-5-305, 45-5-306, 45-5-601, 45-5-602, 45-5-603, 46-18-111, 46-18-201, 46-18-203, 46-18-205, 46-18-207, 46-18-222, 46-18-231, 46-23-502, AND 46-23-1011, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 1491

375 *(House Bill No. 524; Clark)* REVISING THE REQUIREMENT THAT RETAIL LICENSES FOR SELLING BEER OR WINE FOR OFF-PREMISES CONSUMPTION BE OPERATED AS A BONA FIDE GROCERY STORE OR A DRUGSTORE LICENSED AS A PHARMACY; AND AMENDING SECTION 16-4-115, MCA. . . . . 1507

376 *(House Bill No. 626; Osmundson)* IMPLEMENTING PROVISIONS OF THE GENERAL APPROPRIATIONS ACT BY INCREASING THE PERCENTAGE OF MOTOR VEHICLE REVENUE DEPOSITED IN THE STATE GENERAL FUND TO BE ALLOCATED TO VETERANS' ACCOUNTS; AMENDING SECTION 15-1-122, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 1508

377 *(Senate Bill No. 196; Rosendale)* LIMITING THE USE OF UNMANNED AERIAL VEHICLES BY LAW ENFORCEMENT; AND PROHIBITING THE USE OF UNLAWFULLY OBTAINED INFORMATION AS EVIDENCE IN COURT . . . . . 1509

378 *(Senate Bill No. 198; Thomas)* PROVIDING FOR INCREASED PENALTIES FOR ASSAULT ON A MINOR UNDER 36 MONTHS OF AGE; AMENDING SECTIONS 45-5-212 AND 46-18-111, MCA; AND PROVIDING AN APPLICABILITY DATE . . . . . 1510

379 *(Senate Bill No. 324; Rosendale)* GENERALLY REVISING SUBDIVISION LAWS RELATED TO LEASE OR RENT; PROVIDING FOR THE REGULATION OF BUILDINGS CREATED FOR LEASE OR RENT ON A SINGLE TRACT; PROVIDING EXEMPTIONS FROM REVIEW FOR CERTAIN BUILDINGS; REQUIRING CERTAIN BUILDINGS CREATED FOR LEASE OR RENT TO BE REVIEWED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY OR LOCAL REVIEWING AUTHORITY FOR SANITATION COMPLIANCE; AUTHORIZING A LOCAL GOVERNMENT TO REVIEW THE CREATION OF BUILDINGS FOR LEASE OR RENT IN CERTAIN CASES; PROVIDING MINIMUM REQUIREMENTS FOR LOCAL GOVERNMENT REGULATIONS; AUTHORIZING THE ADOPTION OF ADDITIONAL CRITERIA FOR THE LOCAL REVIEW OF CERTAIN BUILDINGS; PROVIDING DEFINITIONS; PROVIDING PENALTIES; REVISING LOCAL SUBDIVISION REGULATIONS; AMENDING SECTIONS 76-3-103, 76-3-504, 76-4-125, 76-6-203, AND 76-7-203, MCA; REPEALING SECTIONS 76-3-202, 76-3-204, AND 76-3-208, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 1512

380 *(House Bill No. 2; Ankney)* APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 2015; AND PROVIDING AN EFFECTIVE DATE . . . . . 1524

381 *(House Bill No. 5; Ankney)* APPROPRIATING MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2015; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; PROVIDING FOR A TRANSFER OF FUNDS FROM THE STATE GENERAL FUND TO THE LONG-RANGE BUILDING PROGRAM ACCOUNT; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1585

382 *(House Bill No. 6; Cook)* IMPLEMENTING THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO IMPLEMENT COMPACTS FOR THE BLACKFEET TRIBE AND THE FORT BELKNAP INDIAN COMMUNITY OF THE FORT BELKNAP RESERVATION; PRIORITIZING PROJECT GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; PROVIDING FOR A GENERAL FUND TRANSFER; PROVIDING A TRANSFER FROM THE ORPHAN SHARE ACCOUNT; AND PROVIDING AN EFFECTIVE DATE . . . . . 1590

383 *(House Bill No. 10; Pomnichowski)* APPROPRIATING MONEY FOR INFORMATION TECHNOLOGY CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2015; PROVIDING FOR MATTERS RELATING TO THE APPROPRIATIONS; PROVIDING FOR A TRANSFER OF FUNDS FROM THE GENERAL FUND TO THE LONG-RANGE INFORMATION TECHNOLOGY PROGRAM ACCOUNT; PROVIDING FOR THE DEVELOPMENT AND ACQUISITION OF NEW INFORMATION TECHNOLOGY SYSTEMS FOR THE DEPARTMENT OF ADMINISTRATION, THE COMMISSIONER OF POLITICAL PRACTICES, THE DEPARTMENT OF ENVIRONMENTAL QUALITY, THE DEPARTMENT OF TRANSPORTATION, THE SECRETARY OF STATE, AND THE LEGISLATIVE BRANCH; AND PROVIDING AN EFFECTIVE DATE . . . . . 1596

384 *(House Bill No. 11; Gibson)* APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO LOCAL GOVERNMENT INFRASTRUCTURE PROJECTS THROUGH THE TREASURE STATE ENDOWMENT PROGRAM; AUTHORIZING GRANTS FROM THE TREASURE STATE ENDOWMENT STATE SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS UPON GRANTS AND FUNDS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR EMERGENCY GRANTS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR INFRASTRUCTURE PLANNING GRANTS; APPROPRIATING MONEY FROM THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM STATE SPECIAL REVENUE ACCOUNT TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR FINANCIAL ASSISTANCE TO REGIONAL WATER AUTHORITIES FOR REGIONAL WATER PROJECTS; PROVIDING FOR A TRANSFER OF FUNDS FROM THE STATE GENERAL FUND TO THE TREASURE STATE ENDOWMENT STATE SPECIAL REVENUE ACCOUNT; PROVIDING FOR A TRANSFER OF FUNDS FROM THE STATE GENERAL FUND TO THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM SPECIAL REVENUE ACCOUNT; AND PROVIDING AN EFFECTIVE DATE . . . . . 1598

385 *(House Bill No. 13; Swanson)* GENERALLY REVISING LAWS GOVERNING STATE EMPLOYEE COMPENSATION; CLARIFYING BENEFITS FOR LAID-OFF EMPLOYEES; APPROPRIATING FUNDS TO IMPLEMENT PAY REVISIONS AND FOR PERSONAL SERVICES CONTINGENCIES; REQUIRING REPORTING ON THE IMPLEMENTATION OF PAY INCREASES; AMENDING SECTIONS 2-18-301, 2-18-303, AND 2-18-703, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 1603

386 *(House Bill No. 97; Wilmer)* REVISING THE COMPENSATION USED TO DETERMINE RETIREMENT BENEFITS IN CERTAIN PUBLIC RETIREMENT SYSTEMS; PLACING A CAP ON THE EARNINGS THAT MAY BE INCLUDED IN THE HIGHEST OR FINAL AVERAGE COMPENSATION USED TO DETERMINE A RETIREMENT BENEFIT UNDER THE PUBLIC EMPLOYEES', JUDGES', HIGHWAY PATROL OFFICERS', SHERIFFS', GAME WARDENS' AND PEACE OFFICERS', MUNICIPAL POLICE OFFICERS', AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS; AMENDING SECTIONS 19-2-303, 19-2-1005, 19-3-108, 19-5-101, 19-6-101, 19-7-101, 19-8-101, 19-9-104, AND 19-13-104, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 1607

387 *(House Bill No. 262; Hill)* EXTENDING MEDICAID ELIGIBILITY TO CHILDREN PLACED IN A SUBSIDIZED GUARDIANSHIP; AMENDING SECTION 53-6-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1619

388 *(House Bill No. 345; Smith)* REVISING THE MONTANA FALSE CLAIMS ACT; REVISING CIVIL PENALTIES TO PROVIDE FOR INFLATION ADJUSTMENTS; REVISING PUBLIC DISCLOSURE PROVISIONS; REVISING THE STATUTE OF LIMITATIONS; PROVIDING A STATUTE OF LIMITATIONS AND DOUBLE BACK PAY FOR RETALIATORY ACTIONS; PROVIDING A REPORTING REQUIREMENT; AMENDING SECTIONS 17-8-402, 17-8-403, 17-8-404, 17-8-410, 17-8-411, AND 17-8-412, MCA; PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 1622

389 *(House Bill No. 377; Woods)* PROVIDING ADDITIONAL FUNDING FOR THE TEACHERS' RETIREMENT SYSTEM; CREATING TWO MEMBERSHIP TIERS WITHIN THE SYSTEM; INCREASING THE NORMAL CONTRIBUTION RATE FOR NEW MEMBERS; ENACTING A SUPPLEMENTAL CONTRIBUTION RATE FOR CURRENT MEMBERS; AUTHORIZING THE TEACHERS' RETIREMENT BOARD TO IMPOSE A SUPPLEMENTAL CONTRIBUTION RATE FOR TIER TWO MEMBERS AND EMPLOYERS; AUTHORIZING THE TEACHERS' RETIREMENT BOARD TO INCREASE OR DECREASE ANY SUPPLEMENTAL CONTRIBUTION RATE ACCORDING TO CERTAIN ACTUARIALLY DETERMINED FUNDING STANDARDS; REVISING HOW AVERAGE FINAL COMPENSATION IS CALCULATED FOR NEW MEMBERS; REVISING ELIGIBILITY FOR EARLY AND NORMAL RETIREMENT AND FOR DEATH AND DISABILITY BENEFITS FOR NEW MEMBERS; ESTABLISHING AN INCREASED NORMAL RETIREMENT BENEFIT FOR CERTAIN NEW MEMBERS; REVISING THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT FOR NEW AND CURRENT MEMBERS; DECREASING THE CAP ON SCHOOL DISTRICT RETIREMENT FUND OPERATING RESERVES AND PROVIDING THAT ANY RESERVES IN EXCESS OF THE CAP BE PAID TO THE TEACHERS' RETIREMENT SYSTEM; PROVIDING APPROPRIATIONS; SPECIFYING A TIMETABLE FOR THE PAYMENT OF STATE TRANSPORTATION REIMBURSEMENT TO THE SCHOOL DISTRICTS; AMENDING SECTIONS 19-20-101, 19-20-208, 19-20-409, 19-20-427, 19-20-602, 19-20-605, 19-20-607, 19-20-716, 19-20-719, 19-20-732,

19-20-801, 19-20-802, 19-20-804, 19-20-805, 19-20-901, 19-20-1001, 20-9-501, AND 20-10-145, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 1629

390 *(House Bill No. 454; McChesney)* PROVIDING FUNDING FOR THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; PROVIDING THAT THE UNALLOCATED PORTION OF COAL SEVERANCE TAX COLLECTIONS IS STATUTORILY APPROPRIATED TO THE PUBLIC EMPLOYEES' DEFINED BENEFIT RETIREMENT PLAN; REVISING THE ALLOCATION OF INTEREST INCOME FROM THE COAL TAX PERMANENT FUND AND PROVIDING A STATUTORY APPROPRIATION OF A PORTION OF THE INTEREST INCOME TO THE PUBLIC EMPLOYEES' DEFINED BENEFIT RETIREMENT PLAN; AMENDING THE TERMINATION DATE FOR THE TRANSFER OF CERTAIN MONEY FROM THE COAL SEVERANCE TAX BOND FUND TO THE TREASURE STATE ENDOWMENT FUND AND THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM FUND; TEMPORARILY INCREASING EMPLOYEE AND EMPLOYER CONTRIBUTIONS TO THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; REVISING THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT FOR NEW AND CURRENT MEMBERS; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 15-35-108, 17-5-703, 19-3-315, 19-3-316, 19-3-1605, AND 19-3-2117, MCA; AMENDING SECTION 6, CHAPTER 495, LAWS OF 1999, AND SECTIONS 15 AND 16, CHAPTER 389, LAWS OF 2011; AND PROVIDING AN EFFECTIVE DATE . . . . . 1650

391 *(House Bill No. 477; Berry)* GENERALLY REVISING UTILITY LAWS; REVISING LAWS RELATED TO ENERGY USE DISCLOSURE AND UTILITY LIABILITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . . . . 1661

392 *(House Bill No. 554; Smith)* REVISING LAWS RELATED TO LEGISLATOR PAYROLL AND BENEFITS; AMENDING SECTIONS 5-2-302 AND 5-2-303, MCA; AND PROVIDING AN EFFECTIVE DATE . 1662

393 *(House Bill No. 559; Bangerter)* GENERALLY REVISING MOTOR VEHICLE LAWS; MODIFYING DATE RESTRICTIONS ON THE CONTINUED USE OF STANDARD LICENSE PLATE DESIGNS OR PLATE NUMBERS; ELIMINATING THE COUNTY PREFIX REQUIREMENTS FOR SMALL LICENSE PLATES; REMOVING COLLEGIATE LICENSE PLATES AND GENERIC SPECIALTY LICENSE PLATES FROM PERMANENT REGISTRATION RESTRICTIONS ON CERTAIN VEHICLES; CLARIFYING CERTAIN SPEEDING OFFENSES AND PENALTIES; ELIMINATING THE REQUIREMENT TO PROVIDE A LIST OF AMATEUR RADIO LICENSE PLATE HOLDERS TO CERTAIN AGENCIES; AMENDING SECTIONS 61-3-321, 61-3-332, 61-3-337, 61-3-562, 61-8-303, 61-8-309, 61-8-310, AND 61-8-725, MCA; REPEALING SECTION 61-3-424, MCA; AND PROVIDING EFFECTIVE DATES . . . . . 1663

394 *(House Bill No. 603; Zolnikov)* PROVIDING THAT A GOVERNMENT ENTITY MUST OBTAIN A SEARCH WARRANT PRIOR TO OBTAINING LOCATION INFORMATION OF AN ELECTRONIC DEVICE; AND PROVIDING EXCEPTIONS, DEFINITIONS, AND A CIVIL PENALTY . 1674

395 *(House Bill No. 609; Connell)* PROVIDING FOR AN INTERIM STUDY OF HUNTING AND FISHING LICENSING; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE . . . . . 1675

396 *(Senate Bill No. 96; Tutvedt)* REDUCING THE TAX RATE FOR A PORTION OF THE TAXABLE MARKET VALUE OF CLASS EIGHT BUSINESS EQUIPMENT OWNED BY A TAXPAYER; INCREASING THE CLASS EIGHT BUSINESS EQUIPMENT TAX EXEMPTION; PROVIDING THAT THE EXEMPTION APPLIES TO CLASS EIGHT PROPERTY THAT EXCEEDS THE EXEMPTION AMOUNT; CHANGING CERTAIN OTHER PROVISIONS RELATING TO TAXATION OF CLASS EIGHT PROPERTY; REMOVING A CONTINGENCY REGARDING FUTURE TAX REDUCTIONS BASED ON INCREASES IN STATE COLLECTIONS OF INDIVIDUAL INCOME TAX AND CORPORATION LICENSE TAX; PROVIDING A PARTIAL REIMBURSEMENT TO LOCAL GOVERNMENTS AND TAX INCREMENT FINANCING DISTRICTS UNDER THE ENTITLEMENT SHARE PAYMENT, TO SCHOOL DISTRICTS THROUGH THE BLOCK GRANT PROGRAM, TO COUNTY SCHOOL RETIREMENT AND COUNTY TRANSPORTATION REIMBURSEMENT, AND TO THE MONTANA UNIVERSITY SYSTEM THROUGH SUPPORT OF PUBLIC EDUCATION INSTITUTIONS FOR THE LOSS OF CLASS EIGHT AND CLASS TWELVE PROPERTY TAX REVENUE; PROVIDING CONTINGENT INCREASES AND DECREASES TO APPROPRIATIONS; AMENDING SECTIONS 15-1-123, 15-6-138, 15-6-141, AND 15-23-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . 1676

397 *(Senate Bill No. 101; Facey)* REVISING THE QUALIFICATIONS TO OBTAIN A PERMIT TO HUNT FROM A VEHICLE; AMENDING SECTION 87-2-803, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . . . . . 1682

398 *(Senate Bill No. 117; Sonju)* PROVIDING THAT FEDERALLY QUALIFIED HIGHER EDUCATION SAVINGS PLANS OF OTHER STATES HAVE THE SAME TAX ADVANTAGES AS ALLOWED FOR THE MONTANA FAMILY EDUCATION SAVINGS PLAN; AMENDING SECTION 15-30-2110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . 1685

399 *(Senate Bill No. 162; Keane)* GENERALLY REVISING HAIL INSURANCE LAWS; TRANSFERRING THE ADMINISTRATIVE RESPONSIBILITY FOR HAIL INSURANCE FEES FROM THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF AGRICULTURE; TRANSFERRING CERTAIN ADMINISTRATIVE DUTIES FOR THE HAIL INSURANCE PROGRAM FROM THE BOARD OF HAIL INSURANCE TO THE DEPARTMENT OF AGRICULTURE; CLARIFYING THE HAIL INSURANCE APPLICATION PROCESS; IMPOSING INTEREST ON DELINQUENT HAIL INSURANCE FEES; PROVIDING RULEMAKING AUTHORITY; CLARIFYING THE PROCESS FOR ADJUSTING CROP LOSSES FROM HAIL FOR THE PURPOSES OF THE HAIL INSURANCE PROGRAM; AMENDING SECTIONS 80-2-203, 80-2-204, 80-2-206, 80-2-207, 80-2-208, 80-2-221, 80-2-222, 80-2-224, 80-2-225, 80-2-230, 80-2-232, 80-2-242, 80-2-243, AND 80-2-244, MCA; REPEALING SECTIONS 80-2-226 AND 80-2-231, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . . . . . 1690

400 *(Senate Bill No. 175; Jones)* GENERALLY REVISING SCHOOL FINANCE LAWS BY INCREASING FUNDING, REDUCING SCHOOL DISTRICT PROPERTY TAXES, AND INCREASING FLEXIBILITY TO SUPPORT IMPROVED ACADEMIC PERFORMANCE OF STUDENTS ENROLLED IN PUBLIC SCHOOLS; CREATING A K-12 DATA TASK FORCE; ESTABLISHING A DATA-FOR-ACHIEVEMENT PAYMENT; REDIRECTING OIL AND NATURAL GAS PRODUCTION TAX REVENUE FROM THE STATE GENERAL FUND TO A NEW NATURAL RESOURCE DEVELOPMENT K-12 FUNDING PAYMENT TO SUPPORT

BASE BUDGETS OF SCHOOL DISTRICTS; ENHANCING THE STATEWIDE K-12 DATA SYSTEM TO IMPROVE TIMELY ACCESS TO INFORMATION NEEDED TO POSITIVELY IMPACT STUDENT PERFORMANCE; STRENGTHENING SAFEGUARDS TO PROTECT THE PRIVACY OF STUDENT DATA; AMENDING THE DEFINITION OF BASE AID TO INCLUDE THE NATURAL RESOURCE DEVELOPMENT K-12 FUNDING PAYMENT AND THE TOTAL DATA-FOR-ACHIEVEMENT PAYMENT; APPLYING INFLATIONARY ADJUSTMENTS TO ENTITLEMENTS; REVISING AND INCREASING THE BASIC ENTITLEMENT; ALLOWING SCHOOL DISTRICTS TO ADD INCREASES IN THEIR BASIC AND PER-ANB ENTITLEMENT TO THE PREVIOUS YEAR'S GENERAL FUND BUDGET; REVISING AND CREATING EXCEPTIONS TO THE LIMITS, ALLOCATION, AND BUDGETING REQUIREMENTS FOR A SCHOOL DISTRICT RECEIVING OIL AND NATURAL GAS PRODUCTION TAX REVENUE; ADDING A THIRD ENROLLMENT COUNT TO CALCULATE ANB; REVISING THE CALCULATION OF ANB TO INCLUDE STUDENTS MASTERING CONTENT IN FEWER HOURS THAN OTHERWISE REQUIRED; ALIGNING THE REQUIREMENT OF REMOVING FUNDING FOR A SCHOOL LOSING ACCREDITATION WITH THE BOARD OF PUBLIC EDUCATION'S ACCREDITATION MODEL; REVISING WHEN AN INCREASE TO ANB IS APPROVED BASED ON UNUSUAL ENROLLMENT FOR PURPOSES OF ESTABLISHING THE DISTRICT'S ENSUING YEAR'S BASIC ENTITLEMENT AND PER-ANB ENTITLEMENT; EXTENDING THE DEADLINE FOR CERTAIN SCHOOL DISTRICT FUND BALANCE LIMITS; AMENDING BONDING PROVISIONS TO ALLOW FOR THE ISSUANCE AND NEGOTIATION OF OIL AND NATURAL GAS REVENUE BONDS FOR SCHOOL PURPOSES; PROVIDING FOR SECURITY FOR OIL AND NATURAL GAS PRODUCTION BONDS; MODIFYING RECIPIENTS OF THE STATE OIL AND NATURAL GAS IMPACT ACCOUNT; PROVIDING THAT ANY EXCESS INTEREST AND INCOME REVENUE ABOVE $1 MILLION IN THE GUARANTEE ACCOUNT MUST BE ALLOCATED TO THE DISTRIBUTION OF THE REVENUE BETWEEN SCHOOL DISTRICT PROPERTY TAX RELIEF AND INCREASED BUDGET AUTHORITY FOR FACILITIES REPAIRS AND OTHER PURPOSES; SPECIFYING AN INTENT THAT INCREASED BUDGET AUTHORITY OF SCHOOL DISTRICTS ABOVE INFLATION BE USED TO IMPLEMENT RECENT CHANGES TO THE ACCREDITATION STANDARDS ADOPTED BY THE BOARD OF PUBLIC EDUCATION; PROVIDING AN APPROPRIATION; ESTABLISHING A STATE SPECIAL REVENUE ACCOUNT TO TRANSFER MONEY TO THE GUARANTEE ACCOUNT TO SUPPORT INCREASES IN THE BASIC ENTITLEMENT AND PROVIDING FOR A TRANSFER FROM THE GENERAL FUND TO THE ACCOUNT; ESTABLISHING A STATE SCHOOL OIL AND NATURAL GAS DISTRIBUTION ACCOUNT; AMENDING SECTIONS 20-7-102, 20-7-104, 20-9-141, 20-9-306, 20-9-308, 20-9-310, 20-9-311, 20-9-314, 20-9-323, 20-9-326, 20-9-342, 20-9-344, 20-9-403, 20-9-406, 20-9-408, 20-9-422, 20-9-423, 20-9-426, 20-9-427, 20-9-430, 20-9-437, 20-9-438, 20-9-440, 20-9-517, 20-9-518, AND 20-9-622, MCA; AMENDING SECTION 29, CHAPTER 418, LAWS OF 2011; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE. . . . . 1696

401 *(Senate Bill No. 201; Hamlett)* GENERALLY REVISING LAWS RELATED TO WILDLAND FIRE; FINDING THAT CATASTROPHIC WILDLAND FIRE HAS THE POTENTIAL TO JEOPARDIZE MONTANANS' CONSTITUTIONAL RIGHT TO A CLEAN AND HEALTHFUL ENVIRONMENT; REQUIRING THE DEPARTMENT OF NATURAL

RESOURCES AND CONSERVATION TO ADVOCATE FOR AUTHORITY TO ENGAGE IN FOREST MANAGEMENT ACTIVITIES TO REDUCE FIRE RISK AND INTENSITY ON FEDERALLY MANAGED LAND LOCATED WITHIN THE WILDLAND-URBAN INTERFACE; AUTHORIZING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE ATTORNEY GENERAL TO INTERVENE IN CERTAIN LITIGATION OR APPEALS; AND AMENDING SECTIONS 76-13-104 AND 76-13-115, MCA. . . . . 1733

402 *(Senate Bill No. 215; Moore)* TRANSFERRING THE ADMINISTRATIVE ATTACHMENT OF THE BOARD OF HORSERACING FROM THE DEPARTMENT OF LIVESTOCK TO THE DEPARTMENT OF COMMERCE; AMENDING SECTION 23-4-101, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 1736

403 *(Senate Bill No. 217; Hamlett)* REVISING LAWS RELATED TO WATERSHEDS AND CATASTROPHIC FIRES; FINDING THAT WATERSHEDS AND THE DRINKING WATER SUPPLIES OF MANY MONTANA COMMUNITIES ARE AT RISK FROM CATASTROPHIC FIRES IN FEDERALLY MANAGED WATERSHEDS; DIRECTING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ANALYZE FOREST LAND FOR POTENTIAL ZONES OF INFESTATION AND ADVOCATE FOR AUTHORITY TO CONDUCT WATERSHED RESTORATION AND PROTECTION SERVICES ON FEDERAL LAND; AUTHORIZING THE ATTORNEY GENERAL TO INTERVENE IN LITIGATION OF FEDERAL FOREST MANAGEMENT PROJECTS; AND AMENDING SECTIONS 76-13-301, 76-13-303, 76-13-701, AND 76-13-702, MCA. . . . . 1738

404 *(Senate Bill No. 223; Caferro)* REQUIRING A PLAN FOR TERMINATING THE MONTANA COMPREHENSIVE HEALTH ASSOCIATION AND PLANS; PROVIDING FOR REVIEW OF THE PLAN BY THE INSURANCE COMMISSIONER AND THE LEGISLATURE; PROVIDING FOR TERMINATION OF THE ASSOCIATION BOARD OF DIRECTORS; AMENDING SECTIONS 33-22-1501, 33-22-1502, AND 33-22-1504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1741

405 *(Senate Bill No. 231; Augare)* REVISING THE LIMITATION ON THE NUMBER OF ACRES THAT ARE ELIGIBLE FOR EXEMPTION FROM THE PROPERTY TAX IF OWNED BY AN INDIAN TRIBE AND DESIGNATED AS PARK LAND; PROVIDING THAT EXISTING PROPERTY TAXES DUE ARE NOT EXTINGUISHED; AMENDING SECTION 15-6-201, MCA; AND PROVIDING AN APPLICABILITY DATE 1745

406 *(Senate Bill No. 264; Arntzen)* CREATING THE PORTABLE ELECTRONICS INSURANCE ACT; REQUIRING LICENSURE TO SELL OR OFFER COVERAGE UNDER A POLICY OF PORTABLE ELECTRONICS INSURANCE; REVISING LICENSE APPLICATION REQUIREMENTS FOR NONRESIDENT INSURANCE ADJUSTERS; GRANTING THE COMMISSIONER OF INSURANCE RULEMAKING AUTHORITY; AMENDING SECTION 33-17-301, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 1749

407 *(Senate Bill No. 323; Thomas)* PERMITTING A QUERY OF THE PRESCRIPTION DRUG REGISTRY PRIOR TO PRESCRIBING A SCHEDULE II OR SCHEDULE III DRUG FOR TREATMENT OF A WORKERS' COMPENSATION INJURY OR OCCUPATIONAL DISEASE; AND PROVIDING AN EFFECTIVE DATE. . . . . 1755

408 *(Senate Bill No. 335; Hamlett)* PROVIDING FOR REMOVAL OF A NATURAL OBSTRUCTION THAT IMPAIRS A PRIOR WATER RIGHT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1756

409 *(Senate Bill No. 336; Hamlett)* CLARIFYING THE DEFINITION OF THE TERM "DEVELOPED SPRING"; AND AMENDING SECTION 85-2-102, MCA. . . . . 1757

410 *(Senate Bill No. 342; Windy Boy)* ESTABLISHING THE MONTANA INDIAN LANGUAGE PRESERVATION PILOT PROGRAM; PROVIDING A PROGRAM DESCRIPTION; PROVIDING AN APPROPRIATION; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE . . . . 1760

411 *(Senate Bill No. 364; Vincent)* AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ADOPT RULES TO REGULATE THE DISPOSAL AND MANAGEMENT OF MATERIALS GENERATED BY THE COMBUSTION OF COAL AT ELECTRIC GENERATING FACILITIES UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 75-10-204 AND 75-10-214, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1762

412 *(Senate Bill No. 386; Facey)* REVISING LAWS GOVERNING BENEFITS FOR VOLUNTEER FIREFIGHTERS; ALLOWING CERTAIN LOCAL GOVERNMENTAL FIRE AGENCIES TO PROVIDE WORKERS' COMPENSATION COVERAGE FOR VOLUNTEER FIREFIGHTERS; REVISING PREMIUM AND BENEFIT PROVISIONS FOR VOLUNTEER FIREFIGHTERS AND CERTAIN VOLUNTEER EMERGENCY MEDICAL TECHNICIANS; AMENDING SECTIONS 7-6-621, 39-71-118, 39-71-123, AND 39-71-401, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 1763

413 *(Senate Bill No. 410; Ripley)* AUTHORIZING TRANSFERS TO IMPLEMENT THE GENERAL APPROPRIATIONS ACT; CREATING STATE SPECIAL REVENUE ACCOUNTS AND AUTHORIZING APPROPRIATIONS PURSUANT TO THOSE ACCOUNTS IN ORDER TO IMPLEMENT CERTAIN TRANSFERS; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. . . . . 1775

414 *(House Bill No. 184; Fiscus)* CLARIFYING THAT A SUPERVISING BROKER OR REAL ESTATE FIRM IS NOT RESPONSIBLE OR LIABLE FOR A FOR SALE BY OWNER PERSONAL TRANSACTION ON THE PART OF A SALESPERSON; AMENDING SECTION 37-51-309, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1778

415 *(House Bill No. 497; White)* PROHIBITING MUNICIPALITIES FROM INCLUDING CERTAIN PROVISIONS IN MUNICIPAL SOCIAL HOST ORDINANCES; AND AMENDING SECTIONS 7-5-109 AND 7-5-4207, MCA. . . . . 1779

416 *(Senate Bill No. 23; Rosendale)* REVISING COUNTY INTERIM ZONING REQUIREMENTS AND PROCEDURES; REQUIRING A COUNTY TO INITIATE A STUDY OR INVESTIGATION TO VERIFY THE EXISTENCE OF AN EMERGENCY; ELIMINATING THE SPECIFICATION OF EXIGENT CIRCUMSTANCES; REQUIRING CERTAIN PROCEDURES FOR THE EXTENSION OF A RESOLUTION FOR AN INTERIM ZONING DISTRICT OR INTERIM REGULATION; AND AMENDING SECTION 76-2-206, MCA. . . . . 1780

417 *(Senate Bill No. 44; Keane)* ELIMINATING THE AIR POLLUTION CONTROL ADVISORY COUNCIL AND ITS FUNCTIONS; ELIMINATING A PROVISION RELATED TO PUBLIC HEARINGS ON RULES; AMENDING SECTIONS 75-2-103 AND 75-2-402, MCA; REPEALING SECTIONS 2-15-2106, 75-2-121, 75-2-122, 75-2-123, AND 75-2-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1782

418 *(Senate Bill No. 226; Moore)* EXEMPTING CERTAIN AGRICULTURAL FEED TRUCKS FROM CERTAIN REQUIREMENTS AND TAXATION RELATED TO THE USE OF SPECIAL FUELS; AMENDING SECTIONS 15-70-321 AND 15-70-330, MCA. . . . . 1785

419 *(Senate Bill No. 280; Thomas)* AUTHORIZING A PROPERTY TAXPAYER THAT OBJECTS TO THE ASSESSED VALUATION OF PROPERTY TO HAVE THE OBJECTION RESOLVED THROUGH MEDIATION; REQUIRING PAYMENT OF A FEE AND PROVIDING PROCEDURES FOR MEDIATION; CLARIFYING THE INFORMATION THAT MAY BE CONVEYED BETWEEN PARTIES BY A MEDIATOR; AMENDING SECTIONS 15-1-211, 15-1-402, 15-8-601, 15-23-102, 15-23-104, AND 15-24-3112, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE. . . . . 1787

420 *(Senate Bill No. 297; Arntzen)* ESTABLISHING LIMITATIONS ON THE PAYMENTS NEGOTIATED FOR PROVIDER AGREEMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 1795

421 *(Senate Bill No. 346; Vincent)* GENERALLY REVISING WATER LAWS RELATED TO GROUND WATER APPROPRIATIONS EXEMPT FROM PERMITTING; DEFINING "STREAM DEPLETION ZONE"; REDUCING THE EXEMPTION FOR GROUND WATER APPROPRIATIONS WITHIN STREAM DEPLETION ZONES; LIMITING AREAS WHERE STREAM DEPLETION ZONES MAY BE ESTABLISHED; CLARIFYING ENFORCEMENT BY SENIOR WATER RIGHT HOLDERS AGAINST GROUND WATER APPROPRIATIONS EXEMPT FROM PERMITTING; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 85-2-102 AND 85-2-306, MCA . . . . . 1796

422 *(Senate Bill No. 369; Facey)* GENERALLY REVISING LAWS RELATED TO STATE LAND CABIN AND HOME SITES; REQUIRING THE BOARD OF LAND COMMISSIONERS, CONSISTENT WITH THE BOARD'S CONSTITUTIONAL FIDUCIARY DUTY OF ATTAINING FULL MARKET VALUE, TO MAKE AVAILABLE FOR SALE AT THE REQUEST OF THE LESSEE OR IMPROVEMENT OWNER ALL LEASED OR VACANT STATE LAND, CABIN OR HOME SITES, AND CABIN SITE IMPROVEMENTS; PROVIDING A PROCESS FOR SELLING ALL LEASED OR VACANT STATE LAND AND CABIN SITE IMPROVEMENTS FOR CABIN AND HOME SITES; PROVIDING FOR A VALUATION PROCESS PRIOR TO SALE; EXEMPTING THE SALE OF CABIN OR HOME SITE LOTS FROM THE PROVISIONS OF TITLE 75, CHAPTER 1, PARTS 1 THROUGH 3; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 77-2-303, 77-2-311, 77-2-318, 77-2-363, AND 77-2-366, MCA; REPEALING SECTION 77-2-320, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1802

423 *(Senate Bill No. 392; Kaufmann)* INCREASING THE AUTHORITY OF THE COMMISSIONER OF POLITICAL PRACTICES TO ENFORCE LAWS PERTAINING TO ANONYMOUS ELECTION MATERIAL; AMENDING SECTION 13-35-225, MCA; AND PROVIDING AN APPLICABILITY DATE . . . . . 1807

## HOUSE JOINT RESOLUTIONS

HJR Page

1 *(Blyton)* REQUESTING AN INTERIM LEGISLATIVE STUDY REGARDING CERTAIN ASPECTS OF THE OFFICE OF COMMISSIONER OF POLITICAL PRACTICES; SPECIFYING

OBJECTIVES OF THE STUDY; AND REQUESTING THAT FINDINGS AND RECOMMENDATIONS BE PRESENTED TO THE NEXT LEGISLATURE . . . . . 1811

2 *(Hollenbaugh)* REQUESTING AN INTERIM STUDY TO INVESTIGATE ELECTRONIC RECORDS MANAGEMENT BY STATE AND LOCAL GOVERNMENT; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 64TH LEGISLATURE . . . . . 1812

3 *(O'Neil)* URGING THE AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES TO LIMIT THE POWER OF CONGRESS TO REGULATE COMMERCE. . . . . 1813

9 *(McNiven)* SUPPORTING THE RESPONSIBLE DEVELOPMENT OF COAL RESOURCES AND COAL-BASED ELECTRICITY . . . . . 1813

11 *(Regier)* RAISING CONCERNS ABOUT POTENTIAL CHANGES TO THE OPERATION AND ADMINISTRATION OF FEDERAL POWER MARKETING ADMINISTRATIONS . . . . . 1814

12 *(Blasdel)* REAFFIRMING MONTANA'S COMMITMENT TO ITS RELATIONSHIP WITH TAIWAN; SUPPORTING TAIWAN'S PARTICIPATION IN APPROPRIATE INTERNATIONAL ORGANIZATIONS; AND WELCOMING THE RESUMPTION OF FREE TRADE TALKS AND THE SIGNING OF FREE TRADE AGREEMENTS 1815

14 *(Jacobson)* URGING THE BOARD OF PUBLIC EDUCATION TO INCLUDE THE SUCCESSFUL COMPLETION OF A FINANCIAL LITERACY COURSE AS A REQUIREMENT FOR GRADUATION. . . . 1817

16 *(Eck)* REQUESTING AN INTERIM STUDY OF STATE-OPERATED PUBLIC INSTITUTIONS SERVING INDIVIDUALS WITH MENTAL ILLNESS, INTELLECTUAL DISABILITIES, AND CHEMICAL DEPENDENCY; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 64TH LEGISLATURE . . . . . 1818

17 *(Gibson)* TO STUDY THE STATE PAY PLANS . . . . . 1819

25 *(Reichner)* REQUESTING AN INTERIM STUDY OF MONTANA'S WORKERS' COMPENSATION SYSTEM REGARDING SUBROGATION, THE WORKERS' COMPENSATION COURT STRUCTURE, THE STRUCTURE OF THE STATE COMPENSATION INSURANCE FUND, AND VARIOUS MEDICAL AND SAFETY COMPONENTS OF THE WORKERS' COMPENSATION SYSTEM. . . . . 1820

26 *(Connell)* REQUESTING AN INTERIM STUDY ON THE INTERSECTING INTERESTS OF ESTATE OWNERS AND DITCH OWNERS AND PROVIDING A MEANS TO ACCOMMODATE BOTH ESTATES. . . . . 1822

30 *(Hansen)* TO COMPILE INFORMATION ON STATE AND FEDERAL BENEFITS OFFERED TO ACTIVE-DUTY OR RESERVE MILITARY PERSONNEL, MEMBERS OF THE MONTANA NATIONAL GUARD, AND VETERANS OF EACH. . . . . 1823

## HOUSE RESOLUTIONS

HR Page

1 *(Smith)* ADOPTING THE HOUSE RULES . . . . . 1824

2 *(Randall)* PROVIDING RECOMMENDATIONS ON THE LEGISLATIVE REDISTRICTING PLAN TO THE MONTANA DISTRICTING AND APPORTIONMENT COMMISSION . . . . . 1850

5 *(Kerns)* INVITING FIREARMS MANUFACTURERS AND FIREARMS ACCESSORY MANUFACTURERS THREATENED BY HOSTILE LAWS IN OTHER STATES TO MOVE TO MONTANA . . . . . 1851

## SENATE JOINT RESOLUTIONS

SJR Page

1 *(Wittich)* ADOPTING THE JOINT LEGISLATIVE RULES . . . . . 1852

2 *(Tutvedt)* ESTABLISHING AN OFFICIAL ESTIMATE OF THE STATE'S GENERAL FUND REVENUE FOR FISCAL YEAR 2013 AND EACH FISCAL YEAR OF THE 2014-2015 BIENNIUM FOR THE PURPOSE OF ACHIEVING A BALANCED BUDGET AS REQUIRED BY ARTICLE VIII, SECTION 9, OF THE MONTANA CONSTITUTION; ACCEPTING AN UNASSIGNED GENERAL FUND BALANCE THAT WAS ESTABLISHED BASED ON GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; ESTABLISHING OFFICIAL ESTIMATES OF CERTAIN NONGENERAL FUND REVENUE; AND REQUESTING THAT THE GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING USE THE REVENUE ESTIMATES CONTAINED IN THIS RESOLUTION AS OFFICIAL REVENUE ESTIMATES FOR FISCAL YEARS 2013, 2014, AND 2015 . 1869

3 *(Murphy)* REQUESTING A STUDY OF THE OPERATIONS OF THE MONTANA BOARD OF PARDONS AND PAROLE . . . . . 1879

4 *(Keane)* REQUESTING AN INTERIM STUDY OF WAYS TO IMPROVE THE MARKETING, MANAGEMENT, OPERATION, MAINTENANCE, AND FUNDING OF STATE-OWNED SITES AT VIRGINIA CITY, NEVADA CITY, AND REEDER'S ALLEY IN HELENA . . . . . 1880

6 *(Olson)* REQUESTING AN INTERIM STUDY TO ANALYZE THE IMPACTS OF THE MONTANA RENEWABLE POWER PRODUCTION AND RURAL ECONOMIC DEVELOPMENT ACT; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 64TH LEGISLATURE . . . . . 1882

8 *(Larsen)* RECOGNIZING THE MILITARY SERVICE OF MONTANANS IN THE ARMED FORCES OF THE UNITED STATES . . . . . 1883

11 *(Brown)* REQUESTING THE GOVERNOR ESTABLISH AN ECONOMIC DEVELOPMENT CENTER IN CALGARY, ALBERTA . . . . . 1884

13 *(Brown)* REQUESTING THE MONTANA UNIVERSITY SYSTEM TO STUDY AND ADOPT GOALS AND PERFORMANCE MEASURES DIRECTED AT INCREASING COLLEGE COMPLETION RATES; REQUESTING THAT THE MONTANA UNIVERSITY SYSTEM WORK WITH THE GOVERNOR; PROVIDING THE PERFORMANCE MEASURES TO BE STUDIED; AND REQUESTING THAT REPORTS BE PROVIDED TO THE 64TH LEGISLATURE, THE GOVERNOR, AND THE BOARD OF REGENTS. . . . . 1885

14 *(Olson)* REQUESTING AN INTERIM STUDY TO IDENTIFY OPPORTUNITIES TO MAKE COMBINED PRIMARY AND SCHOOL ELECTIONS FEASIBLE . . . . . 1886

15 *(Fielder)* REQUESTING AN INTERIM STUDY EVALUATING THE MANAGEMENT OF CERTAIN FEDERAL LANDS, ASSESSING RISKS, AND IDENTIFYING SOLUTIONS . . . . . 1887

18 *(Thomas)* URGING THE MONTANA CONGRESSIONAL DELEGATION AND THE PRESIDENT OF THE UNITED STATES OF AMERICA TO INITIATE A PROCESS WHEREIN THE FEDERAL GOVERNMENT

MUST ACCOMPLISH A BALANCED BUDGET WITHIN 10 YEARS AND LOWER ANNUAL FEDERAL DEFICIT SPENDING LEVELS . . . . . 1889

20 *(Webb)* REQUESTING AN INTERIM STUDY OF PRESCRIPTION DRUG ABUSE AND THE EFFECTS OF THE ABUSE ON MONTANANS . . . 1890

21 *(Caferro)* COMMEMORATING THE 163RD INFANTRY REGIMENT AND ITS SUCCESSORS ON THE 70TH ANNIVERSARY OF THE BATTLE OF SANANANDA, PAPUA NEW GUINEA. . . . . 1891

22 *(Jent)* REQUESTING AN INTERIM STUDY EVALUATING CURRENT COURT PROCEDURES IN FAMILY LAW CASES AND IDENTIFYING ALTERNATIVE SOLUTIONS. . . . . 1893

23 *(Tutvedt)* REQUESTING AN INTERIM STUDY OF MONTANA'S TAX APPEALS AND HEARING PROCESS AND THE OPTIONS AVAILABLE FOR STREAMLINING AND IMPROVING THE APPEAL PROCESS . . 1894

24 *(Buttrey)* REQUESTING A STUDY OF HOW MILITARY TRAINING MAY APPLY TO PROFESSIONAL AND OCCUPATIONAL LICENSING AND OTHER CIVILIAN JOB CERTIFICATION REQUIREMENTS . . . . . 1895

26 *(Arntzen)* REQUESTING AN INTERIM STUDY OF THE TRANSPORTING OF OVERSIZE LOADS THROUGH MONTANA . . . 1896

## SENATE RESOLUTIONS

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1 *(Wittich)* ADOPTING THE SENATE RULES. . . . . 1897

2 *(Olson)* RAISING CONCERNS ABOUT POTENTIAL CHANGES TO THE OPERATION AND ADMINISTRATION OF FEDERAL POWER MARKETING ADMINISTRATIONS . . . . . 1916

3 *(Essmann)* PROVIDING RECOMMENDATIONS ON THE LEGISLATIVE REDISTRICTING PLAN TO THE MONTANA DISTRICTING AND APPORTIONMENT COMMISSION . . . . . 1918

5 *(Jent)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT MADE BY THE CHIEF JUSTICE OF THE MONTANA SUPREME COURT AND SUBMITTED TO THE SENATE OF THE HONORABLE WILLIAM RUSSELL MCELYEA AS ASSOCIATE WATER JUDGE OF THE STATE OF MONTANA. . . . . 1919

6 *(Murphy)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT AS THE WORKERS' COMPENSATION JUDGE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE . . 1919

7 *(Murphy)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF CRIME CONTROL, THE BOARD OF PRIVATE SECURITY, AND THE PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE. . . . . 1920

8 *(Priest)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013. . . . . 1921

9 *(Windy Boy)* ACKNOWLEDGING THE IDLE NO MORE MOVEMENT IN CANADA . . . . . 1923

10 *(Vincent)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF WATER WELL CONTRACTORS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE . . . . . 1924

11 *(Brown)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF VETERINARY MEDICINE, BOARD OF HAIL INSURANCE, AND BOARD OF HORSERACING MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE . . 1924

12 *(Olson)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 22, 2013, TO THE SENATE . . . . . 1925

13 *(Olson)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 22, 2013, TO THE SENATE . . . . . 1925

14 *(Brown)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE DIRECTOR OF AGRICULTURE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 22, 2013, TO THE SENATE . . . . . 1926

15 *(Arntzen)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE DIRECTOR OF THE DEPARTMENT OF TRANSPORTATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 22, 2013, TO THE SENATE . . . . . 1926

16 *(Tutvedt)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE DIRECTOR OF REVENUE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 22, 2013, TO THE SENATE . . . . . 1927

17 *(Sonju)* CONCURRING IN, CONFIRMING, AND CONSENTING TO AN APPOINTMENT TO THE BOARD OF FUNERAL SERVICE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE . . . . . 1927

18 *(Sonju)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE COMMISSIONER OF THE DEPARTMENT OF LABOR AND INDUSTRY MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 22, 2013, TO THE SENATE . . . . . 1928

19 *(Sonju)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE DIRECTOR OF THE DEPARTMENT OF COMMERCE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 22, 2013, TO THE SENATE . . . . . 1928

20 *(Tutvedt)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE STATE TAX APPEAL BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 26, 2013, TO THE SENATE . . . . . 1929

21 *(Priest)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE DIRECTOR OF THE DEPARTMENT OF

PUBLIC HEALTH AND HUMAN SERVICES MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 22, 2013, TO THE SENATE . . . . . 1929

22 *(Arthun)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE PUBLIC EMPLOYEES' RETIREMENT BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE . . 1930

23 *(Arthun)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF VETERANS' AFFAIRS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE . . 1930

25 *(Arthun)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE DIRECTOR OF THE DEPARTMENT OF MILITARY AFFAIRS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 22, 2013 . . . . . 1931

26 *(Ripley)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 22, 2013, TO THE SENATE . . . . . 1931

27 *(Murphy)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 22, 2013, TO THE SENATE . . . . . 1932

28 *(Brenden)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE DIRECTOR OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 22, 2013, TO THE SENATE . . . . . 1932

29 *(Peterson)* CONCURRING IN, CONFIRMING, AND CONSENTING TO APPOINTMENTS TO THE MONTANA HISTORICAL SOCIETY BOARD OF TRUSTEES MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE . . . . . 1933

30 *(Peterson)* CONCURRING IN, CONFIRMING, AND CONSENTING TO APPOINTMENT TO THE BOARD OF PUBLIC EDUCATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE . . . . . 1933

31 *(Peterson)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE . . . . . 1934

32 *(Peterson)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE MONTANA ARTS COUNCIL MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE . . . . . 1935

34 *(Thomas)* INVITING FIREARMS MANUFACTURERS AND FIREARMS ACCESSORY MANUFACTURERS THREATENED BY HOSTILE LAWS IN OTHER STATES TO MOVE TO MONTANA . . . . . 1935

35 *(Sonju)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF PERSONNEL APPEALS MADE

BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE . . 1936

36 *(Sonju)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO CERTAIN PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE. . . . . 1936

37 *(Sonju)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF RESEARCH AND COMMERCIALIZATION TECHNOLOGY MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE. . . . . 1938

38 *(Sonju)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE STATE BANKING BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE . . . . . 1938

39 *(Sonju)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF BARBERS AND COSMETOLOGISTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE . . . . . 1939

40 *(Vincent)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF DEPARTMENT OF ENVIRONMENTAL QUALITY DIRECTOR TRACY STONE-MANNING MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 22, 2013, TO THE SENATE . . . . . 1940

41 *(Vincent)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 22, 2013, TO THE SENATE . . . . . 1940

43 *(Brown)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF LIVESTOCK AND THE LIVESTOCK LOSS BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 26, 2013, TO THE SENATE . . . . . 1941

44 *(Peterson)* CONCURRING IN, CONFIRMING, AND CONSENTING TO AN APPOINTMENT TO THE BOARD OF REGENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE . . . . . 1941

45 *(Peterson)* CONCURRING IN, CONFIRMING, AND CONSENTING TO AN APPOINTMENT TO THE BOARD OF REGENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE . . . . . 1942

46 *(Peterson)* CONCURRING IN, CONFIRMING, AND CONSENTING TO AN APPOINTMENT TO THE BOARD OF PUBLIC EDUCATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 6, 2013, TO THE SENATE . . . . 1942

48 *(Peterson)* CONCURRING IN, CONFIRMING, AND CONSENTING TO APPOINTMENTS TO THE BOARD OF REGENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 6, 2013, TO THE SENATE . . . . . 1943

49 *(Priest)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO CERTAIN BOARDS MADE BY THE GOVERNOR

AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 15, 2013, TO THE SENATE . . . . . 1943

50 *(Priest)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF DENTISTRY MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 26, 2013, TO THE SENATE . . . . . 1944

51 *(Arthun)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE MONTANA FACILITY FINANCE AUTHORITY MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 15, 2013, TO THE SENATE . . . . . 1944

52 *(Arthun)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF INVESTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 26, 2013, TO THE SENATE . . . . . 1945

53 *(Arthun)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE PUBLIC EMPLOYEES' RETIREMENT BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 26, 2013, TO THE SENATE . . . 1945

54 *(Arthun)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF INVESTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 26, 2013, TO THE SENATE . . . . . 1946

55 *(Blewett)* URGING THE INTERNATIONAL OLYMPIC COMMITTEE TO KEEP WRESTLING AS PART OF THE SUMMER OLYMPICS PROGRAM; AND URGING THE UNITED STATES OLYMPIC COMMITTEE TO CONTINUE SUPPORTING THE EFFORT . . . . . 1946

56 *(Olson)* CONCURRING IN, CONFIRMING, AND CONSENTING TO AN APPOINTMENT TO THE BOARD OF OIL AND GAS CONSERVATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 29, 2013, TO THE SENATE . . . 1947

57 *(Olson)* CONCURRING IN, CONFIRMING, AND CONSENTING TO AN APPOINTMENT TO THE BOARD OF OIL AND GAS CONSERVATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 29, 2013, TO THE SENATE . . . 1948

59 *(Olson)* CONCURRING IN, CONFIRMING, AND CONSENTING TO AN APPOINTMENT TO THE BOARD OF OIL AND GAS CONSERVATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 29, 2013, TO THE SENATE . . . 1948

60 *(Brown)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF HAIL INSURANCE AND THE BOARD OF HORSERACING MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 29, 2013, TO THE SENATE . . . . . 1949

61 *(Arntzen)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF AERONAUTICS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 29, 2013, TO THE SENATE . . . . . 1949

62 *(Arntzen)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE TRANSPORTATION COMMISSION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 29, 2013, TO THE SENATE . . . 1950

63 *(Rosendale)* URGING CONGRESS TO SUBMIT TO THE STATES FOR RATIFICATION A BALANCED BUDGET AMENDMENT TO THE UNITED STATES CONSTITUTION . . . . . 1951

64 *(Sonju)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF HOUSING MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED FEBRUARY 26, 2013, AND MARCH 29, 2013, TO THE SENATE . 1952

65 *(Sonju)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF PERSONNEL APPEALS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 22, 2013, TO THE SENATE . . . 1952

66 *(Sonju)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO CERTAIN PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 29, 2013, TO THE SENATE . . . . . 1953

67 *(Murphy)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF CRIME CONTROL, THE PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL, AND THE BOARD OF PARDONS AND PAROLE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED MARCH 15, 2013, AND MARCH 26, 2013, TO THE SENATE. . 1953

68 *(Brenden)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE FISH, WILDLIFE, AND PARKS COMMISSION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 11, 2013, TO THE SENATE . . . . . 1955

69 *(Brenden)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE FISH, WILDLIFE, AND PARKS COMMISSION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 11, 2013, TO THE SENATE . . . . . 1955

70 *(Van Dyk)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE FISH, WILDLIFE, AND PARKS COMMISSION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 11, 2013, TO THE SENATE . . . . . 1956

72 *(Peterson)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 12, 2013, TO THE SENATE . . . . . 1956

73 *(Peterson)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE MONTANA ARTS COUNCIL MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 12, 2013, TO THE SENATE . . . . . 1957

74 *(Ripley)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF PUBLIC ASSISTANCE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 12, 2013, TO THE SENATE . . . . . 1957

75 *(Arntzen)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF AERONAUTICS MADE BY

THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 12, 2013, TO THE SENATE . . . . . 1958

76 *(Sonju)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF ARCHITECTS AND LANDSCAPE ARCHITECTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 12, 2013, TO THE SENATE . . . . . 1958

77 *(Priest)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO CERTAIN BOARDS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 12, 2013, TO THE SENATE . . . . . 1959

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120 AN ACT REQUIRING PARENTAL NOTIFICATION PRIOR TO AN ABORTION FOR A MINOR; PROVIDING FOR A JUDICIAL WAIVER OF NOTIFICATION; PROVIDING PENALTIES; REPEALING PRIOR STATUTES RELATING TO PARENTAL NOTIFICATION; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AMENDING SECTIONS 41-1-405 AND 47-1-104, MCA; REPEALING SECTIONS 50-20-201, 50-20-202, 50-20-203, 50-20-204, 50-20-205, 50-20-208, 50-20-209, 50-20-211, 50-20-212, AND 50-20-215, MCA; AND PROVIDING AN EFFECTIVE DATE . . . . . 1963

121 AN ACT DENYING CERTAIN STATE-FUNDED SERVICES TO ILLEGAL ALIENS; ESTABLISHING PROCEDURES FOR DETERMINING A PERSON'S CITIZENSHIP STATUS; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 1969

122 AN ACT PROHIBITING THE STATE OR FEDERAL GOVERNMENT FROM MANDATING THE PURCHASE OF HEALTH INSURANCE COVERAGE OR IMPOSING PENALTIES FOR DECISIONS RELATED TO THE PURCHASE OF HEALTH INSURANCE COVERAGE; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AND PROVIDING AN EFFECTIVE DATE . . . . . 1970

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124 A CITIZEN INITIATIVE REFERENDUM TO REFER TO THE VOTERS OF MONTANA SB423, A BILL WHICH REPEALS I-148 AND ENACTS A NEW MEDICAL MARIJUANA PROGRAM . . . . . 1972

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166 A CITIZEN INITIATIVE TO CHARGE MONTANA ELECTED AND APPOINTED OFFICIALS, STATE AND FEDERAL, WITH IMPLEMENTING A POLICY THAT CORPORATIONS ARE NOT HUMAN BEINGS WITH CONSTITUTIONAL RIGHTS. . . . . 1996

# LAWS

## Enacted by the

# SIXTY-THIRD LEGISLATURE
# IN REGULAR SESSION

**Held at Helena, the Seat of Government**
**January 7, 2013, through April 24, 2013**

**Explanatory Note: Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics and that deleted provisions be shown as stricken.**

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**COMPILED BY MONTANA**
**LEGISLATIVE SERVICES DIVISION**

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# CHAPTER NO. 1

[HB 1]

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE CURRENT AND SUBSEQUENT LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Appropriation.** (1) The following amounts are appropriated from the state general fund for fiscal years 2013, 2014, and 2015 for the operation of the 63rd legislature and the costs of preparing for the 64th legislature:

LEGISLATIVE BRANCH (1104)

| | |
|---|---|
| 1. Senate | $3,033,632 |
| 2. House of Representatives | 5,049,355 |
| 3. Legislative Services Division | 568,699 |

(2) The following amounts are appropriated from the state general fund for fiscal year 2015 for the initial costs of the 64th legislature:

LEGISLATIVE BRANCH (1104)

| | |
|---|---|
| 1. Senate | $203,280 |
| 2. House | 359,837 |
| 3. Legislative Services Division | 16,500 |

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved January 25, 2013

# CHAPTER NO. 2

[HB 20]

AN ACT CREATING A STATUTORY APPROPRIATION FOR THE PAYMENT OF LOTTERY CONTRACTOR FEES; AMENDING SECTION 23-7-402, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 23-7-402, MCA, is amended to read:

**"23-7-402. Disposition of revenue.** (1) A minimum of 45% of the money paid for tickets or chances must be paid out as prize money. The prize money is statutorily appropriated, as provided in 17-7-502, to the lottery.

(2) Commissions paid to lottery ticket or chance sales agents are not a state lottery operating expense.

*(3) Lottery contractor fees, which are fees paid to contracted lottery vendors based on sales, must be paid from the state lottery enterprise fund. The money to pay lottery contractor fees is statutorily appropriated, as provided in 17-7-502, to the lottery.*

~~(3)~~*(4)* That part of all gross revenue not used for the payment of prizes, commissions, and operating expenses, together with the interest earned on the gross revenue while the gross revenue is in the enterprise fund, is net revenue. Net revenue must be transferred quarterly from the enterprise fund established by 23-7-401 to the state general fund.

~~(4)~~*(5)* The spending authority of the lottery may be increased in accordance with this section upon review and approval of a revised operation plan by the office of budget and program planning."

**Section 2. Effective date.** [This act] is effective July 1, 2013.

**Section 3. Termination.** [This act] terminates June 30, 2019.

Approved February 5, 2013

# CHAPTER NO. 3

[HB 25]

AN ACT DEFINING "ADJUSTED COST OF EDUCATION"; AMENDING SECTION 20-15-310, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-15-310, MCA, is amended to read:

**"20-15-310. Appropriation — definitions.** (1) It is the intent of the legislature that all community college spending, other than from restricted funds, designated funds, or funds generated by an optional, voted levy, be governed by the provisions of this part and the state general appropriations act.

(2) (a) The state general fund appropriation must be determined as follows:

(i) multiply the variable cost of education per student by the full-time equivalent student count and add the budget amount for the fixed cost of education; and

(ii) multiply the total in subsection (2)(a)(i) by the state share.

(b) The variable cost of education per student, the budget amount for fixed costs, and the state share must be determined by the legislature. The state share, expressed as a percentage, and the variable cost of education per student must be specified in the appropriations act appropriating funds to the community colleges for each biennium.

(3) The student count may not include those enrolled in community service courses as defined by the board of regents.

(4) As used in this section, the following definitions apply:

*(a) "Adjusted cost of education" means the cost of education minus any reversion calculated under 17-7-142, expenditures from one-time-only legislative appropriations, and expenditures funded by local mill levies provided for in 2-9-212 and 20-9-501 in excess of the 2012 mill levy levels.*

~~(a)~~*(b)* "Cost of education" means the actual costs incurred by the community colleges during the budget base fiscal year, as reported on the current unrestricted operating fund schedule that is statutorily required to be submitted to the ~~commissioner of higher education, minus any reversion and one-time-only expenditures that are included~~ *board of regents*.

~~(b)~~*(c)* "Fixed cost of education" means that portion of the *adjusted* cost of education, as determined by the legislature, that is not influenced by increases or decreases in student enrollment.

~~(c)~~*(d)* "Variable cost of education per student" means that portion of the *adjusted* cost of education, as determined by the legislature, that is subject to change as a result of increases or decreases in student enrollment, divided by the actual student enrollment during the budget base fiscal year."

**Section 2. Effective date.** [This act] is effective July 1, 2013.

Approved February 5, 2013

## CHAPTER NO. 4

[HB 42]

AN ACT PROVIDING FOR AN INCREASE IN THE AMOUNT OF RECOVERABLE DAMAGES AND ATTORNEY FEES UNDER LAWS RELATING TO THE DESTRUCTION OF PROPERTY BY MINORS; AND AMENDING SECTIONS 40-6-237 AND 40-6-238, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 40-6-237, MCA, is amended to read:

**"40-6-237. Destruction of property by minor — liability of parents.** ~~Any~~ *A* municipal corporation, county, city, town, school district, or department of the state of Montana, ~~any~~ *a* person, or ~~any~~ *a* religious organization whether incorporated or unincorporated is entitled to recover damages in a civil action in an amount not to exceed ~~$2,500~~ *$6,900* in a court of competent jurisdiction from the parents of ~~any~~ *a* person under ~~the age of~~ 18 years *of age*, living with the parents, who ~~shall~~ maliciously or willfully ~~destroy~~ *destroys* property, real, personal, or mixed, belonging to ~~such~~ *the* municipal corporation, county, city, town, school district, department of the state of Montana, person, or religious organization."

**Section 2.** Section 40-6-238, MCA, is amended to read:

**"40-6-238. Limitation on amount of recovery.** The recovery ~~shall be~~ *of damages under 40-6-237 is* limited to the actual damages in an amount not to exceed ~~$2,500~~ *$6,900* in addition to taxable court costs and ~~a~~ reasonable ~~attorney's fee~~ *attorney fees* to be set by the court not to exceed ~~$100~~ *$1,800*. The right to recover attorney fees as provided by this section is limited to a person bringing an action under 40-6-237."

Approved February 5, 2013

## CHAPTER NO. 5

[HB 139]

AN ACT REVISING LAWS GOVERNING THE LAW ENFORCEMENT COMMUNICATIONS SYSTEM; CLARIFYING TERMS; REVISING BILLING PROCEDURES; REVISING TERMS FOR NONPAYMENT; AMENDING SECTIONS 44-2-301, 44-2-302, 44-2-303, 44-2-304, 44-2-311, 44-2-312, 44-2-313, 44-2-314, AND 44-2-315, MCA; AND REPEALING SECTION 44-2-316, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 44-2-301, MCA, is amended to read:

**"44-2-301. Establishment — inclusion of other state agencies.** *(1)* The attorney general is authorized to establish a ~~permanent law enforcement communications system~~ *criminal justice information network* for the purpose of connecting federal, state, county, and city law enforcement agencies. The attorney general may bring into the network, if the parties desire, any department of Montana state government or its subdivisions outside of law enforcement activities when, in the opinion of the attorney general and the state

department or subdivision, the inclusion will materially aid the law enforcement agencies of the state of Montana or its subdivisions in the fight against crime.

*(2) As used in this part, "criminal justice information network" means a telecommunications network used exclusively for the purpose of information exchange among the state's law enforcement agencies as provided in Title 44, chapter 5.*"

**Section 2.** Section 44-2-302, MCA, is amended to read:

**"44-2-302. Powers of attorney general.** ~~To carry out the provisions of this part~~ *In order to operate the criminal justice information network*, the attorney general*, within the framework of any funds budgeted or collected from participating agencies,* is authorized to:

(1) purchase, lease, or otherwise acquire facilities and equipment ~~necessary to accomplish the purposes of this part~~ *necessary to accomplish the purposes of this part*; *and*

(2) employ ~~such~~ personnel as may be necessary to operate ~~such facilities within the framework of any funds budgeted or prorated on a charge basis against participating agencies as herein identified~~ *the network*."

**Section 3.** Section 44-2-303, MCA, is amended to read:

**"44-2-303. Federal cost sharing.** The attorney general shall contact federal law enforcement agencies or officials ~~relative to federal~~ *regarding* cost sharing in the ~~teletypewriter communications system~~ *criminal justice information network*~~;~~. ~~and if such~~ *If federal* funds are available ~~from federal sources~~, the attorney general may ~~sign~~ *enter into cost-sharing* agreements with the federal agencies. ~~Any~~ *If* federal funds *are* received in ~~any~~ *a* biennium for which Montana funds have been appropriated*, the funds must* ~~shall~~ be deposited in the ~~system's~~ *network's* account and ~~shall~~ *must* be used, if ~~at all~~ possible, to reduce the spending of money appropriated from the general fund."

**Section 4.** Section 44-2-304, MCA, is amended to read:

**"44-2-304. Report by attorney general.** The attorney general shall submit, as a part of the information required by 17-7-111, a *detailed* report ~~in detail~~ covering the operations of the ~~communications~~ *criminal justice information* network, the accounting of all money received and expended, and the need to expand or improve the ~~system~~ *network*."

**Section 5.** Section 44-2-311, MCA, is amended to read:

**"44-2-311. Participation by local and other agencies.** Any county, city, or other law enforcement agency may, with the approval of the attorney general, connect to the ~~system~~ *criminal justice information network* and participate in it upon payment of or agreement to pay ~~those~~ *the* costs established by the department of justice."

**Section 6.** Section 44-2-312, MCA, is amended to read:

**"44-2-312. Authorization of ~~monthly~~ operational charge.** The attorney general ~~is hereby authorized to~~ *may* establish ~~a monthly~~ *an* operational charge for the ~~teletypewriter communications~~ *criminal justice information* network, exclusive of personnel services~~;~~. ~~and such~~ *The* charge ~~shall~~ *must* be prorated among ~~all~~ the various agencies using the ~~system~~ *network*."

**Section 7.** Section 44-2-313, MCA, is amended to read:

**"44-2-313. Payment of charge.** ~~The~~ *With the exception of federal agencies that require quarterly billing, the* charge authorized in 44-2-312 must be billed ~~monthly~~ *annually* to the agencies. Payments made as a result of the billing must

be remitted to the attorney general and deposited in a special revenue account in the state treasury."

**Section 8.** Section 44-2-314, MCA, is amended to read:

**"44-2-314. Use of money — records.** The state treasurer ~~is authorized to~~ *may* draw warrants on ~~this~~ *the* account *provided for in 44-2-313* upon request of the attorney general when money is needed to pay any of the costs of keeping the ~~system operative~~ *criminal justice information network operational*. A strict accounting must be kept of all receipts and disbursements and must be available as a matter of record to members of the appropriations committee of the house of representatives ~~as they may require in the performance of their duties~~."

**Section 9.** Section 44-2-315, MCA, is amended to read:

**"44-2-315. Removal from network upon nonpayment.** Law enforcement agencies, other than the state of Montana or any of its subdivisions, that become ~~90~~ *120* days delinquent in payment of any fees approved and assessed ~~hereunder shall~~ *must* be notified that they will be removed from the *criminal justice information* network, and the department of justice shall take the necessary steps to carry out this provision."

**Section 10. Repealer.** The following section of the Montana Code Annotated is repealed:

44-2-316. Assessment for personnel.

Approved February 8, 2013

# CHAPTER NO. 6

[SB 8]

AN ACT ELIMINATING THE REQUIREMENT THAT A RACIAL PROFILING REPORT BE PROVIDED TO THE LEGISLATURE; AND AMENDING SECTION 44-2-117, MCA.

WHEREAS, House Bill No. 142 required interim committees to "review statutorily established advisory councils and required reports of assigned agencies to make recommendations to the next legislature"; and

WHEREAS, following the required review, the Law and Justice Interim Committee voted to make the recommendation contained in this bill.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 44-2-117, MCA, is amended to read:

**"44-2-117. Racial profiling prohibited — definitions — policies — complaints — training.** (1) A peace officer may not engage in racial profiling.

(2) The race or ethnicity of an individual may not be the sole factor in:

(a) determining the existence of probable cause to take into custody or arrest an individual; or

(b) constituting a particularized suspicion that an offense has been or is being committed in order to justify the detention of an individual or the investigatory stop of a motor vehicle.

(3) Each law enforcement agency shall adopt a policy on race-based traffic stops that:

(a) prohibits the practice of routinely stopping members of minority groups for violations of vehicle laws as a pretext for investigating other violations of criminal law;

(b) provides for periodic reviews by the law enforcement agency and collection of data that determine whether any peace officers of the law enforcement agency have a pattern of stopping members of minority groups for violations of vehicle laws in a number disproportionate to the population of minority groups residing or traveling within the jurisdiction of the law enforcement agency;

(c) if the review under subsection (3)(b) reveals a pattern, requires an investigation to determine whether any peace officers of the law enforcement agency routinely stop members of minority groups for violations of vehicle laws as a pretext for investigating other violations of criminal law.

(4) (a) Each municipal, county, consolidated local government, and state law enforcement agency shall adopt a detailed written policy that clearly defines the elements constituting racial profiling. Each agency's policy must prohibit racial profiling, require that all stops are lawful under 46-5-401, and require that all stops are documented according to subsection (3) of this section.

(b) The policy must include a procedure that the law enforcement agency will use to address written complaints concerning racial profiling. The complaint procedure must require that:

(i) all written complaints concerning racial profiling be promptly reviewed;

(ii) a person is designated who shall review all written complaints of racial profiling;

(iii) the designated person shall, within 10 days of receipt of a written complaint, acknowledge receipt of the complaint in writing; and

(iv) after a review is completed, the designated person shall, in writing, inform the person who submitted the written complaint and the head of the agency of the results of the review.

(c) The policy must be available for public inspection during normal business hours.

(5) Each municipal, county, consolidated local government, and state law enforcement agency shall require for all of its peace officers cultural awareness training and training in racial profiling. The training program must be certified by the Montana public safety officer standards and training council established in 2-15-2029.

(6) Each law enforcement agency may provide for appropriate counseling and training of any peace officer found to have engaged in race-based traffic stops within 90 days of the review. The course or courses of instruction and the guidelines must stress understanding and respect for racial and cultural differences and development of effective, noncombative methods of carrying out law enforcement duties in a racially and culturally diverse environment.

(7) If an investigation of a complaint of racial profiling reveals that a peace officer was in direct violation of the law enforcement agency's written policy prohibiting racial profiling, the law enforcement agency shall take appropriate action against the peace officer consistent with applicable laws, rules, ordinances, or policies.

(8) For the purposes of this section, the following definitions apply:

(a) "Minority group" means individuals of African American, Hispanic, Native American, Asian, or Middle Eastern descent.

(b) "Peace officer" has the meaning provided in 46-1-202.

(c) "Racial profiling" means the detention, official restraint, or other disparate treatment of an individual solely on the basis of the racial or ethnic status of the individual.

~~(9) The department of justice shall make periodic reports to the law and justice interim committee regarding the degree of compliance by municipal, county, consolidated local government, and state law enforcement agencies with the requirements of this section.~~

*(9) The department of justice shall make available to the public information regarding the degree of compliance by municipal, county, consolidated local government, and state law enforcement agencies with the requirements of this section.*

~~(10)~~*(10)* Each law enforcement agency in this state may use federal funds from community-oriented policing services grants or any other federal sources to equip each vehicle used for traffic stops with a video camera and voice-activated microphone."

Approved February 8, 2013

# CHAPTER NO. 7

[SB 50]

AN ACT TO ELIMINATE A REPORT ON EXPENDITURES FROM THE ATTORNEY LICENSE TAX; AND AMENDING SECTION 37-61-211, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 37-61-211, MCA, is amended to read:

**"37-61-211. Annual license tax — municipal tax prohibited.** (1) ~~Every~~ *An* attorney or counselor at law admitted by the supreme court of the state to practice within the state is required to pay a license tax of $25 a year. The tax is payable to and collected by the clerk of the supreme court on or before April 1 of each year.

(2) Upon the payment of the tax, the clerk shall issue and deliver a certificate to the person paying the tax, certifying to the payment of the license tax and stating the period covered by the payment.

(3) ~~(a)~~ The tax collections must be allocated to the supreme court for operations of the following commissions or other entities:

~~(i)~~*(a)* commission on code of judicial conduct;

~~(ii)~~*(b)* commission on courts of limited jurisdiction;

~~(iii)~~*(c)* commission on practice;

~~(iv)~~*(d)* commission on technology;

~~(v)~~*(e)* district court council;

~~(vi)~~*(f)* judicial nomination commission;

~~(vii)~~*(g)* judicial standards commission;

~~(viii)~~*(h)* sentence review division; and

~~(ix)~~*(i)* uniform district court rules commission.

~~(b) The court administrator shall, as provided in 3-1-702(2), report annually on expenditures authorized in subsection (3)(a) of this section at the first meeting of the law and justice interim committee after the end of each fiscal year.~~

(4) A license tax may not be imposed ~~upon~~ *on* attorneys by a municipality or any other subdivision of the state."

Approved February 8, 2013

## CHAPTER NO. 8

[HB 51]

AN ACT ADOPTING THE MOST RECENT FEDERAL MILITARY LAWS AND REGULATIONS, FORMS, PRECEDENTS, AND USAGES, INCLUDING THE UNIFORM CODE OF MILITARY JUSTICE, THAT ARE APPLICABLE IN THE MONTANA NATIONAL GUARD; AMENDING SECTION 10-1-104, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 10-1-104, MCA, is amended to read:

**"10-1-104. Federal regulations to govern.** (1) Federal laws and regulations, forms, precedents, and usages relating to and governing the armed forces of the United States and the national guard, as in effect on October 1, ~~2011~~ *2013*, insofar as they are applicable and not inconsistent with the constitution and laws of this state or with a rule or regulation adopted pursuant to 10-1-105, apply to and govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code.

(2) The Uniform Code of Military Justice, as in effect on October 1, ~~2011~~ *2013*, including the regulations, manuals, forms, precedents, and usages implementing, interpreting, and complementing the code, is adopted for use by the national guard of this state and applies, insofar as the code is not otherwise inconsistent with the constitution and laws of this state, including the regulations, manuals, forms, precedents, and usages implementing, interpreting, and complementing the constitution and laws of this state, or with a rule or regulation adopted pursuant to 10-1-105, to the greatest extent practicable to govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code when the members are serving other than in a federal capacity under Title 10 of the United States Code."

**Section 2. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 3. Applicability.** [This act] applies to events that occur and proceedings begun on or after October 1, 2013.

Approved February 11, 2013

## CHAPTER NO. 9

[HB 92]

AN ACT REMOVING THE TERM "PUBLIC DEFENDER" FROM THE LIST OF MEMBERS OF THE DRUG TREATMENT COURT TEAM AND THE MENTAL HEALTH TREATMENT COURT TEAM; AND AMENDING SECTIONS 46-1-1103 AND 46-1-1203, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 46-1-1103, MCA, is amended to read:

**"46-1-1103. Definitions.** As used in this part, the following definitions apply:

(1) "Assessment" means a diagnostic evaluation to determine whether and to what extent a person is a drug offender under this part and would benefit from the provisions of this part.

(2) "Continuum of care" means a seamless and coordinated course of substance abuse education and treatment designed to meet the needs of drug offenders as they move through the criminal justice system and beyond, maximizing self-sufficiency.

(3) "Drug" includes:

(a) a controlled substance, which is a drug or other substance for which a medical prescription or other legal authorization is required for purchase or possession;

(b) an illegal drug, which is a drug whose manufacture, sale, use, or possession is forbidden by law; or

(c) a harmful substance, which is a misused substance otherwise legal to possess, including alcohol.

(4) "Drug offender" means a person charged with a drug-related offense or an offense in which substance abuse is determined to have been a significant factor in the commission of an offense.

(5) "Drug treatment court" means a court established by a court pursuant to this part implementing a program of incentives and sanctions intended to assist a participant to end the participant's addiction to drugs and to cease criminal behavior associated with drug use and addiction.

(6) "Drug treatment court coordinator" means an individual who, under the direction of the drug treatment court judge, is responsible for coordinating the establishment, staffing, operation, evaluation, and integrity of the drug treatment court.

(7) "Drug treatment court team" means a group of individuals appointed by the drug treatment court that may consist of the following members:

(a) the judge, which may include a magistrate or other hearing officer;

(b) the prosecutor;

(c) the ~~public defender or~~ defense attorney;

(d) a law enforcement officer;

(e) the drug treatment court coordinator;

(f) a probation and parole officer;

(g) substance abuse treatment providers;

(h) a representative from the department of public health and human services; and

(i) any other person selected by the drug treatment court.

(8) "Memorandum of understanding" means a written document setting forth an agreed-upon procedure.

(9) "Recidivism" means any arrest for a serious offense that results in the filing of a charge and can carry a sentence of 1 or more years.

(10) "Staff meeting" means the meeting before a drug offender's appearance in drug treatment court in which the drug treatment court team discusses a coordinated response to the drug offender's behavior.

(11) "Substance abuse" means the illegal or improper consumption of a drug as defined in this section.

(12) "Substance abuse treatment" means a program designed to provide prevention, education, and therapy directed toward ending substance abuse and preventing a return to substance use."

**Section 2.** Section 46-1-1203, MCA, is amended to read:

**"46-1-1203. Definitions.** As used in this part, the following definitions apply:

(1) "Assessment" means a diagnostic evaluation to determine whether and to what extent a person is an offender with a mental disorder under this part and would benefit from the provisions of this part.

(2) "Continuum of care" means a seamless and coordinated course of mental health counseling and treatment designed to meet the needs of participants as they move through the criminal justice system and beyond, maximizing self-sufficiency.

(3) "Drug" has the meaning provided in 46-1-1103.

(4) "Memorandum of understanding" means a written document setting forth an agreed-upon procedure.

(5) "Mental health treatment court" means a court established by a court pursuant to this part implementing a program of incentives and sanctions intended to assist a participant, whose conduct has resulted in a criminal violation, in receiving the needed treatment and life skills to prevent further criminal behavior associated with a mental disorder.

(6) "Mental health treatment court coordinator" means an individual who, under the direction of the mental health treatment court judge, is responsible for coordinating the establishment, staffing, operation, evaluation, and integrity of the mental health treatment court.

(7) "Mental health treatment court team" means a group of individuals appointed by the mental health treatment court that:

(a) must include the following members:

(i) the judge, which may include a magistrate or other hearing officer;

(ii) the prosecutor;

(iii) the ~~public defender or~~ defense attorney;

(iv) the participant; and

(v) the mental health treatment court coordinator; and

(b) may include the following additional members:

(i) a law enforcement officer;

(ii) a probation and parole officer;

(iii) a mental health professional;

(iv) a substance abuse treatment provider;

(v) a representative from the department of public health and human services;

(vi) a mental health advocate; and

(vii) any other person selected by the mental health treatment court.

(8) "Mental health treatment program" means a program designed by the mental health treatment court team to provide prevention, education, and therapy directed toward ending criminal behavior and preventing a return to a condition leading to criminal behavior. Mental health treatment programs may

consist of but are not limited to housing assistance, job training, mental health counseling, and psychiatric treatment.

(9) "Participant" means a person charged with a criminal offense or an offense in which a mental disorder, as defined in 53-21-102, is determined to have been a significant factor in the commission of the offense.

(10) "Staff meeting" means the meeting before a participant's appearance in mental health treatment court in which the mental health treatment court team discusses a coordinated response to the participant's behavior.

(11) "Substance abuse" means the illegal or improper consumption of a drug, but does not include inadvertent error in the use of medication.

(12) "Substance abuse treatment" means a program designed to provide prevention, education, and therapy directed toward ending substance abuse and preventing a return to substance use."

Approved February 11, 2013

# CHAPTER NO. 10

[SB 29]

AN ACT CLARIFYING THE PRIMARY SECTOR BUSINESS WORKFORCE TRAINING ACT BY REVISING TERMS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 39-11-103 AND 39-11-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 39-11-103, MCA, is amended to read:

**"39-11-103. Definitions.** As used in this chapter, the following definitions apply:

~~(1) "Average weekly wage" has the meaning provided in 39-71-116.~~

~~(2)~~*(1)* "Department" means the department of commerce established in 2-15-1801.

~~(3)~~*(2)* "Eligible training provider" means:

(a) a unit of the university system, as defined in 20-25-201;

(b) a community college district, as defined in 20-15-101;

(c) an accredited, tribally controlled community college located in the state of Montana; or

(d) an entity approved to provide workforce training that is included on the eligible training provider list.

~~(4)~~*(3)* "Eligible training provider list" means the list maintained by the department of labor and industry of those eligible training providers who may be used to provide workforce training under a grant authorized in 39-11-202.

~~(5)~~*(4)* "Employee" means the individual employed in a new job.

~~(6)~~*(5)* "Employer" means the individual, corporation, partnership, or association providing new jobs and entering into a grant contract.

~~(7)~~*(6)* "Full-time job" means a predominantly year-round position requiring an average of *at least* 35 hours of work each week.

~~(8)~~*(7)* (a) "New job" means a newly created full-time *or part-time* job in ~~an eligible~~ *a primary sector* business.

(b) The term does not include:

(i) jobs for recalled employees returning to positions held previously, for replacement employees, or for employees newly hired as a result of a labor dispute, ~~part-time jobs or~~ seasonal jobs, or other jobs that previously existed within the employment of the employer in the state; or

(ii) jobs created by an employer as the result of an acquisition of a Montana company or entity if those jobs previously existed in the state of Montana in the acquired company or entity unless it is demonstrated that the jobs:

(A) are substantially different as a result of the acquisition; and

(B) will require new training for the employee to meet new job requirements.

~~(9)~~*(8)* "Part-time job" means a predominantly year-round position requiring an average of 25 to 34 hours of work each week.

~~(10)~~*(9)* "Primary sector business" means an employer engaged in establishing or expanding operations within Montana that through the employment of knowledge or labor add value to a product, process, or export service that results in the creation of new wealth and *at least one of the following conditions applies*:

(a) ~~for which~~ at least 50% of the sales of the employer occur outside of Montana;

(b) the employer is a manufacturing company with at least 50% of its sales to other Montana companies that have 50% of their sales occurring outside of Montana; or

(c) the employer is a new business that provides, as determined by the department, a product or a service that is not available in Montana or a substantially similar product or service that is not available in Montana, which results in state residents leaving the state to purchase the product or service.

~~(11)~~*(10)* "Primary sector business training program" or "program" means the grant provided to employers for the purpose of working with eligible training providers to provide employees with education and training required for jobs in new or expanding primary sector businesses in the state.

~~(12)~~*(11)* (a) "Program costs" means all necessary and incidental costs of providing program services.

(b) The term does not include the cost of equipment to be owned or used by the eligible training provider.

~~(13)~~*(12)* "Program services" means training and education specifically directed to the new jobs, including:

(a) all direct training costs, such as:

(i) program promotion;

(ii) instructor wages, per diem, and travel;

(iii) curriculum development and training materials;

(iv) lease of training equipment and training space;

(v) miscellaneous direct training costs;

(vi) administrative costs; and

(vii) assessment and testing;

(b) in-house or on-the-job training; and

(c) subcontracted services with eligible training providers."

**Section 2.** Section 39-11-202, MCA, is amended to read:

**"39-11-202. Primary sector business workforce training grants — eligibility.** (1) Subject to appropriation by the legislature, the department may

award workforce training grants to primary sector businesses that provide education or skills-based training, through eligible training providers ~~from the eligible training provider list~~, for employees in new jobs.

(2) To be eligible for a grant, an applicant shall demonstrate that ~~at least 50% of the applicant's sales will be from outside of Montana or that the applicant is a manufacturing company with 50% of its sales from companies that have 50% of their sales outside of Montana and must meet~~ *the applicant is a primary sector business and meets* at least one of the following criteria:

(a) ~~be~~ *is* a value-adding business as defined by the Montana board of investments;

(b) ~~demonstrate~~ *has* a significant positive economic impact to the region and state beyond the job creation involved;

(c) ~~provide~~ *provides* a service or function that is essential to the locality or the state; or

(d) ~~be~~ *is* a for-profit or a nonprofit hospital or medical center providing a variety of medical services for the community or region.

(3) An applicant shall also provide a match of at least $1 for every $3 requested. The match:

(a) must be from new, unexpended funds available at the time of application;

(b) may include new loans and investments and expenditures for direct project-related costs such as new equipment and buildings. The department may consider recent purchases of fixed assets directly related to the proposal on a case-by-case basis. A purchase of fixed assets directly related to the proposed training activities that have been made within 90 days after submission of the application may be considered eligible by the department.

(4) (a) Except as provided in subsection (4)(c), a grant provided under this section may not exceed $5,000 for each full-time position and $2,500 for each part-time position for which an employee is being trained. A grant may be provided only for a new job that has an average weekly wage that meets or exceeds the lesser of 170% of Montana's current minimum wage or the current average weekly wage of the county in which the employees are to be principally employed, provided minimum wage requirements are met.

(b) The department may consider the value of employee benefits in calculating the expected annual wage.

(c) The department may, in exceptional circumstances, consider a higher grant ceiling for jobs that will pay high wages and benefits if the need for higher training costs is documented in the application.

(d) A grant provided under this section must be proportional to the number of jobs provided, the expected average annual wage of all jobs provided, and the underlying economic indicators of the region where the majority of the jobs will be created.

(5) Funding ceilings must be determined by the availability of funding, the cost for each job, the quality of the primary sector business proposal, and whether training will be provided in Montana.

(6) The grant application, at a minimum, must contain:

(a) a business plan containing information that is sufficient for the department to obtain an adequate understanding of the business to be assisted, including the products or services offered, estimated market potential, management experience of principals, current financial position, and details of the proposed venture. In lieu of a business plan, the department may consider a

copy of the current loan application to entities such as the Montana board of investments, the federal business and industry guarantee program, or the small business administration.

(b) financial statements and projections for the 2 most recent years of operation and projections for each of the 2 years following the grant, including but not limited to balance sheets, profit and loss statements, and cash flow statements. A business operating for less than 2 years shall provide all available financial statements.

(c) a hiring and training plan, which must include:

(i) a breakdown of the jobs to be created or retained, including the number and type of jobs that are full-time, part-time, skilled, semiskilled, or unskilled positions;

(ii) a timetable for creating the positions and the total number of employees to be hired;

(iii) an assurance that the business will comply with the equal opportunity and nondiscrimination laws;

(iv) procedures for outreach, recruitment, screening, training, and placement of employees;

(v) a description of the training curriculum and resources;

(vi) written commitments from any agency or organization participating in the implementation of the hiring plan; and

(vii) a description of the type and method of training to be provided to employees, the starting wage and wage to be paid after training for each position, the job benefits to be paid or provided, and any payment to eligible training providers.

(7) If the department determines that an applicant meets the criteria established in this section and has complied with the applicable procedures and review processes established by the department, the department may award a primary sector business workforce development grant to the employer and authorize the disbursement of funds under contract to the primary sector business.

(8) The department shall provide employers assistance in accessing workforce and education services outside the scope of this chapter for which employees may be eligible. These additional services may not be used to replace a grant provided under this section once the contract has been finalized.

(9) (a) A contract with a grant recipient must contain provisions:

(i) certifying that the amount of the grant already expended will be reimbursed in the event that the primary sector business ceases operation in the state of Montana within the grant contract period, which may be up to 2 years;

(ii) specifying that the employer may receive grant funds over the contract period only upon documenting the creation of eligible jobs, the hiring of employees for the jobs, or the incurring of eligible training expenses; and

(iii) providing the department with annual reports and a final closeout report that documents the wages paid to an employee upon completion of the training.

(b) The contract must be signed by the person in the primary sector business who is assigned the duties and responsibilities for training and the overall success of the program and by the primary sector business's chief executive.

*(10) The department may adopt rules to implement this section.*"

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved February 11, 2013

# CHAPTER NO. 11

[HB 35]

AN ACT CLARIFYING THAT CERTAIN CLASS EIGHT PROPERTY TAX ADJUSTMENTS ARE BASED ON CORPORATION LICENSE TAX COLLECTIONS RATHER THAN CORPORATION INCOME TAX COLLECTIONS; AMENDING SECTION 15-6-138, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-6-138, MCA, is amended to read:

**"15-6-138. Class eight property — description — taxable percentage.** (1) Class eight property includes:

(a) all agricultural implements and equipment that are not exempt under 15-6-207 or 15-6-220;

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-219, and supplies except those included in class five under 15-6-135;

(c) for oil and gas production, all:

(i) machinery;

(ii) fixtures;

(iii) equipment, including flow lines and gathering lines, pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, and gas boosters, together with equipment that is skidable, portable, or movable;

(iv) tools that are not exempt under 15-6-219; and

(v) supplies except those included in class five;

(d) all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors as provided in 15-6-220, and supplies except those included in class five;

(e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class or that are rented under a purchase incentive rental program as defined in 15-6-202(4);

(f) special mobile equipment as defined in 61-1-101;

(g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(h) x-ray and medical and dental equipment;

(i) citizens' band radios and mobile telephones;

(j) radio and television broadcasting and transmitting equipment;

(k) cable television systems;

(l) coal and ore haulers;

(m) theater projectors and sound equipment; and

(n) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

(2) As used in this section, the following definitions apply:

(a) "Coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds an axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(b) "Commercial establishment" includes any hotel, motel, office, petroleum marketing station, or service, wholesale, retail, or food-handling business.

(c) "Flow lines and gathering lines" means pipelines used to transport all or part of the oil or gas production from an oil or gas well to an interconnection with a common carrier pipeline as defined in 69-13-101, a pipeline carrier as defined in 49 U.S.C. 15102(2), or a rate-regulated natural gas transmission or oil transmission pipeline regulated by the public service commission or the federal energy regulatory commission.

(3) Except as provided in 15-24-1402, 15-24-2102, and subsection (4) of this section class eight property is taxed at:

(a) as determined pursuant to subsection (4):

(i) for the first $2 million of taxable market value, 2%; or

(ii) for the first $3 million of taxable market value, 1.5%; and

(b) for all taxable market value in excess of the applicable amount of taxable market value in subsection (3)(a), 3%.

(4) (a) The adjusted taxable market value and rate in subsection (3)(a)(i) apply for class eight property unless in any year beginning with fiscal year 2013 the revenue collected from individual income tax and corporation ~~income~~ *license* tax exceeds the revenue collected from individual income tax and corporation ~~income~~ *license* tax in the previous fiscal year by more than 4%. In that case, for tax years beginning after the next December 31, the taxable market value and rate in subsection (3)(a)(ii) apply.

(b) For the purpose of making the determination required in subsection (4)(a), the department of administration shall certify to the secretary of state, by August 1 of each year in which class eight property is not taxed pursuant to subsection (3)(a)(ii), the amount of unaudited individual income tax and corporation ~~income~~ *license* tax revenue in the prior fiscal year as recorded when that fiscal year statewide accounting, budgeting, and human resource system records are closed in July.

(5) The class eight property of a person or business entity that owns an aggregate of $20,000 or less in market value of class eight property is exempt from taxation.

(6) The gas gathering facilities of a stand-alone gas gathering company providing gas gathering services to third parties on a contractual basis, owning more than 500 miles of gas gathering lines in Montana, and centrally assessed in tax years prior to 2009 must be treated as a natural gas transmission pipeline subject to central assessment under 15-23-101. For purposes of this subsection, the gas gathering line ownership of all affiliated companies, as defined in section 1504(a) of the Internal Revenue Code, 26 U.S.C. 1504(a), must be aggregated for purposes of determining the 500-mile threshold."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved February 13, 2013

# CHAPTER NO. 12

[HB 56]

AN ACT CLARIFYING THE LAWS RELATED TO A PRICE REDUCTION FOR QUANTITY SALES OF LIQUOR; AND AMENDING SECTIONS 16-2-201 AND 16-3-307, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 16-2-201, MCA, is amended to read:

**"16-2-201. Reduction for quantity sales of liquor.** ~~(1)~~ ~~Reduction~~ *A reduction* of 8% of the posted price of liquor sold at ~~the~~ *an* agency liquor store must be made ~~by the department~~ for sales of liquor to ~~any~~ *a* licensee purchasing liquor in unbroken case lots. No other reduction *below the posted price* may be made ~~to any other person by the department~~ for ~~quantity~~ sales of liquor.

~~(2) This section does not prevent an agent from providing purchase discounts or selling liquor to any other person at a price less than the agent's established retail price. However, an agent is prohibited from selling liquor to any person at a price less than the department's posted price.~~"

**Section 2.** Section 16-3-307, MCA, is amended to read:

**"16-3-307. Sale of liquor at less than posted price unlawful.** ~~It~~ *Except as provided in 16-2-201, it* is unlawful for ~~any~~ *a* licensee under the provisions of this code to resell ~~any~~ liquor purchased by the licensee from an agency liquor store ~~or the state of Montana~~ for a sum less than the posted price established by the department ~~and paid by the licensee~~."

Approved February 13, 2013

# CHAPTER NO. 13

[HB 73]

AN ACT REVISING WOLF HUNTING LAWS; CLARIFYING COMMISSION AUTHORITY TO CLOSE A SEASON; AUTHORIZING THE ISSUANCE OF MULTIPLE LICENSES AND CLARIFYING THEIR USE; GRANTING RULEMAKING AUTHORITY; REDUCING THE PRICE OF A NONRESIDENT LICENSE; ALLOWING USE OF RECORDED OR ELECTRONICALLY AMPLIFIED CALLS; PROVIDING AN EXCEPTION TO THE REQUIREMENT THAT HUNTERS WEAR ORANGE; AMENDING SECTIONS 87-1-304, 87-2-104, 87-2-523, 87-2-524, 87-6-401, AND 87-6-414, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 87-1-304, MCA, is amended to read:

**"87-1-304. Fixing of seasons and bag and possession limits.** (1) Subject to the provisions of 87-5-302 *and subsection (7) of this section*, the commission may:

(a) fix seasons, bag limits, possession limits, and season limits;

(b) open or close or shorten or lengthen seasons on any species of game, bird, fish, or fur-bearing animal as defined by 87-2-101;

(c) declare areas open to the hunting of deer, antelope, elk, moose, sheep, goat, mountain lion, bear, wild buffalo or bison, and wolf by persons holding an archery stamp and the required license, permit, or tag and designate times

when only bows and arrows may be used to hunt deer, antelope, elk, moose, sheep, goat, mountain lion, bear, wild buffalo or bison, and wolf in those areas;

(d) subject to the provisions of 87-1-301(7), restrict areas and species to hunting with only specified hunting arms, including bow and arrow, for the reasons of safety or of providing diverse hunting opportunities and experiences; and

(e) declare areas open to special license holders only and issue special licenses in a limited number when the commission determines, after proper investigation, that a special season is necessary to ensure the maintenance of an adequate supply of game birds, fish, or animals or fur-bearing animals. The commission may declare a special season and issue special licenses when game birds, animals, or fur-bearing animals are causing damage to private property or when a written complaint of damage has been filed with the commission by the owner of that property. In determining to whom special licenses must be issued, the commission may, when more applications are received than the number of animals to be killed, award permits to those chosen under a drawing system. The procedures used for awarding the permits from the drawing system must be determined by the commission.

(2) The commission may adopt rules governing the use of livestock and vehicles by archers during special archery seasons.

(3) Subject to the provisions of 87-5-302 *and subsection (7) of this section*, the commission may divide the state into fish and game districts and create fish, game, or fur-bearing animal districts throughout the state. The commission may declare a closed season for hunting, fishing, or trapping in any of those districts and later may open those districts to hunting, fishing, or trapping.

(4) The commission may declare a closed season on any species of game, fish, game birds, or fur-bearing animals threatened with undue depletion from any cause. The commission may close any area or district of any stream, public lake, or public water or portions thereof to hunting, trapping, or fishing for limited periods of time when necessary to protect a recently stocked area, district, water, spawning waters, spawn-taking waters, or spawn-taking stations or to prevent the undue depletion of fish, game, fur-bearing animals, game birds, and nongame birds. The commission may open the area or district upon consent of a majority of the property owners affected.

(5) The commission may authorize the director to open or close any special season upon 12 hours' notice to the public.

(6) The commission may declare certain fishing waters closed to fishing except by persons under 15 years of age. The purpose of this subsection is to provide suitable fishing waters for the exclusive use and enjoyment of juveniles under 15 years of age, at times and in areas the commission in its discretion considers advisable and consistent with its policies relating to fishing.

*(7) In an area immediately adjacent to a national park, the commission may not:*

*(a) prohibit the hunting or trapping of wolves; or*

*(b) close the area to wolf hunting or trapping unless a wolf harvest quota established by the commission for that area has been met.*"

**Section 2.** Section 87-2-104, MCA, is amended to read:

**"87-2-104. Number of licenses, permits, or tags allowed — fees.** (1) The department may prescribe rules and regulations for the issuance or sale of a replacement license, permit, or tag if the original license, permit, or tag is lost, stolen, or destroyed upon payment of a fee not to exceed $5.

(2) When authorized by the commission for game management purposes, the department may:

(a) issue more than one Class A-3 resident deer A, Class A-4 resident deer B, Class B-7 nonresident deer A, Class B-8 nonresident deer B, *Class E-1 resident wolf, Class E-2 nonresident wolf,* or special antelope license to an applicant; and

(b) issue a special antlerless moose license, a special cow or calf bison license, or one or more special adult ewe mountain sheep licenses to an applicant.

(3) For all of the game management licenses issued under subsection (2), the commission shall determine the hunting districts or portions of hunting districts for which the licenses are to be issued, the number of licenses to be issued, and all terms and conditions for the use of the licenses.

(4) When authorized by the commission for game management purposes, the department may issue Class A-9 resident antlerless elk B tag licenses and Class B-12 nonresident antlerless elk B tag licenses entitling the holder to take an antlerless elk. Unless otherwise reduced pursuant to subsection (5), the fee for a Class B-12 license is $273. The commission shall determine the hunting districts or portions of hunting districts for which Class A-9 and Class B-12 licenses are to be issued, the number of licenses to be issued, and all terms and conditions for the use of the licenses.

(5) The fee for a resident or nonresident license of any class issued under subsection (2) or (4) may be reduced annually by the department."

**Section 3.** Section 87-2-523, MCA, is amended to read:

**"87-2-523. Class E-1—resident wolf license.** (1) Except as otherwise provided in this chapter, a person who is a resident, as defined in 87-2-102, and who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued, upon payment of a fee of $19, may receive a Class E-1 license that entitles a holder who is 12 years of age or older to hunt a wolf and possess the carcass of the wolf as authorized by commission rules.

*(2) A person who purchases a license pursuant to this section after August 31 may not use the license until 24 hours after the license is issued.*

~~(2)~~*(3)* Fees collected pursuant to this section must be deposited and used in accordance with 87-1-623."

**Section 4.** Section 87-2-524, MCA, is amended to read:

**"87-2-524. Class E-2—nonresident wolf license.** (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued, upon payment of a fee of ~~$350~~ *$50*, may receive a Class E-2 license that entitles a holder who is 12 years of age or older to hunt a wolf and possess the carcass of the wolf as authorized by commission rules.

*(2) A person who purchases a license pursuant to this section after August 31 may not use the license until 24 hours after the license is issued.*

~~(2)~~*(3)* Fees collected pursuant to this section must be deposited and used in accordance with 87-1-623."

**Section 5.** Section 87-6-401, MCA, is amended to read:

**"87-6-401. Unlawful use of equipment while hunting.** (1) A person may not:

(a) hunt or attempt to hunt any game animal or game bird by the aid or with the use of any snare, except as allowed in 87-3-127 and 87-3-128, set gun, projected artificial light, trap, salt lick, or bait;

(b) use any recorded or electrically amplified bird or animal calls or sounds or recorded or electrically amplified imitations of bird or animal calls or sounds to assist in the hunting, taking, killing, or capturing of wildlife except *for* predatory animals*, wolves,* and those birds not protected by state or federal law;

(c) while hunting, take into a field or forest or have in the person's possession any device or mechanism devised to silence, muffle, or minimize the report of any firearm, whether the device or mechanism is operated from or attached to any firearm;

(d) while hunting, possess any electronic motion-tracking device or mechanism, as defined by commission rule, that is designed to track the motion of a game animal and relay information on the animal's movement to the hunter. A radio-tracking collar attached to a dog that is used by a hunter engaged in lawful hunting activities is not considered a motion-tracking device or mechanism for purposes of this subsection (1)(d).

(e) while hunting, use archery equipment that has been prohibited by rule of the commission;

(f) use a shotgun to hunt deer or elk except with weapon type and loads as specified by the department;

(g) use a rifle to hunt or shoot upland game birds unless the use of rifles is permitted by the department. This does not prohibit the shooting of wild waterfowl from blinds over decoys with a shotgun only, not larger than a number 10 gauge, fired from the shoulder.

(h) use a rifle to hunt or shoot wild turkey during the spring wild turkey season.

(2) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(3) A person convicted of hunting while using projected artificial light as described in subsection (1)(a) may be subject to the additional penalties provided in 87-6-901 and 87-6-902.

(4) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 through 87-6-907."

**Section 6.** Section 87-6-414, MCA, is amended to read:

**"87-6-414. Failure to wear hunter orange while big game hunting.** (1) Except as provided in subsection (3), a person may not hunt any big game animals in this state or accompany any hunter as an outfitter or guide under any of the provisions of the laws of this state without wearing as exterior garments above the waist a total of not less than 400 square inches of hunter orange material visible at all times while hunting.

(2) As used in this section, "hunter orange" means a daylight fluorescent orange color.

(3) This section does not apply to a person hunting*:*

*(a)* with a bow and arrow during the special archery season*; or*

*(b) wolves outside the general deer and elk season as authorized by commission rules*.

(4) The department shall make rules to implement this section.

(5) A person convicted of a violation of this section shall be punished by a fine of not less than $10 or more than $20."

**Section 7. Effective date.** [This act] is effective on passage and approval.

Approved February 13, 2013

## CHAPTER NO. 14

[HB 132]

AN ACT PROHIBITING THE USE OF A HIGHWAY PATROL UNIFORM OR TITLE TO SOLICIT SUPPORT FOR OR OPPOSITION TO CERTAIN POLITICAL COMMITTEES AND ELECTIONS; AND AMENDING SECTION 2-2-121, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-2-121, MCA, is amended to read:

**"2-2-121. Rules of conduct for public officers and public employees.** (1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

(2) A public officer or a public employee may not:

(a) subject to subsection (7), use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;

(b) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.

(3) (a) Except as provided in subsection (3)(b), a public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in this subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a

candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to:

(i) the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations;

(ii) in the case of a school district, as defined in Title 20, chapter 6, compliance with the requirements of law governing public meetings of the local board of trustees, including the resulting dissemination of information by a board of trustees or a school superintendent or a designated employee in a district with no superintendent in support of or opposition to a bond issue or levy submitted to the electors. Public funds may not be expended for any form of commercial advertising in support of or opposition to a bond issue or levy submitted to the electors.

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

*(d) (i) If the public officer or public employee is a Montana highway patrol chief or highway patrol officer appointed under Title 44, chapter 1, the term "equipment" as used in this subsection (3) includes the chief's or officer's official highway patrol uniform.*

*(ii) A Montana highway patrol chief's or highway patrol officer's title may not be referred to in the solicitation of support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue.*

(4) (a) A candidate, as defined in 13-1-101(6)(a), may not use or permit the use of state funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains the candidate's name, picture, or voice except in the case of a state or national emergency and then only if the announcement is reasonably necessary to the candidate's official functions.

(b) A state officer may not use or permit the use of public time, facilities, equipment, supplies, personnel, or funds to produce, print, or broadcast any advertisement or public service announcement in a newspaper, on radio, or on television that contains the state officer's name, picture, or voice except in the case of a state or national emergency if the announcement is reasonably necessary to the state officer's official functions or in the case of an announcement directly related to a program or activity under the jurisdiction of the office or position to which the state officer was elected or appointed.

(5) A public officer or public employee may not participate in a proceeding when an organization, other than an organization or association of local government officials, of which the public officer or public employee is an officer or director is:

(a) involved in a proceeding before the employing agency that is within the scope of the public officer's or public employee's job duties; or

(b) attempting to influence a local, state, or federal proceeding in which the public officer or public employee represents the state or local government.

(6) A public officer or public employee may not engage in any activity, including lobbying, as defined in 5-7-102, on behalf of an organization, other than an organization or association of local government officials, of which the public officer or public employee is a member while performing the public officer's or public employee's job duties. The provisions of this subsection do not prohibit a public officer or public employee from performing charitable

fundraising activities if approved by the public officer's or public employee's supervisor or authorized by law.

(7) A listing by a public officer or a public employee in the electronic directory provided for in 30-17-101 of any product created outside of work in a public agency is not in violation of subsection (2)(a) of this section. The public officer or public employee may not make arrangements for the listing in the electronic directory during work hours.

(8) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute and if the person complies with the disclosure procedures under 2-2-131.

(9) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless the member is also a full-time public employee.

(10) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local government from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to performing the official act."

Approved February 13, 2013

## CHAPTER NO. 15

[SB 46]

AN ACT CLARIFYING TERMINOLOGY USED FOR REGISTERED APPRENTICESHIPS; AND AMENDING SECTIONS 39-6-101, 39-6-102, 39-6-104, 39-6-106, 39-6-107, AND 39-6-108, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 39-6-101, MCA, is amended to read:

**"39-6-101. Duties of department — *definitions.*** (1) The department ~~of labor and industry~~ shall:

(a) encourage and promote the making of apprenticeship agreements conforming to the standards established by or in accordance with this chapter;

(b) register apprenticeship agreements that are in the best interests of the apprenticeship and conform to the standards established by or in accordance with this chapter;

(c) keep a record of apprenticeship agreements and, taking into consideration performance of the agreement, issue certificates of completion of apprenticeship;

(d) terminate or cancel any apprenticeship agreements in accordance with the provisions of the agreements;

(e) provide assistance for the development of on-the-job training programs in nonapprenticeable occupations;

(f) establish standards for apprenticeship agreements in conformity with the provisions of this chapter;

(g) use the standard prevailing wage rate for construction services, as defined in 18-2-401, for a prevailing wage rate district as provided in 18-2-411 as a base on which an apprenticeship wage is calculated pursuant to 39-6-108 for apprentices;

(h) adopt rules necessary to carry out the intent and purposes of this chapter; and

(i) perform other duties that may be required by federal regulations, provided that the federal regulations are not in conflict with this chapter.

(2) ~~Not less often than~~ *At least* once every 2 years, the department shall ~~make a~~ report ~~of~~ *on* its activities and findings to the governor and, as provided in 5-11-210, to the legislature. The department shall also make the report available to the public.

*(3) For the purposes of this chapter, the following definitions apply:*

*(a) "Apprentice" means a worker employed to learn a skilled occupation under a written apprenticeship agreement registered with the department.*

*(b) "Department" means the department of labor and industry.*"

**Section 2.** Section 39-6-102, MCA, is amended to read:

**"39-6-102. Powers of department.** (1) The department ~~of labor and industry~~ may accept from the federal government or any agency ~~thereof~~ *of the federal government* or from any state agency any funds made available to carry out ~~purposes within the scope of~~ the activities and purposes of the department under this chapter ~~and to~~. *The department may* use ~~such~~ *the* funds ~~as said department may direct~~ for the purposes for which ~~said~~ *the* funds are made available.

(2) The department may act to bring about the settlement of differences arising out of the apprenticeship agreement ~~where such~~ *if the* differences cannot be adjusted locally or in accordance with the established ~~trade~~ *occupational* procedure."

**Section 3.** Section 39-6-104, MCA, is amended to read:

**"39-6-104. Local and state joint apprenticeship committees.** (1) ~~Local and~~ *The department may approve local or* state joint apprenticeship committees ~~may be approved~~ in any ~~trade or group of trades~~ *occupation or group of occupations* in cities or trade areas ~~by the department of labor and industry~~ whenever the apprentice training needs of ~~such trade or group of trades~~ *the occupation or group of occupations* justifies ~~such~~ establishment *of a committee*.

(2) ~~Such~~ *The* local or state joint apprenticeship committees ~~shall~~ *must* be composed of an equal number of employer and employee representatives chosen from names submitted by the respective local or state employer and employee organizations in ~~such trade or group of trades. In a trade or group of trades~~ *the occupation or group of occupations. For an occupation or group of occupations* in which there is no bona fide employer or employee organization, the joint committee ~~shall~~ *must* be composed of persons known to represent the interests of employers and *of persons known to represent the interests* of employees~~, respectively,~~ or *the department may approve* a state joint apprenticeship committee ~~may be approved as~~ or ~~the department may~~ act itself as the joint committee ~~in such trade or group of trades~~ *for the occupation or group of occupations*.

(3) Subject to the review of the department and in accordance with the standards established by this chapter and by the department, ~~such~~ *a* committee shall devise standards for apprenticeship agreements and ~~give such aid as may be~~ *provide the assistance* necessary ~~in~~ *for* their operation in ~~their~~ *the* respective ~~trades~~ *occupations* and localities."

**Section 4.** Section 39-6-106, MCA, is amended to read:

**"39-6-106. Contents of apprenticeship agreements — credit for prior training or experience.** (1) Apprenticeship agreements must contain:

(a) a statement of the ~~trade or craft~~ *occupation* to be taught and the required hours for completion of apprenticeship, which must be ~~not less than~~ *at least* 2,000 hours of reasonably continuous employment;

(b) a statement of the processes in the ~~trade or craft~~ *occupational* divisions in which the apprentice is to be taught and the approximate amount of time to be spent at each process;

(c) a statement of the number of hours to be spent by the apprentice in related and supplemental instruction~~, which is~~. *The* recommended ~~to be~~ *number of hours is at least* 144 hours ~~per~~ *a* year~~;~~.

(d) a statement that apprentices must be ~~not less than~~ *at least* 16 years of age;

(e) a statement of the progressively increasing scale of wages to be paid the apprentice using the criteria established in 39-6-108;

(f) provision for a period of probation during which the department ~~of labor and industry must~~ *shall* terminate an apprenticeship agreement at the *written* request ~~in writing~~ of any participating party. After the probationary period, the department may terminate the registration of an apprentice upon agreement of the parties.

(g) provision that the services of the department may be used for consultation regarding the settlement of differences arising out of the apprenticeship agreement if the differences cannot be adjusted locally or in accordance with the established ~~trade~~ *occupational* procedure;

(h) provision that, if an employer is unable to fulfill an obligation under the apprenticeship agreement, the employer may transfer the obligation to another employer if the other employer has been approved as a training facility;

(i) provision for the specification of the ratio of apprentices to journeymen. The department shall continue to honor and recognize ratio provisions as established in existing labor/management bargaining agreements or as established by an industry practice.

(j) additional standards as may be prescribed in accordance with this chapter.

(2) An apprentice who, prior to entering into an agreement, has had training or experience in the ~~trade or craft~~ *occupation* in which the apprentice is employed as an apprentice may be granted full or partial credit for the training or experience on the recommendation of the employer or the joint apprenticeship committee and with the approval of the department."

**Section 5.** Section 39-6-107, MCA, is amended to read:

**"39-6-107. Provisions of chapter voluntary.** The provisions of this chapter ~~shall~~ apply to a person, firm, corporation, or ~~craft~~ *occupation* only after ~~such~~ *the* person, firm, corporation, or ~~craft~~ *occupation* has voluntarily elected to conform with its provisions."

**Section 6.** Section 39-6-108, MCA, is amended to read:

**"39-6-108. Apprentice wage rate.** (1) Except as provided in subsection (3), a wage paid to an apprentice employed for construction services, as defined in 18-2-401, under Title 18, chapter 2, part 4, must:

(a) be based on the standard prevailing rate of wages for construction services, as defined in 18-2-401, for a prevailing wage rate district as provided in 18-2-411; and

(b) increase progressively to no more than the employer's lowest journeyman hourly wage from a starting wage of no less than 40% of the hourly wage paid to a journeyman in the same ~~craft~~ *occupation* and working in the same area or region. A higher wage must be paid if required by federal law, by other state law, or by contract. If the apprentice performs labor in more than one locality, the apprentice must be paid based on the progressive wage schedule for the journeyman wage rate in the area in which the apprentice is working.

(2) The wage does not include a travel allowance or benefits. Benefits must be paid to an apprentice if work is being performed on a project that is covered by requirements to pay the Montana prevailing wage or a project covered by the federal Davis-Bacon Act, pursuant to 29 CFR, parts 1, 3, and 5.

(3) Wages paid under an individual's written apprenticeship agreement registered with the department ~~of labor and industry~~ as of October 1, 2006, are excluded from the rate set in subsection (1).

~~(4) For purposes of this section, "apprentice" means a worker employed to learn a skilled trade under a written apprenticeship agreement registered with the department of labor and industry.~~"

Approved February 13, 2013

## CHAPTER NO. 16

[SB 64]

AN ACT GRANTING IMMUNITY FROM THE DISCIPLINARY AUTHORITY OF A LICENSING BOARD FROM CHARGES OF MISCONDUCT REGARDING TESTIMONY BY LICENSED SOCIAL WORKERS, PROFESSIONAL COUNSELORS, AND MARRIAGE AND FAMILY THERAPISTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Immunity from misconduct allegations.** Immunity from the disciplinary authority of the board for violations of 37-1-316 is granted to a person licensed by the board whenever the allegation of misconduct is based on testimony or opinions offered by the licensee with respect to judicial proceedings governed by Titles 40, 41, or 42.

**Section 2. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 37, chapter 22, part 4, and the provisions of Title 37, chapter 22, part 4, apply to [section 1].

(2) [Section 1] is intended to be codified as an integral part of Title 37, chapter 23, part 3, and the provisions of Title 37, chapter 23, part 3, apply to [section 1].

(3) [Section 1] is intended to be codified as an integral part of Title 37, chapter 37, part 3, and the provisions of Title 37, chapter 37, part 3, apply to [section 1].

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved February 13, 2013

# CHAPTER NO. 17

[HB 21]

AN ACT GENERALLY REVISING THE STATUTORY APPROPRIATIONS LAWS; CLARIFYING THE RECIPIENT OF CERTAIN STATUTORY APPROPRIATIONS; CLARIFYING THE CRITERIA FOR APPROPRIATE STATUTORY APPROPRIATIONS; AMENDING SECTIONS 10-2-603, 17-1-508, 17-7-502, 20-9-516, 20-9-622, 77-1-109, 77-2-303, AND 77-2-304, MCA; REPEALING SECTIONS 17-3-112, 17-6-340, AND 50-4-623, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 10-2-603, MCA, is amended to read:

**"10-2-603. Special revenue account — use of funds — solicitation.** (1) There is an account in the special revenue fund to the credit of the board for the state veterans' cemeteries.

(2) Plot allowances, donations to the cemetery program, and fund transfers pursuant to 15-1-122(2)(d) must be deposited into the account.

(3) The account is statutorily appropriated, as provided in 17-7-502, to the ~~board~~ *department* and may be used *by the board* only for the construction, maintenance, operation, and administration of the state veterans' cemeteries.

(4) The board shall solicit veterans' license plate sales and donations on behalf of the state veterans' cemeteries."

**Section 2.** Section 17-1-508, MCA, is amended to read:

**"17-1-508. Review of statutory appropriations.** (1) Each biennium, the office of budget and program planning shall, in development of the executive budget, review and identify instances in which statutory appropriations in current law do not appear consistent with the guidelines set forth in subsection (2).

(2) The review of statutory appropriations must determine whether a statutory appropriation meets the requirements of 17-7-502. Except as provided in 77-1-108, a statutory appropriation from a continuing and reliable source of revenue may not be used to fund administrative costs. In reviewing and establishing statutory appropriations, the legislature shall consider the following guidelines. A *proposed or existing* statutory appropriation may *not* be considered appropriate if:

~~(a) the fund or use requires an appropriation;~~

~~(b)~~*(a)* the money is ~~not~~ from a continuing, reliable, and estimable source;

~~(c)~~*(b)* the use of the appropriation or the expenditure occurrence is ~~not~~ predictable and reliable;

~~(d)~~*(c)* the authority ~~does not exist~~ *exists* elsewhere;

~~(e)~~*(d)* an alternative appropriation method is ~~not~~ available, practical, or effective;

~~(f)~~*(e)* ~~other than for emergency purposes, it does not appropriate money from the state general fund~~ *it appropriates state general fund money for purposes other than paying for emergency services*;

~~(g)~~*(f)* the money is ~~dedicated for a specific use~~ *used for general purposes*;

~~(h)~~*(g)* the legislature wishes ~~the activity to be funded on a continual basis~~ *to review expenditure and appropriation levels each biennium*; and

~~(i)~~*(h)* ~~when feasible,~~ an expenditure cap and sunset date are ~~included~~ *excluded*.

(3) The office of budget and program planning shall prepare a fiscal note for each piece of legislation that proposes to create or amend a statutory appropriation. It shall, consistent with the guidelines in this section, review each of these pieces of legislation. Its findings concerning the statutory appropriation must be contained in the fiscal note accompanying that legislation."

**Section 3.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-206; 44-13-102; ~~50-4-623;~~ 53-1-109; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; 87-1-230; 87-1-603; 87-1-621; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 17, Ch. 593, L. 2005, and sec. 1, Ch. 186, L. 2009, the inclusion of 15-31-906 terminates January 1, 2015; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 8, Ch. 330, L. 2009, the inclusion of 87-1-621

terminates June 30, 2013; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 8, Ch. 427, L. 2009, the inclusion of 87-1-230 terminates June 30, 2013; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 47, Ch. 19, L. 2011, the inclusion of 87-1-621 terminates June 30, 2013; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; and pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017.)"

**Section 4.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; ~~17-3-112;~~ 17-3-212; 17-3-222; 17-3-241; 17-6-101; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; 87-1-230; 87-1-603; 87-1-621; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 17, Ch. 593, L. 2005, and sec. 1, Ch. 186, L. 2009, the inclusion of 15-31-906 terminates January 1, 2015; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by

19-6-709; pursuant to sec. 8, Ch. 330, L. 2009, the inclusion of 87-1-621 terminates June 30, 2013; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 8, Ch. 427, L. 2009, the inclusion of 87-1-230 terminates June 30, 2013; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 47, Ch. 19, L. 2011, the inclusion of 87-1-621 terminates June 30, 2013; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; and pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017.)"

**Section 5.** Section 20-9-516, MCA, is amended to read:

**"20-9-516. School facility and technology account.** (1) There is a school facility and technology account in the state special revenue fund provided for in 17-2-102. The purpose of the account is to provide money to schools for:

(a) major deferred maintenance;

(b) improving energy efficiency in school facilities;

(c) critical infrastructure in school districts;

(d) emergency facility needs;

(e) technological improvements; and

(f) state reimbursement for school facilities as provided in 20-9-371.

(2) There must be deposited in the account:

(a) an amount of money equal to the income attributable to the difference between the average sale value of 18 million board feet and the total income produced from the annual timber harvest on common school trust lands during the fiscal year;

~~(b) the mineral royalties transferred from the guarantee account as provided in 20-9-622;~~ and

~~(c)~~*(b)* the income received from certain lands and riverbeds as provided in 17-3-1003(5)."

**Section 6.** Section 20-9-622, MCA, is amended to read:

**"20-9-622. Guarantee account.** ~~(1)~~ There is a guarantee account in the state special revenue fund. The guarantee account is intended to:

~~(a)~~*(1)* stabilize the long-term growth of the permanent fund; and

~~(b)~~*(2)* maintain a constant and increasing distributable revenue stream. All realized capital gains and all distributable revenue must be deposited in the guarantee account. ~~Except as provided in subsection (2), the~~ *The* guarantee account is statutorily appropriated, as provided in 17-7-502, for distribution to school districts through school equalization aid as provided in 20-9-343.

~~(2) As long as a portion of the coal severance tax loan authorized in section 8, Chapter 418, Laws of 2001, is outstanding, the department of natural resources and conservation shall monthly transfer from the guarantee account to the general fund an amount that represents the amount of interest income that would be earned from the investment of the amount of the loan that is currently outstanding. When the loan is fully paid, all mineral royalties deposited in the guarantee account must be transferred to the school facility and technology account pursuant to 17-6-340.~~"

**Section 7.** Section 77-1-109, MCA, is amended to read:

**"77-1-109. Deposits of proceeds in trust land administration account.** (1) The amount of money that is deposited into the trust land

administration account established in 77-1-108 may not exceed an amount equal to 25% of distributable revenue generated in the fiscal year completed prior to the legislative session that will appropriate money for the next biennium. This excludes revenue generated by the forest improvement fee provided for in 77-5-204.

(2) (a) Subject to subsection (1), the department shall deposit into the trust land administration account the following:

(i) distributable revenue;

(ii) the proceeds or income from the sale of easements and timber, except timber from public school and Montana university system lands;

(iii) mineral royalties; and

(iv) fees collected pursuant to 77-2-328.

(b) As deposits are made, they must be identified and accounted for by trust.

(c) The department may not make deductions from interest or income generated from lands granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329.

(3) After the deposits in subsection (2) have been made, the remainder of the proceeds, other than proceeds from timber from Montana university system lands ~~and other than those purchased pursuant to 17-6-340~~, must be deposited in accordance with 17-3-1003, 18-2-107, and 20-9-341(2). Timber proceeds from university system lands must be paid over to the state treasurer, who shall deposit the money to the credit of the proper fund for use as provided in 17-3-1003. ~~Royalty payments purchased pursuant to 17-6-340 must be used as provided in that section and 20-9-622.~~"

**Section 8.** Section 77-2-303, MCA, is amended to read:

**"77-2-303. Restrictions on land available for sale.** (1) ~~Subject to purchase by the department pursuant to 17-6-340, land~~ *Land* that in the judgment of the department is likely to contain valuable deposits of coal, oil, oil shale, phosphate, metals, sodium, or other valuable mineral deposits is not subject to sale of either the surface land or any of the mineral deposits. However, this subsection does not prohibit the sale of lands containing sand, gravel, building stone, brick clay, or similar materials.

(2) (a) There is reserved from sale from all state land bordering on navigable lakes, nonnavigable meandered lakes, and navigable streams, that the board considers in the best interests of the state, a strip of land that includes all the land lying between *the* low-water mark and high-water mark and that extends in width landward from the line of *the* high-water mark of the lake or stream the full width of the 40-acre tract or government lot abutting the line of *the* high-water mark. If the width of the abutting government lot at its narrowest point is less than 100 feet, then the strip reserved must extend to and include the next adjoining 40-acre tract or government lot. The land reserved from sale by this subsection is subject to the granting of easements the same as other state lands.

(b) Strips of land bordering on meandering lakes or on navigable streams, except the strip lying between *the* low-water and high-water mark, whether surveyed and platted into blocks and lots or not, may be leased as provided in this title for the leasing of other state lands."

**Section 9.** Section 77-2-304, MCA, is amended to read:

**"77-2-304. Mineral reservations in state land.** All coal, oil, oil shale, gas, phosphate, sodium, and other mineral deposits in state land, except sand,

gravel, building stone, and brick clay, which were not reserved by the United States before July 1, 1927, are reserved to the state. ~~Subject to 17-6-340, those~~ *Those* deposits are reserved from sale except upon a rental and royalty basis as provided by law. A purchaser of state land acquires no right, title, or interest in or to any of those deposits. The state also reserves for itself and its lessees the right to enter upon state land to prospect for, develop, mine, and remove mineral deposits and to occupy and use so much of the surface of the land as may be required for all purposes reasonably extending to the exploring for, mining, and removal of the deposits from the land, but the lessee shall make just payment to the purchaser for all damage done by reason of entry upon the land and the use and occupancy of the surface of the land."

**Section 10. Repealer.** (1) The following sections of the Montana Code Annotated are repealed:

17-6-340. Purchase of permanent fund mineral estate.

50-4-623. Fees — statutory appropriation.

(2) The following section of the Montana Code Annotated is repealed:

17-3-112. Earnings — statutory appropriation.

**Section 11. Effective dates — contingency.** (1) Except as provided in subsection (2), [this act] is effective July 1, 2013.

(2) [Sections 4 and 10(2)] are effective on the date that the governor certifies to the code commissioner that federal funds and interest earnings received under 17-3-112 have been spent.

Approved February 14, 2013

## CHAPTER NO. 18

[HB 34]

AN ACT EXTENDING THE APPLICATION OF THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 17-5-205, MCA, is amended to read:

**"17-5-205. Application.** The application of the Bond Validating Act, Title 17, chapter 5, part 2, is extended to bonds issued and proceedings taken prior to ~~March 16, 2011~~ *[the effective date of this act]*."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved February 18, 2013

## CHAPTER NO. 19

[HB 41]

AN ACT REVISING THE INTERIM COMMITTEE MONITORING STRUCTURE TO TRANSFER OVERSIGHT OF THE DIVISION OF BANKING AND FINANCIAL INSTITUTIONS TO THE ECONOMIC AFFAIRS INTERIM COMMITTEE FROM THE STATE ADMINISTRATION AND VETERANS' AFFAIRS COMMITTEE; AMENDING SECTIONS 5-5-223 AND 5-5-228, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 5-5-223, MCA, is amended to read:

**"5-5-223. Economic affairs interim committee.** The economic affairs interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes:

(1) department of agriculture;

(2) department of commerce;

(3) department of labor and industry;

(4) department of livestock;

(5) office of the state auditor and insurance commissioner;

(6) office of economic development; ~~and~~

(7) the state compensation insurance fund provided for in 39-71-2313, including the board of directors of the state compensation insurance fund established in 2-15-1019*; and*

*(8) the division of banking and financial institutions provided for in 32-1-211*."

**Section 2.** Section 5-5-228, MCA, is amended to read:

**"5-5-228. State administration and veterans' affairs interim committee.** (1) The state administration and veterans' affairs interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the public employee retirement plans and for the following executive branch agencies and, unless otherwise assigned by law, the entities attached to the agencies for administrative purposes:

(a) department of administration, except:

(i) the state compensation insurance fund provided for in 39-71-2313, including the board of directors of the state compensation insurance fund established in 2-15-1019; ~~and~~

(ii) the office of state public defender; *and*

*(iii) the division of banking and financial institutions;*

(b) department of military affairs; and

(c) office of the secretary of state.

(2) The committee shall:

(a) consider the actuarial and fiscal soundness of the state's public employee retirement systems, based on reports from the teachers' retirement board, the public employees' retirement board, and the board of investments, and study and evaluate the equity and benefit structure of the state's public employee retirement systems;

(b) establish principles of sound fiscal and public policy as guidelines;

(c) as necessary, develop legislation to keep the retirement systems consistent with sound policy principles;

(d) solicit and review proposed statutory changes to any of the state's public employee retirement systems;

(e) report to the legislature on each legislative proposal reviewed by the committee. The report must include but is not limited to:

(i) a summary of the fiscal implications of the proposal;

(ii) an analysis of the effect that the proposal may have on other public employee retirement systems;

(iii) an analysis of the soundness of the proposal as a matter of public policy;

(iv) any amendments proposed by the committee; and

(v) the committee's recommendation on whether the proposal should be enacted by the legislature.

(f) attach the committee's report to any proposal that the committee considered and that is or has been introduced as a bill during a legislative session; and

(g) publish, for legislators' use, information on the state's public employee retirement systems.

(3) The committee may:

(a) specify the date by which proposals affecting a retirement system must be submitted to the committee for the review contemplated under subsection (2)(d); and

(b) request personnel from state agencies, including boards, political subdivisions, and the state public employee retirement systems, to furnish any information and render any assistance that the committee may request."

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved February 18, 2013

## CHAPTER NO. 20

[HB 53]

AN ACT REVISING THE DUTIES OF THE STATE ADMINISTRATION AND VETERANS' AFFAIRS INTERIM COMMITTEE; AMENDING SECTION 5-5-228, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 5-5-228, MCA, is amended to read:

**"5-5-228. State administration and veterans' affairs interim committee.** (1) The state administration and veterans' affairs interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the public employee retirement plans and for the following executive branch agencies and, unless otherwise assigned by law, the entities attached to the agencies for administrative purposes:

(a) department of administration, except:

(i) the state compensation insurance fund provided for in 39-71-2313, including the board of directors of the state compensation insurance fund established in 2-15-1019; and

(ii) the office of state public defender;

(b) department of military affairs; and

(c) office of the secretary of state.

(2) The committee shall:

(a) consider the actuarial and fiscal soundness of the state's public employee retirement systems, based on reports from the teachers' retirement board, the public employees' retirement board, and the board of investments, and study and evaluate the equity and benefit structure of the state's public employee retirement systems;

(b) establish principles of sound fiscal and public policy as guidelines;

(c) as necessary, develop legislation to keep the retirement systems consistent with sound policy principles; *and*

~~(d) solicit and review proposed statutory changes to any of the state's public employee retirement systems;~~

~~(e) report to the legislature on each legislative proposal reviewed by the committee. The report must include but is not limited to:~~

~~(i) a summary of the fiscal implications of the proposal;~~

~~(ii) an analysis of the effect that the proposal may have on other public employee retirement systems;~~

~~(iii) an analysis of the soundness of the proposal as a matter of public policy;~~

~~(iv) any amendments proposed by the committee; and~~

~~(v) the committee's recommendation on whether the proposal should be enacted by the legislature.~~

~~(f) attach the committee's report to any proposal that the committee considered and that is or has been introduced as a bill during a legislative session; and~~

~~(g)~~*(d)* publish, for legislators' use, information on the ~~state's~~ public employee retirement systems *that the committee considers will be valuable to legislators when considering retirement legislation*.

(3) The committee may:

(a) specify the date by which *retirement board* proposals affecting a retirement system must be submitted to the committee for the review ~~contemplated under subsection (2)(d)~~ *pursuant to subsection (1)*; and

(b) request personnel from state agencies, including boards, political subdivisions, and the state public employee retirement systems, to furnish any information and render any assistance that the committee may request."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved February 18, 2013

## CHAPTER NO. 21

[SB 15]

AN ACT ALLOWING DISCLOSURE OF INFORMATION RELATED TO A TAXPAYER'S RETURNS OR REPORTS TO THE TAXPAYER'S SPOUSE IF THE SPOUSE IS A MARRIED TAXPAYER FILING SEPARATELY ON THE SAME RETURN; AMENDING SECTIONS 15-30-2618 AND 53-2-211, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-30-2618, MCA, is amended to read:

**"15-30-2618. Confidentiality of tax records.** (1) Except as provided in 5-12-303, 15-1-106, 17-7-111, and subsections ~~(7)~~ *(8)* and ~~(8)~~ *(9)* of this section, in accordance with a proper judicial order, or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any individual report or individual return required under this chapter or any other information secured in the administration of this chapter; or

(b) any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) (a) The officers charged with the custody of the reports and returns may not be required to produce them or evidence of anything contained in them in an action or proceeding in a court, except in an action or proceeding:

(i) to which the department is a party under the provisions of this chapter or any other taxing act; or

(ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

(b) The court may require the production of and may admit in evidence only as much of the reports or of the facts shown by the reports as are pertinent to the action or proceedings.

(3) This section does not prohibit:

(a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any return or report filed in connection with the taxpayer's tax;

(b) the publication of statistics classified to prevent the identification of particular reports or returns and the items of particular reports or returns; or

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-2630.

*(4) The department may deliver to a taxpayer's spouse the taxpayer's return or information related to the return for a tax year if the spouse and the taxpayer filed the return with the filing status of married filing separately on the same return. The information being provided to the spouse or reported on the return, including subsequent adjustments or amendments to the return, must be treated in the same manner as if the spouse and the taxpayer filed the return using a joint filing status for that tax year.*

~~(4)~~*(5)* Reports and returns must be preserved for at least 3 years and may be preserved until the department orders them to be destroyed.

~~(5)~~*(6)* Any offense against subsections (1) through ~~(4)~~ *(5)* is punishable by a fine not exceeding $500. If the offender is an officer or employee of the state, the offender must be dismissed from office or employment and may not hold any public office or public employment in this state for a period of 1 year after dismissal or, in the case of a former officer or employee, for 1 year after conviction.

~~(6)~~*(7)* This section may not be construed to prohibit the department from providing taxpayer return information and information from employers' payroll withholding reports to:

(a) the department of labor and industry to be used for the purpose of investigation and prevention of noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws; or

(b) the state fund to be used for the purpose of investigation and prevention of noncompliance, fraud, and abuse under the workers' compensation program.

~~(7)~~*(8)* The department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either officer to inspect the return of income of any individual or may furnish to the officer or an authorized representative an abstract of the return of income of any individual or supply the officer with information concerning an item of income contained in

a return or disclosed by the report of an investigation of the income or return of income of an individual, but the permission may be granted or information furnished only if the statutes of the United States or of the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

~~(8)~~*(9)* On written request to the director or a designee of the director, the department shall furnish:

(a) to the department of justice all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to 15-30-2114(4), for the purpose of enabling the department of justice to administer the provisions of 61-5-105;

(b) to the department of public health and human services information acquired under 15-30-2616, pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public assistance fraud and abuse, provided notice to the applicant has been given;

(c) to the department of labor and industry for the purpose of prevention and detection of fraud and abuse in and eligibility for benefits under the unemployment compensation and workers' compensation programs information on whether a taxpayer who is the subject of an ongoing investigation by the department of labor and industry is an employee, an independent contractor, or self-employed;

(d) to the department of fish, wildlife, and parks specific information that is available from income tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and fishing licenses;

(e) to the board of regents information required under 20-26-1111;

(f) to the legislative fiscal analyst and the office of budget and program planning individual income tax information as provided in 5-12-303, 15-1-106, and 17-7-111. The information provided to the office of budget and program planning must be the same as the information provided to the legislative fiscal analyst.

(g) to the department of transportation farm income information based on the most recent income tax return filed by an applicant applying for a refund under 15-70-223 or 15-70-362, provided that notice to the applicant has been given as provided in 15-70-223 and 15-70-362. The information obtained by the department of transportation is subject to the same restrictions on disclosure as are individual income tax returns.

(h) to the commissioner of insurance's office all information necessary for the administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20."

**Section 2.** Section 53-2-211, MCA, is amended to read:

**"53-2-211. Department to share eligibility data.** (1) The department shall make available to the unemployment compensation program of the department of labor and industry all information contained in its files and records pertaining to eligibility of persons for medicaid, financial assistance and nonfinancial assistance, as defined in 53-2-902, and food stamps. The information made available must include information on the amount and source of an applicant's income. The information received from the department must be used by the department of labor and industry for the purpose of determining fraud, abuse, or eligibility for benefits under the unemployment compensation program of the state and for no other purpose.

(2) The department shall make available to the unemployment compensation and workers' compensation programs of the department of labor and industry all information contained in its files and records pertaining to eligibility of persons for low-income energy assistance and weatherization. The information made available must include information on the amount and source of an applicant's income. The information received from the department must be used by the department of labor and industry for the purpose of determining fraud, abuse, or eligibility for benefits under the unemployment compensation and workers' compensation programs of the state and for no other purpose.

(3) (a) Subject to federal restrictions, the department may request information from the department of labor and industry pertaining to unemployment, workers' compensation, and occupational disease benefits. If the department of labor and industry discovers evidence relating to fraud or abuse for unemployment, workers' compensation, or occupational benefits, the department of labor and industry may request information from the department of revenue pertaining to income as provided in 15-30-2618~~(8)(c)~~*(9)(c)*.

(b) The information must be used by the department for the purpose of determining fraud, abuse, or eligibility for benefits.

(4) The department may, to the extent permitted by federal law, make available to an agency of the state or to any other organization information contained in its files and records pertaining to the eligibility of persons for medicaid, financial assistance and nonfinancial assistance, as defined in 53-2-902, food stamps, low-income energy assistance, weatherization, or other public assistance."

**Section 3. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2012.

Approved February 18, 2018

# CHAPTER NO. 22

[SB 16]

AN ACT AMENDING THE ENTITLEMENT SHARE PAYMENT FOR MISSOULA TAX INCREMENT FINANCING DISTRICT 1-1C; AND AMENDING SECTION 15-1-121, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-1-121, MCA, is amended to read:

**"15-1-121. Entitlement share payment — purpose — appropriation.** (1) As described in 15-1-120(3), each local government is entitled to an annual amount that is the replacement for revenue received by local governments for diminishment of property tax base and various earmarked fees and other revenue that, pursuant to Chapter 574, Laws of 2001, amended by section 4, Chapter 13, Special Laws of August 2002, and later enactments, were consolidated to provide aggregation of certain reimbursements, fees, tax collections, and other revenue in the state treasury with each local government's share. The reimbursement under this section is provided by direct payment from the state treasury rather than the ad hoc system that offset certain state payments with local government collections due the state and reimbursements made by percentage splits, with a local government remitting a portion of collections to the state, retaining a portion, and in some cases sending a portion to other local governments.

(2) The sources of dedicated revenue that were relinquished by local governments in exchange for an entitlement share of the state general fund were:

(a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;

(b) vehicle, boat, and aircraft taxes and fees pursuant to:

(i) Title 23, chapter 2, part 5;

(ii) Title 23, chapter 2, part 6;

(iii) Title 23, chapter 2, part 8;

(iv) 61-3-317;

(v) 61-3-321;

(vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001;

(vii) Title 61, chapter 3, part 7;

(viii) 5% of the fees collected under 61-10-122;

(ix) 61-10-130;

(x) 61-10-148; and

(xi) 67-3-205;

(c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);

(d) district court fees pursuant to:

(i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);

(ii) 25-1-202;

(iii) 25-9-506; and

(iv) 27-9-103;

(e) certificate of title fees for manufactured homes pursuant to 15-1-116;

(f) financial institution taxes collected pursuant to the former provisions of Title 15, chapter 31, part 7;

(g) all beer, liquor, and wine taxes pursuant to:

(i) 16-1-404;

(ii) 16-1-406; and

(iii) 16-1-411;

(h) late filing fees pursuant to 61-3-220;

(i) title and registration fees pursuant to 61-3-203;

(j) veterans' cemetery license plate fees pursuant to 61-3-459;

(k) county personalized license plate fees pursuant to 61-3-406;

(l) special mobile equipment fees pursuant to 61-3-431;

(m) single movement permit fees pursuant to 61-4-310;

(n) state aeronautics fees pursuant to 67-3-101; and

(o) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77, chapter 1, part 5.

(3) (a) Except as provided in subsection (3)(b), the total amount received by each local government in fiscal year 2010 as an entitlement share payment under this section is the base component for the fiscal year 2011 distribution, and in each subsequent year the prior year entitlement share payment, including any reimbursement payments received pursuant to subsection (7), is

each local government's base component. The sum of all local governments' base components is the fiscal year entitlement share pool.

(b) The total amount received by each local government in fiscal year 2011 as an entitlement share payment under this section is the base component for fiscal year 2012 and 2013 distributions, and in each subsequent year the prior year entitlement share payment, including any reimbursement payments received pursuant to subsection (7), is each local government's base component. The sum of all local governments' base components is the fiscal year entitlement share pool.

(4) (a) With the exception of fiscal years 2012 and 2013, the base entitlement share pool must be increased annually by an entitlement share growth rate as provided for in this subsection (4). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year, with the exception of fiscal years 2012 and 2013.

(b) By October 1 of each year, the department shall calculate the growth rate of the entitlement share pool for the current year in the following manner:

(i) The department shall calculate the entitlement share growth rate based on the ratio of two factors of state revenue sources for the first, second, and third most recently completed fiscal years as recorded on the statewide budgeting and accounting system. The first factor is the sum of the revenue for the first and second previous completed fiscal years received from the sources referred to in subsection (2)(b), (2)(c), and (2)(g) divided by the sum of the revenue for the second and third previous completed fiscal years received from the same sources multiplied by 0.75. The second factor is the sum of the revenue for the first and second previous completed fiscal years received from individual income tax as provided in Title 15, chapter 30, and corporation income tax as provided in Title 15, chapter 31, divided by the sum of the revenue for the second and third previous completed fiscal years received from the same sources multiplied by 0.25.

(ii) Except as provided in subsection (4)(b)(iii), the entitlement share growth rate is the lesser of:

(A) the sum of the first factor plus the second factor; or

(B) 1.03 for counties, 1.0325 for consolidated local governments, and 1.035 for cities and towns.

(iii) In no instance can the entitlement growth factor be less than 1. The entitlement share growth rate is applied to the most recently completed fiscal year entitlement payment to determine the subsequent fiscal year payment.

(5) As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided for in subsection (8). The county or consolidated local government is responsible for making an allocation from the county's or consolidated local government's share of the entitlement share pool to each special district within the county or consolidated local government in a manner that reasonably reflects each special district's loss of revenue sources for which reimbursement is provided in this section. The allocation for each special district that existed in 2002 must be based on the relative proportion of the loss of revenue in 2002.

(6) (a) The entitlement share pools calculated in this section, the amounts determined under 15-1-123(2) for local governments, the funding provided for in subsection (8) of this section, and the amounts determined under 15-1-123(4) for tax increment financing districts are statutorily appropriated, as provided in

17-7-502, from the general fund to the department for distribution to local governments. Except for the distribution made under 15-1-123(2)(b), the distributions must be made on a quarterly basis.

(b) (i) The growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. The growth factor in the entitlement share must be calculated separately for:

(A) counties;

(B) consolidated local governments; and

(C) incorporated cities and towns.

(ii) In each fiscal year, the growth amount for counties must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each county's percentage of the prior fiscal year entitlement share pool for all counties; and

(B) 50% of the growth amount must be allocated based upon the percentage that each county's population bears to the state population not residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each consolidated local government's percentage of the prior fiscal year entitlement share pool for all consolidated local governments; and

(B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local government's population bears to the state's total population residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each incorporated city's or town's percentage of the prior fiscal year entitlement share pool for all incorporated cities and towns; and

(B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's population bears to the state's total population residing within incorporated cities and towns as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(v) In each fiscal year, the amount of the entitlement share pool before the growth amount or adjustments made under subsection (7) are applied is to be distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

(7) If the legislature enacts a reimbursement provision that is to be distributed pursuant to this section, the department shall determine the reimbursement amount as provided in the enactment and add the appropriate amount to the entitlement share distribution under this section. The total entitlement share distributions in a fiscal year, including distributions made pursuant to this subsection, equal the local fiscal year entitlement share pool. The ratio of each local government's distribution from the entitlement share

pool must be recomputed to determine each local government's ratio to be used in the subsequent year's distribution determination under subsections (6)(b)(ii)(A), (6)(b)(iii)(A), and (6)(b)(iv)(A).

(8) (a) Except for a tax increment financing district entitled to a reimbursement under 15-1-123(4), if a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any funding. If a tax increment financing district referred to in subsection (8)(b) terminates, then the funding for the district provided for in subsection (8)(b) terminates.

(b) Except for the reimbursement made under 15-1-123(4)(b), one-half of the payments provided for in this subsection (8)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection (8)(a), the entitlement share for tax increment financing districts is as follows:

| | | |
|---|---|---|
| Deer Lodge | TIF District 1 | $2,833 |
| Deer Lodge | TIF District 2 | 2,813 |
| Flathead | Kalispell - District 2 | 4,638 |
| Flathead | Kalispell - District 3 | 37,231 |
| Flathead | Whitefish District | 148,194 |
| Gallatin | Bozeman - downtown | 31,158 |
| Missoula | Missoula - 1-1C | ~~250,279~~ *225,251* |
| Missoula | Missoula - 4-1C | 30,009 |
| Silver Bow | Butte - uptown | 255,421 |

(9) The estimated fiscal year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from tax increment financing districts, from countywide transportation block grants, or from countywide retirement block grants.

(10) When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.

(11) A local government may appeal the department's estimation of the base component, the entitlement share growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211.

(12) A payment required pursuant to this section may not be offset by a debt owed to a state agency by a local government in accordance with Title 17, chapter 4, part 1."

Approved February 18, 2018

## CHAPTER NO. 23

[SB 30]

AN ACT AUTHORIZING THE BIG SKY ECONOMIC DEVELOPMENT PROGRAM TO INCLUDE EMPLOYEE BENEFITS AND ALTERNATE APPLICABLE WAGE REQUIREMENTS; DEFINING AND CLARIFYING TERMS; AMENDING SECTIONS 90-1-201 AND 90-1-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 90-1-201, MCA, is amended to read:

**"90-1-201. Big sky economic development program — definitions.** (1) (a) There is a big sky economic development program that consists of:

(i) the big sky economic development fund established in 17-5-703; and

(ii) the economic development special revenue account provided for in 90-1-205.

(b) Interest and income from the big sky economic development fund may be used to administer the big sky economic development program and to provide financial assistance for qualified economic development purposes under this part.

(2) As used in this part, the following definitions apply:

(a) "Certified regional development corporation" has the meaning provided in 90-1-116.

(b) "Department" means the department of commerce provided for in 2-15-1801.

(c) "Economic development organization" means:

(i) (A) a private, nonprofit corporation, as provided in Title 35, chapter 2, that is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code, 26 U.S.C. 501(c)(3) or 501(c)(6);

(B) an entity certified by the department under 90-1-116; or

(C) an entity established by a local government; or

(ii) an entity actively engaged in economic development and business assistance work in a region of the state.

*(d) "Employee benefits" means health, welfare, and pension contributions that meet the requirements of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.*

~~(d)~~*(e)* "High-poverty county" means a county in this state in which 14% or more of people of all ages are in poverty as determined by the U.S. bureau of the census estimates for the most current year available.

~~(e)~~*(f)* "Local government" means a county, consolidated government, city, town, or district or local public entity with the authority to spend or receive public funds.

~~(f)~~*(g)* "Tribal government" means any one of the seven federally recognized tribal governments of Montana and the Little Shell band of Chippewa Indians."

**Section 2.** Section 90-1-204, MCA, is amended to read:

**"90-1-204. Priorities for funding — rulemaking.** (1) ~~The~~ *Under the big sky economic development program provided for in 90-1-201, the* department must receive proposals for grants and loans from local governments and tribal governments. A local government shall work with an economic development organization on a proposal. The department shall work with the local government and the economic development organization or with an applicant tribal government in preparing cost estimates for a proposed project. In reviewing proposals, the department may consult with other state agencies with expertise pertinent to the proposal.

(2) (a) The department shall adopt rules necessary to implement the big sky economic development program. In adopting rules, the department shall look to the rules adopted for the treasure state endowment program and other similar state programs. To the extent feasible, the department shall make the rules compatible with those other programs. To the extent feasible, the department

shall employ an approach pertaining to the use of funds so that, except as provided in subsection (2)(b), the needs of rural areas are balanced with the needs of the state's urban centers.

(b) For high-poverty counties, the department shall employ an approach pertaining to the use of funds that is intended to lower poverty levels in the county to a percentage at which the county no longer is defined as a high-poverty county.

(c) The rules must provide for the types of uses of funds available under the big sky economic development program. The types of uses of funds by:

(i) local governments and tribal governments include but are not limited to:

(A) a reduction in the interest rate of a commercial loan for the expansion of a basic sector company;

(B) a grant or low-interest loan for relocation expenses for a basic sector company; and

(C) rental assistance or lease buy-downs for a relocation or expansion project for a basic sector company;

(ii) a certified regional development corporation or a tribal government include:

(A) support for business improvement districts and central business district redevelopment;

(B) industrial development;

(C) feasibility studies;

(D) creation and maintenance of baseline community profiles; and

(E) matching funds for federal funds, including but not limited to brownfields funds and natural resource damage funds.

(d) (i) The rules must provide for distribution methods for financial assistance available to local governments and tribal governments. The rules must provide for distribution based upon the number of jobs expected to be created because of the funding.

(ii) Funding may not exceed $5,000 for each expected job, except that funding for a project in a high-poverty county may not exceed $7,500 for each expected job.

(iii) The rules must require equal matching funds for a grant or loan, except that the rules for a grant or a loan in a high-poverty county may allow a 50% to 100% match requirement for the high-poverty county.

(e) The rules may provide for greater incentives for a high-poverty county.

(f) The rules must provide for the full or partial repayment of a grant if the new jobs or some of the new jobs for which a grant is given are not created.

(g) A grant or loan *under the big sky economic development program* may be made only for a new job that has an average weekly wage that meets or exceeds the *lesser of 170% of Montana's current minimum wage or the* current average weekly wage of the county in which the employees are to be principally employed. *For purposes of this subsection (2)(g) and subject to subsection (2)(h), the department may consider the value of employee benefits in determining whether the wage requirements have been met.*

*(h) Nothing in subsection (2)(g) exempts an employer from minimum wage requirements.*"

**Section 3. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved February 18, 2013

## CHAPTER NO. 24

[SB 39]

AN ACT ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION SUBMIT A PROGRESS REPORT FOR THE DESIGNATION OF WILDLAND-URBAN INTERFACE PARCELS TO AN INTERIM LEGISLATIVE COMMITTEE; AMENDING SECTION 76-13-145, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 76-13-145, MCA, is amended to read:

**"76-13-145. Designation of wildland-urban interface parcels.** (1) ~~Prior to January 1, 2012, and subject~~ *Subject* to the provisions of this section, the department shall identify the parcels of property in the state that are considered to be wildland-urban interface parcels, delineate those parcels on maps, and ensure that the maps and information on the maps are available to the public, local governing bodies, and governmental fire agencies organized under Title 7, chapter 33.

(2) (a) Except as provided in subsection (2)(b), the department shall identify a county's wildland-urban interface parcels based on the wildland-urban interface designation developed as part of the county's completion of a community wildfire protection plan under 16 U.S.C. 6501, et seq., the Healthy Forests Restoration Act of 2003.

(b) If a community wildfire protection plan has not been adopted, the department shall:

(i) provide notice to the county governing body that the department intends to designate the wildland-urban interface within the county's jurisdictional boundary;

(ii) allow up to 18 months for the county to complete and adopt a community wildfire protection plan if a county had begun the process of developing a plan prior to receiving the notice from the department under subsection (2)(b)(i);

(iii) review and consider the analysis of the potential for fire and wildland fire in the county's growth policy, as required in 76-1-601(3)(j) if a growth policy has been adopted;

(iv) consult with the county governing body and governmental fire agencies organized under Title 7, chapter 33, regarding appropriate parcels to designate as wildland-urban interface parcels; and

(v) clearly identify and make available to the county governing body and governmental fire agencies the criteria the department intends to use in designating parcels.

(3) Location of a property within the wildland-urban interface designated under this section may not be the sole reason for assessing additional fire protection fees, impact fees, or other fees against the property.

~~(4) The department shall report its progress in designating wildland-urban interface parcels to an appropriate interim legislative committee assigned to study wildland fire suppression or to the environmental quality council.~~

~~(5)~~*(4)* The department shall review each county's wildland-urban interface designation every 5 years, make changes as necessary, and maintain accurate maps and other identifying information."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved February 18, 2013

# CHAPTER NO. 25

[SB 52]

AN ACT CLARIFYING WHAT ENTITIES ARE RESPONSIBLE FOR REPORTING THE USE OF RENEWABLE ENERGY CREDITS; AMENDING SECTIONS 69-3-2009 AND 69-3-2010, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 69-3-2009, MCA, is amended to read:

**"69-3-2009. Electrical generation facilities renewable energy credit reporting.** (1) (a) Except as provided in 69-3-2010, *the following entities shall annually file a renewable energy credit report in accordance with this section:*

*(i)* a *public* utility ~~as defined in 69-5-102 operating in Montana,~~ *that buys or sells renewable energy credits for the purposes of complying with 69-3-2004;*

*(ii)* a competitive electricity supplier ~~as defined in 69-3-2003,~~ *that buys or sells renewable energy credits for the purposes of complying with 69-3-2004;*

*(iii) a cooperative utility that buys or sells renewable energy credits for the purposes of complying with 69-3-2008;* and

*(iv)* any owner of ~~an~~ *a renewable* electrical generation facility ~~operating in Montana~~ that ~~buys or~~ sells renewable energy credits *produced by the renewable electrical generation facility* ~~shall annually file a renewable energy credit report in accordance with this section~~.

(b) The report must be filed by March 1 of the year following the purchase or sale of the renewable energy credit.

(2) Except as provided in 69-3-2010, the report must include:

(a) the price of any renewable energy credit bought or sold ~~by the facility or utility~~; and

(b) whether electrical energy and renewable energy credits were bought or sold together or separately, as a bundled or unbundled product.

(3) Except as provided in subsection (4), the reports are not subject to the regulatory powers of the department of revenue. The department of revenue shall make the report available for public inspection.

(4) A *public* utility*, a competitive electricity supplier, a cooperative utility,* or *an* owner of ~~an~~ *a renewable* electrical generation facility that fails to file the report required pursuant to this section shall pay an administrative penalty, assessed by the department of revenue, of $1,500. A utility may not recover this penalty through an increase in electricity rates. Money generated from these penalties must be deposited in the universal low-income energy assistance fund established in 69-8-412(1)(b).

(5) For the purposes of implementing this section, "*renewable* electrical generation facility" means any combination of a physically connected generator or generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power *that is located in Montana and uses any of the sources of energy listed in 69-3-2003(10)*.

(6) (a) The report required in subsection (1) must be filed with the department of revenue in a format determined by the department.

(b) A *public* utility, a competitive electricity supplier, *a cooperative utility,* or an owner of ~~an~~ *a renewable* electrical generation facility that is required to file a report pursuant to subsection (1) shall provide a copy of the report to the energy and telecommunications interim committee provided for in 5-5-230. Before September 15 of the year preceding a legislative session, the energy and telecommunications interim committee shall review the reports and, if necessary, submit recommendations regarding the use of renewable energy credits in Montana to the legislature."

**Section 2.** Section 69-3-2010, MCA, is amended to read:

**"69-3-2010. Exceptions to report contents.** (1) If a *public* utility, a competitive electricity supplier, *a cooperative utility,* or an owner of ~~an~~ *a renewable* electrical generation facility ~~operating in Montana~~ required to file the report pursuant to 69-3-2009 buys or sells a renewable energy credit in a market where the price of a renewable energy credit is not publicly disclosed, the *public* utility, competitive electricity supplier, *cooperative utility,* or owner of ~~an~~ *a renewable* electrical generation facility ~~operating in Montana~~ is not required to disclose the price.

(2) The *public* utility, competitive electricity supplier, *cooperative utility,* or owner of ~~an~~ *a renewable* electrical generation facility ~~operating in Montana~~ shall report the number of credits bought or sold and whether the energy and renewable energy credits were bought or sold together or separately as a bundled or unbundled product."

**Section 3. Effective date.** [This act] is effective on passage and approval.

**Section 4. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to renewable energy credits bought or sold on or after January 1, 2012.

Approved February 18, 2013

# CHAPTER NO. 26

[SB 60]

AN ACT ELIMINATING THE ALTERNATIVE LIVESTOCK ADVISORY COUNCIL AND ITS DUTIES; REPEALING SECTION 87-4-432, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Repealer.** The following section of the Montana Code Annotated is repealed:

87-4-432. Alternative livestock advisory council — appointment of members — duties.

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved February 18, 2013

# CHAPTER NO. 27

[SB 72]

AN ACT REVISING THE DATE ON WHICH CATTLE ARE COUNTED FOR PURPOSES OF LIVESTOCK ASSESSMENT FEES; AMENDING SECTIONS 81-6-104, 81-6-204, AND 81-6-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 81-6-104, MCA, is amended to read:

**"81-6-104. Fee — special fund.** The county livestock protective committee may recommend to the board of county commissioners the imposition of a fee in an amount not to exceed 50 cents per head on all cattle 9 months of age or older in the county on ~~January 1~~ *the regular assessment date of each year as provided in 15-24-903*, and the board of county commissioners shall impose the fee~~, to~~. *The fee must* be collected and deposited by the county treasurer in a special fund to be known as the livestock special deputy fund, together with any other funds made available from county, state, federal, or private sources for the purposes of this part."

**Section 2.** Section 81-6-204, MCA, is amended to read:

**"81-6-204. Fee — deposit of proceeds — multiple-county district.** The district cattle protective committee may recommend to the board of county commissioners the imposition of a fee in an amount not to exceed 50 cents per head on all cattle 9 months of age or older in the district on ~~January 1~~ *the regular assessment date of each year as provided in 15-24-903*, and the board of county commissioners shall impose the fee~~, to~~. *The fee must* be collected and deposited in the county treasury of one of the counties in the district, selected by the district cattle protective committee, in a special fund to be known as the livestock special deputy fund, together with any other funds made available from county, state, federal, or private sources for the purposes of this part."

**Section 3.** Section 81-6-209, MCA, is amended to read:

**"81-6-209. Fee — deposit of proceeds — single-county district.** The district cattle protective committee may recommend to the board of county commissioners the imposition of a fee in an amount not to exceed 50 cents per head on all cattle 9 months of age or older in the district on ~~January 1~~ *the regular assessment date of each year as provided in 15-24-903*, and the board of county commissioners shall impose the fee~~, to~~. *The fee must* be collected and deposited in the county treasury in a special fund to be known as the livestock special deputy fund, together with any other funds made available from county, state, federal, or private sources for the purposes of this part."

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved February 18, 2013

# CHAPTER NO. 28

[HB 17]

AN ACT REVISING OR ELIMINATING CERTAIN DEPARTMENT OF JUSTICE STATUTORY ADVISORY COUNCILS AND REPORTS; ELIMINATING THE STATUTORY REQUIREMENT FOR THE STATE FIRE PREVENTION AND INVESTIGATION ADVISORY COUNCIL; CLARIFYING THE DUTIES AND REPORTING REQUIREMENT OF THE DOMESTIC

VIOLENCE FATALITY REVIEW COMMISSION; ELIMINATING THE CIGARETTE STANDARDS REPORT TO THE LEGISLATURE; AND AMENDING SECTIONS 2-15-2005, 2-15-2017, AND 50-65-102, MCA.

WHEREAS, House Bill No. 142 (Chapter 126, Laws of 2011) required interim committees to "review statutorily established advisory councils and required reports of assigned agencies to make recommendations to the next legislature"; and

WHEREAS, the Law and Justice Interim Committee voted to make the recommendations contained in this bill.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-15-2005, MCA, is amended to read:

**"2-15-2005. State fire prevention and investigation section — advisory council.** (1) There is a state fire prevention and investigation section in the department of justice and under the supervision and control of the attorney general.

(2) A person appointed to administer the fire prevention and investigation section shall represent the state of Montana as the state fire marshal and must be a person qualified by experience, training, and high professional competence in matters of fire service and safety.

~~(3) The attorney general shall create a fire prevention and investigation advisory council in accordance with procedures provided in 2-15-122.~~"

**Section 2.** Section 2-15-2017, MCA, is amended to read:

**"2-15-2017. Domestic violence fatality review commission — confidentiality of meetings and records — criminal liability for unauthorized disclosure — report to legislature.** (1) There is a domestic violence fatality review commission in the department of justice.

(2) The commission shall:

(a) examine the trends and patterns of domestic violence-related fatalities in Montana;

(b) educate the public, service providers, and policymakers about domestic violence fatalities and strategies for intervention and prevention; and

(c) recommend policies, practices, and services that may encourage collaboration and reduce fatalities due to domestic violence.

(3) The members of the commission, not to exceed 18, are appointed by the attorney general from among the following disciplines:

(a) representatives from state departments that are involved in issues of domestic abuse;

(b) representatives of private organizations that are involved in issues of domestic abuse;

(c) medical and mental health care providers who are involved in issues of domestic abuse;

(d) representatives from law enforcement, the judiciary, and the state bar of Montana;

(e) representatives of Montana Indian tribes;

(f) other concerned citizens; and

(g) a member of the legislature who serves on either the house judiciary committee or the senate judiciary committee.

(4) The members shall serve without compensation by the commission but are entitled to be reimbursed for travel expenses as provided for in 2-18-501

through 2-18-503, and members who are full-time salaried officers or employees of this state or of any political subdivision of this state are entitled to their regular compensation. The provisions of 2-15-122 do not apply to the commission.

(5) The commission shall review ~~fatalities that are not under investigation and fatalities in cases that have been adjudicated and have received a final judgment~~ *closed domestic homicide cases selected by the attorney general to provide the commission with the best opportunity to fulfill its duties under this section*.

(6) Upon written request from the commission, a person who possesses information or records that are necessary and relevant to a domestic violence fatality review shall, as soon as practicable, provide the commission with the information and records. A person who provides information or records upon request of the commission is not criminally or civilly liable for providing information or records in compliance with this section.

(7) The meetings and proceedings of the commission are confidential and are exempt from the provisions of Title 2, chapter 3.

(8) The records of the commission are confidential and are exempt from the provisions of Title 2, chapter 6. The records are not subject to subpoena, discovery, or introduction into evidence in a civil or criminal action unless the records are reviewed by a district court judge and ordered to be provided to the person seeking access. The commission shall disclose conclusions and recommendations upon request but may not disclose information, records, or data that are otherwise confidential. The commission may not use the information, records, or data for purposes other than those designated by subsections (2)(a) and (2)(c).

(9) The commission may require any person appearing before it to sign a confidentiality agreement created by the commission in order to maintain the confidentiality of the proceedings. In addition, the commission may enter into agreements with nonprofit organizations and private agencies to obtain otherwise confidential information.

(10) A member of the commission who knowingly uses information obtained pursuant to subsection (6) for a purpose not authorized in subsection (2) or who discloses information in violation of subsection (8) is subject to a civil penalty of not more than $500.

(11) The commission shall report its findings and recommendations in writing to the ~~legislature~~ *law and justice interim committee*, the attorney general, the governor, and the chief justice of the Montana supreme court ~~no later than the third Tuesday in January of each year in which the legislature meets in~~ *prior to each* regular *legislative* session. The report must be made available to the public through the office of the attorney general. The commission may issue data or other information periodically, in addition to the biennial report."

**Section 3.** Section 50-65-102, MCA, is amended to read:

**"50-65-102. Cigarette test method and performance standard — conditions on sale — alternative test method and performance standard.** (1) Except as provided in subsection ~~(8)~~ *(7)*, cigarettes may not be sold or offered for sale in this state or sold or offered for sale to persons located in this state unless:

(a) the cigarettes have been tested in accordance with the test method provided in this section;

(b) the cigarettes meet the performance standard specified in this section;

(c) the manufacturer has filed a written certification with the state fire marshal in accordance with 50-65-103; and

(d) the cigarettes have been marked in accordance with 50-65-104.

(2) (a) Testing of cigarettes must be conducted in accordance with the American society for testing and materials standard E2187-04, the standard test method for measuring the ignition strength of cigarettes.

(b) Testing must be conducted on 10 layers of filter paper.

(c) No more than 25% of the cigarettes tested in a test trial in accordance with this section may exhibit full-length burns. Forty replicate tests compose a complete test trial for each cigarette used.

(d) The performance standards required in subsection (2)(c) may be applied only to a complete test trial.

(e) Written certifications must be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the international organization for standardization or another comparable accreditation standard required by the state fire marshal.

(f) Laboratories conducting testing in accordance with this section shall implement a quality control and quality assurance program that includes a procedure for determining the repeatability of the testing results. The repeatability value may not be greater than 0.19.

(g) This section does not require additional testing if cigarettes are tested for any other purpose in a manner that is consistent with this chapter.

(h) Testing performed or sponsored by the state fire marshal to determine a cigarette's compliance with the required performance standard must be conducted in accordance with this section.

(3) Each cigarette listed in a certification submitted pursuant to 50-65-103 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard provided in this section must have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band must be located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there must be at least two bands fully located at least 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column or, for nonfiltered cigarettes, 10 millimeters from the labeled end of the tobacco column.

(4) (a) A manufacturer of a cigarette that the state fire marshal determines cannot be tested in accordance with the test method prescribed in subsection (2)(a) shall propose a test method and performance standard for the cigarette to the state fire marshal.

(b) Upon approval of the proposed test method and a determination by the state fire marshal that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in subsection (2)(c), the manufacturer may employ that test method and performance standard to certify a cigarette pursuant to 50-65-103.

(c) If the state fire marshal determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in 50-65-102 and the state fire marshal determines that the officials responsible for implementing those requirements have approved the proposed alternative test method and

performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under provisions comparable to this section, the state fire marshal shall authorize the manufacturer to employ the alternative test method and performance standard to certify the cigarette for sale in this state unless the state fire marshal demonstrates a reasonable basis why the alternative test is unacceptable. All other applicable provisions of this section apply to the manufacturer even if the alternative test method and performance standard are authorized.

(5) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of 3 years and shall make copies of these reports available to the state fire marshal and the attorney general upon written request. A manufacturer who fails to make copies of the reports available within 60 days of receipt of a written request is subject to a civil penalty not to exceed $10,000 for each day after the 60th day that the manufacturer does not make the copies available.

(6) The state fire marshal may adopt a subsequent American society for testing and materials standard test method for measuring the ignition strength of cigarettes upon a finding that the subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns that the same cigarette would exhibit when tested in accordance with the standard provided in subsection (2)(a) and the performance standard in subsection (2)(c).

~~(7) The department of justice shall review the effectiveness of this section and report every 4 years to the legislature the state fire marshal's findings and, if appropriate, submit recommendations for legislation to improve the effectiveness of this section. The report and legislative recommendations may be submitted no later than January 1 of each 4-year period.~~

~~(8)~~*(7)* The requirements of subsection (1) do not prohibit a wholesale dealer or retail dealer from selling the wholesale dealer's or retail dealer's existing inventory of cigarettes on or after May 1, 2008, if the wholesale dealer or retail dealer can establish that state tax stamps were affixed to the cigarettes prior to May 1, 2008, and if the wholesale dealer or retail dealer establishes that the inventory was purchased prior to May 1, 2008, in comparable quantity to the inventory purchased during the same period of the prior year.

~~(9)~~*(8)* Because this chapter is based on New York law, it is the intent of the legislature that this chapter be implemented in accordance with the implementation and substance of the New York executive law section 156-c, fire safety standards for cigarettes."

Approved February 19, 2013

## CHAPTER NO. 29

[HB 107]

AN ACT REVISING LAWS REGARDING COUNSEL ASSIGNMENTS IN ABUSE OR NEGLECT PROCEEDINGS; REQUIRING A DETERMINATION OF ELIGIBILITY FOR COUNSEL ASSIGNMENTS; PROVIDING FOR COUNSEL ASSIGNMENTS AT THE COURT'S EXPENSE IN CERTAIN CASES; PROVIDING A COORDINATION INSTRUCTION REGARDING APPROPRIATIONS FOR COUNSEL ASSIGNMENTS BY THE JUDICIARY; AMENDING SECTION 41-3-425, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 41-3-425, MCA, is amended to read:

**"41-3-425. Right to counsel.** (1) Any party involved in a petition filed pursuant to 41-3-422 has the right to counsel in all proceedings held pursuant to the petition.

(2) Except as provided in ~~subsection (3)~~ *subsections (3) and (4)*, the court shall immediately appoint ~~or have counsel assigned~~ *the office of state public defender to assign counsel* for:

(a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422*, pending a determination of eligibility pursuant to 47-1-111*;

(b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is not appointed for the child or youth; and

(c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act.

(3) When appropriate, the court may appoint ~~or have counsel assigned for:~~

~~(a) a guardian ad litem or a court-appointed special advocate involved in a proceeding under a petition filed pursuant to 41-3-422;~~

~~(b)~~ *the office of state public defender to assign counsel for* any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is appointed for the child or youth.

(4) ~~The court's action pursuant to subsection (2) or (3) must be to order the office of state public defender, provided for in 47-1-201, to immediately assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, pending a determination of eligibility pursuant to 47-1-111~~ *When appropriate and in accordance with judicial branch policy, the court may assign counsel at the court's expense for a guardian ad litem or a court-appointed special advocate involved in a proceeding under a petition filed pursuant to 41-3-422*."

**Section 2. Coordination instruction.** If both House Bill No. 2 and [this act] are passed and approved and at least $40,000 is not appropriated *for each year of the biennium ending June 30, 2015,* to the judiciary for the purpose of funding counsel assignments pursuant to 41-3-425(4) then:

(1) the general fund appropriation for the office of state public defender in House Bill No. 2 is decreased by $40,000 for *each year of* the biennium ending June 30, 2015; and

(2) the general fund appropriation for the judiciary for the purpose of funding counsel assignments pursuant to 41-3-425(4) is increased by $40,000 for *each year of* the biennium ending June 30, 2015.

**Section 3. Effective date.** [This act] is effective July 1, 2013.

Approved February 19, 2013

## CHAPTER NO. 30

[HB 137]

AN ACT CLARIFYING APPLICATION OF PAROLE ELIGIBILITY RESTRICTIONS; AMENDING SECTION 46-18-222, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 46-18-222, MCA, is amended to read:

**"46-18-222. Exceptions to mandatory minimum sentences, restrictions on deferred imposition and suspended execution of sentence, and restrictions on parole eligibility.** Mandatory minimum sentences prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201(1)(b), 46-18-205, 46-18-221(3), 46-18-224, and 46-18-502(3), and restrictions on parole eligibility *prescribed by 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), and 45-5-625(4)* do not apply if:

(1) the offender was less than 18 years of age at the time of the commission of the offense for which the offender is to be sentenced;

(2) the offender's mental capacity, at the time of the commission of the offense for which the offender is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the offender, at the time of the commission of the offense for which the offender is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the offender was an accomplice, the conduct constituting the offense was principally the conduct of another, and the offender's participation was relatively minor;

(5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under 45-5-502(3), 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4) and the judge determines, based on the findings contained in a sexual offender evaluation report prepared by a qualified sexual offender evaluator pursuant to the provisions of 46-23-509, that treatment of the offender while incarcerated, while in a residential treatment facility, or while in a local community affords a better opportunity for rehabilitation of the offender and for the ultimate protection of the victim and society, in which case the judge shall include in its judgment a statement of the reasons for its determination."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved February 19, 2013

# CHAPTER NO. 31

[SB 121]

AN ACT REMOVING THE CONTRACTUAL PRESUMPTION THAT IN A CONTRACT BETWEEN A GOVERNMENT ENTITY AND A PRIVATE PARTY ALL UNCERTAINTY IS CAUSED BY THE PRIVATE PARTY; AND AMENDING SECTION 28-3-206, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 28-3-206, MCA, is amended to read:

**"28-3-206. Uncertainty to be resolved against party causing it.** In cases of uncertainty not removed by parts 1 through 5 of this chapter, the language of a contract should be interpreted most strongly against the party

who caused the uncertainty to exist. The promisor is presumed to be ~~such~~ *that* party~~, except that in the case of a contract between a public officer or body, as such, and a private party, it is presumed that all uncertainty was caused by the private party~~."

Approved February 19, 2013

# CHAPTER NO. 32

[HB 32]

AN ACT REQUIRING THAT THE PORTION OF THE LODGING FACILITY USE TAX PAID WITH FEDERAL FUNDS BY STATE AGENCIES BE PAID BACK TO THE AGENCY THAT MADE THE IN-STATE LODGING EXPENDITURE; AND AMENDING SECTIONS 15-65-121 AND 15-65-131, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-65-121, MCA, is amended to read:

**"15-65-121. Distribution of tax proceeds.** (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 17-2-124, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 17-2-124 and as provided in subsections (2)(a) through (2)(f) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The department shall *distribute the portion of the 4% that was paid with federal funds to the agency that made the in-state lodging expenditure and* deposit 30% of the amount deducted *less the portion paid with federal funds* in the state general fund ~~and distribute the portion of the amount deducted that was paid with federal funds to the department of administration for return to the federal government as provided in 17-3-106(2)~~. The amount of $400,000 each year must be deposited in the Montana heritage preservation and development account provided for in 22-3-1004.

(2) The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation, deposited in the state general fund, ~~distributed to the department of administration~~ *distributed to agencies that paid the tax with federal funds*, or deposited in the heritage preservation and development account must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical interpretation state special revenue account, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) 64.9% to be used directly by the department of commerce;

(e) (i) except as provided in subsection (2)(e)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city, consolidated city-county, resort area, or resort area district exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city, consolidated city-county, resort area, or resort area district is located, to be distributed to the nonprofit convention and visitors bureau in that city, consolidated city-county, resort area, or resort area district; and

(f) 2.6% to the Montana historical interpretation state special revenue account established in 22-3-115.

(3) If a city, consolidated city-county, resort area, or resort area district qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city, consolidated city-county, resort area, or resort area district is located.

(4) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials.

(5) The tax proceeds received that are transferred to a state special revenue account pursuant to subsections (2)(a) through (2)(e) are statutorily appropriated to the entities as provided in 17-7-502.

(6) The tax proceeds received that are transferred to the Montana historical interpretation state special revenue account pursuant to subsection (2)(f) are subject to appropriation by the legislature."

**Section 2.** Section 15-65-131, MCA, is amended to read:

**"15-65-131. State agencies to account for in-state lodging expenditures.** Each state agency shall account for in-state lodging expenditures in a manner that will enable the department to determine total expenditures for in-state lodging by state agencies in order to make a deposit of a portion of the tax proceeds imposed by 15-65-111 in the state general fund and distribute the portion of taxes paid with federal funds to the ~~federal government as provided in 15-65-121~~ *agency that made the in-state lodging expenditure*."

Approved February 20, 2013

# CHAPTER NO. 33

[HB 40]

AN ACT CLARIFYING THE RETENTION PERIOD FOR STUDENT RECORDS AND SCHOOL DISTRICT PERSONNEL FILES; AMENDING SECTION 20-1-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-1-212, MCA, is amended to read:

**"20-1-212. Destruction of records by school officer.** (1) Upon the order of the board of trustees, a school officer may destroy records that have met the retention period, as contained in the local government records retention and disposition schedules, and, with written approval of the local government records destruction subcommittee provided for in 2-6-403, any records not referenced in the retention and disposition schedule that are no longer needed by the office.

(2) ~~Student records~~ *Each student's permanent file, as defined by the board of public education,* must be permanently kept~~, and employment records~~ *in a secure location. Other student records must be maintained and destroyed as provided in subsection (1). Personnel files* must be kept for 10 years after termination."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved February 20, 2013

# CHAPTER NO. 34

[HB 52]

AN ACT RENAMING THE AGRICULTURE IN MONTANA SCHOOLS PROGRAM AS THE AGRICULTURE LITERACY IN MONTANA SCHOOLS PROGRAM; AND AMENDING SECTIONS 15-30-2388 AND 15-30-2389, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-30-2388, MCA, is amended to read:

**"15-30-2388. Agriculture *literacy* in Montana schools program account — administration.** (1) There is an agriculture *literacy* in Montana schools program account in the state special revenue fund provided for in 17-2-102.

(2) All money collected under 15-30-2389 must be deposited in the account.

(3) Money in the account must be used by the department of agriculture to provide funding for developing and presenting~~, through the joint efforts of the United States department of agriculture, educators at all levels, and representatives of agricultural organizations statewide and nationwide,~~ an educational program that will provide young people with a better understanding of the crucial role of agriculture in all aspects of society and of how Montana agriculture relates to the rest of the world. *The educational program must be developed and presented through the joint efforts of the United States department of agriculture, educators at all levels, and representatives of state and national agricultural organizations.*"

**Section 2.** Section 15-30-2389, MCA, is amended to read:

**"15-30-2389. Voluntary checkoff for agriculture *literacy* in Montana schools program.** (1) Each individual taxpayer who is required to file an income tax return under Title 15, chapter 30, may contribute to the funding of the agriculture *literacy* in Montana schools program by marking an appropriate box on the state income tax return.

(2) The department shall include on each Montana state individual income tax return form a clear and conspicuous provision by which the taxpayer may indicate a contribution to the agriculture *literacy* in Montana schools program. The contribution may be made from the amount to be refunded to the taxpayer

or, if no refund is due, must be in addition to the amount of tax required to be paid. The provision must be in substantially the following form:

Check the appropriate blank if you wish to contribute ___ $5, ___ $10, ___ $20, or ___ (specify an amount) of your tax refund, or add such amount to your tax payment, to fund the agriculture *literacy* in Montana schools program. If a joint return, check the appropriate blank if your spouse wishes to designate ___ $5, ___ $10, ___ $20, or ___ (specify an amount) for the same purpose.

(3) Money received under this section must be deposited in the agriculture *literacy* in Montana schools program account established by 15-30-2388 after the department has deducted the amount necessary for the department to administer this section as provided in 15-30-2386."

Approved February 20, 2013

# CHAPTER NO. 35

[HB 55]

AN ACT UPDATING MOTOR CARRIER LAWS TO COMPLY WITH FEDERAL PREEMPTION OF STATE REGULATION OF MOTOR CARRIERS TRANSPORTING CERTAIN PROPERTY; AMENDING SECTIONS 69-12-311, 69-12-312, 69-12-407, AND 69-12-408, MCA; REPEALING SECTIONS 69-12-331 AND 69-12-612, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 69-12-311, MCA, is amended to read:

**"69-12-311. Class A motor carrier certificate.** (1) ~~No~~ *A* Class A motor carrier ~~shall operate for the transportation of~~ *may not transport* persons, ~~and/or~~ property*, or both* for hire on any public highway in this state without ~~first having obtained from the commission, under the provisions of~~ *obtaining, pursuant to* this chapter, a certificate declaring that public convenience and necessity require ~~such~~ *the* operation.

(2) A motor carrier ~~making application for such certificate shall do so~~ *shall apply for a certificate,* in writing, separately for each route~~, which petition shall~~. *The application must* be verified by the applicant and ~~shall~~ specify the following ~~matters~~:

(a) the name and address of the applicant ~~and the names~~ and ~~addresses of~~ its officers, if any;

(b) the public highway or highways ~~over which~~ and the fixed termini between ~~which or~~ the regular route or routes ~~over which it~~ *where the applicant* intends to operate;

(c) ~~the kind of transportation, whether passenger, freight, or both, together with~~ a full and complete description of the character of the vehicle or vehicles to be used, including the seating capacity ~~of any vehicle to be used for passenger traffic and the tonnage capacity of any vehicle to be used in freight traffic~~;

(d) the proposed time schedule;

(e) a *proposed* schedule of the tariff or rates ~~desired~~ to be charged ~~for the transportation of freight and/or passengers~~;

(f) a complete and detailed description of the property proposed to be devoted to the public service;

(g) a detailed statement showing the assets and liabilities of ~~such~~ *the* applicant; and

(h) ~~such~~ other ~~or additional~~ information ~~as~~ *required by* the commission ~~may by order require~~.

(3) ~~Such~~ *The* application ~~shall~~ *must* be accompanied by a filing fee to be set by rule of the commission."

**Section 2.** Section 69-12-312, MCA, is amended to read:

**"69-12-312. Class B motor carrier certificate.** (1) ~~No~~ *A* Class B motor carrier ~~shall operate for the transportation of~~ *may not transport* persons, ~~and/or~~ property, *or both* for hire on any public highway in this state without ~~first having obtained from the commission, under the provisions of~~ *obtaining, pursuant to* this chapter, a certificate *declaring* that public convenience and necessity require ~~such~~ *the* ~~operations~~ *operation*.

(2) A motor carrier ~~making application for such permit shall do so~~ *shall apply for a certificate* in writing, separately for each locality ~~for which consideration is desired, which petition shall~~ *under consideration. The application must* be verified *by the applicant* and ~~shall~~ specify the following ~~matters~~:

(a) *the* name and address of the applicant and ~~the names and addresses of~~ its officers, if any;

(b) the kind of transportation, whether passenger, ~~freight~~ *household goods*, or both, together with a full and complete description of the character of the vehicle or vehicles to be used, including the seating capacity of any vehicle to be used for passenger traffic and the tonnage capacity of any vehicle to be used in ~~freight~~ *household goods* traffic;

(c) the locality and character of operations to be conducted;

(d) a *proposed* schedule of the tariff ~~of~~ *or* rates ~~desired~~ to be charged for the transportation of ~~freight and/or~~ passengers, *household goods, or both*;

(e) a complete and detailed description of the property proposed to be devoted to the public service;

(f) a detailed statement showing the assets and liabilities of ~~such~~ *the* applicant; and

(g) ~~such~~ other ~~or additional~~ information ~~as the commission may by order require~~ *required by the commission*.

(3) ~~Such~~ *The* application ~~shall~~ *must* be accompanied by a filing fee to be set by rule of the commission."

**Section 3.** Section 69-12-407, MCA, is amended to read:

**"69-12-407. Records and reports.** (1) All records, books, accounts, and files of ~~every~~ *a* Class A, Class B, Class C, and Class D motor carrier in this state, ~~so far~~ as they relate to the business of transportation conducted by the motor carrier, must at all times be subject to examination by the commission or by any authorized agent or employee of the commission. The commission shall prescribe a uniform system of accounts and uniform reports covering the operations of Class A, Class B, Class C, and Class D motor carriers~~, and every~~. *A* motor carrier authorized to operate in accordance with the provisions of this chapter shall keep its records, books, and accounts according to the uniform system~~, insofar as~~ *to the extent* possible.

(2) Before April 1 of each year, unless this deadline has been extended for good cause by the commission, ~~every~~ *a* motor carrier authorized to engage in business shall file with the commission a report, under oath, on a form

prescribed and furnished by the commission. ~~Those carriers filing an annual report with the interstate commerce commission shall, in addition to filing the report prescribed by the public service commission, submit to the public service commission a copy of the annual report filed with the interstate commerce commission. In addition to annual reports every motor carrier shall prepare and file with the commission, at the time or times and in the form to be prescribed by the commission, annual reports, special reports, and statements giving to the commission information it requires in order to perform its duties under this chapter.~~

(3) In addition to other reporting requirements, ~~the commission shall require the holder of~~ a Class D motor carrier ~~certificate to~~ *shall* provide sufficient information *to the commission* to show that the carrier is entitled to possess the Class D motor carrier certificate under the requirements of 69-12-314."

**Section 4.** Section 69-12-408, MCA, is amended to read:

**"69-12-408. Identification of ownership of certain large motor vehicles.** (1) (a) ~~A~~ *Except as provided in subsection (2), a* person may not operate a motor vehicle or combination of vehicles~~, except farm vehicles,~~ having a gross weight of more than 10,000 pounds ~~upon~~ *on* the highways of the state unless ~~there~~ *the name or trade name, city, and state or the name or trade name and the public service commission or department of transportation number* is displayed on both sides of each vehicle operated under its own power, either alone or in combination.~~, the name or trade name and city and state of or the name or trade name and the public service commission, interstate commerce commission, or department of transportation~~ *If a number is displayed, it must be the* number of the person or corporation under whose jurisdiction the vehicle or vehicles ~~is or~~ are being operated.

(b) The display ~~of name~~ must be in letters in sharp contrast to the background and in *a* size, shape, and color readily legible in daylight from a distance of 50 feet while the vehicle is not in motion. The display must be ~~kept and~~ maintained ~~to remain~~ *so that it remains* legible. The display may be accomplished either by painting the information on the vehicle or through the use of a decal or a removable device~~,~~ prepared so that it meets the identification and legibility requirements of this section.

(2) This section does not apply to*:*

*(a) farm vehicles; or*

*(b)* motor vehicles being*:*

*(i)* transported to dealers from point of manufacture ~~or~~*;*

*(ii) transported* from one dealer to another ~~or being~~*;*

*(iii)* demonstrated to a ~~prospect~~ *prospective buyer;* or

*(iv)* delivered to a buyer from a dealer or a manufacturer."

**Section 5. Repealer.** The following sections of the Montana Code Annotated are repealed:

69-12-331. Special provisions relating to transportation of buildings.

69-12-612. Interchange of equipment.

**Section 6. Effective date.** [This act] is effective on passage and approval.

**Section 7. Applicability.** [This act] applies to certificates, records, reports, and identifications issued, completed, or displayed after [the effective date of this act].

Approved February 20, 2013

## CHAPTER NO. 36

[HB 60]

AN ACT TERMINATING THE REQUIRED REVIEW OF PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS IN 2014; AND AMENDING SECTION 4, CHAPTER 330, LAWS OF 2011.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 4, Chapter 330, Laws of 2011, is amended to read:

**"Section 4. Termination.** [This act] terminates December 31, ~~2018~~ *2014*."

Approved February 20, 2013

## CHAPTER NO. 37

[HB 111]

AN ACT REPEALING THE TAXABLE VALUE DECREASE FOR EXPANDING INDUSTRIES THAT PROCESS MONTANA RAW MATERIALS OR USE MONTANA SEMIFINISHED PRODUCTS IN MANUFACTURING; REPEALING SECTIONS 15-24-2401, 15-24-2402, 15-24-2403, 15-24-2404, AND 15-24-2405, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Repealer.** The following sections of the Montana Code Annotated are repealed:

15-24-2401. Purpose.

15-24-2402. Definitions.

15-24-2403. Expanding industry taxable value decrease — application — approval — reports.

15-24-2404. Exclusion from other property tax reductions or exemptions — recapture.

15-24-2405. Rules.

Approved February 20, 2013

## CHAPTER NO. 38

[SB 32]

AN ACT ALLOWING EXCESS MONEY IN A SCHOOL EXTRACURRICULAR FUND TO BE INVESTED; PROVIDING FOR USE OF THE INTEREST EARNED; CLARIFYING WHO MAY ESTABLISH AN EXTRACURRICULAR FUND; AND AMENDING SECTION 20-9-504, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-9-504, MCA, is amended to read:

**"20-9-504. Extracurricular fund for pupil functions.** (1) The ~~government of the pupils of the school within~~ *trustees of* a district ~~or the administration of a school on behalf of the pupils~~ may establish an extracurricular fund for the purposes of ~~the receipts and expenditures of~~ *receiving and expending* money collected for pupil extracurricular functions ~~with the approval of the trustees of the district~~. All extracurricular money of a pupil organization of the school must be deposited and expended by check from a bank account maintained for the extracurricular fund.

(2) An accounting system for the extracurricular fund recommended by the superintendent of public instruction must be implemented by the trustees. The accounting system must provide for:

(a) the internal control of the cash receipts and expenditures of the money; and

(b) a general account that can be reconciled with the bank account for the extracurricular fund and reconciled with the detailed accounts within the extracurricular fund maintained for each student function.

*(3) The trustees may invest any excess money in the extracurricular fund in accordance with the provisions of 20-9-213(4). Interest earned as a result of the investments may either be:*

*(a) credited to a general operating account within the fund to be used to offset expenses incurred in administering the fund; or*

*(b) distributed to the fund from which the money was withdrawn for investment.*"

Approved February 20, 2013

# CHAPTER NO. 39

[SB 87]

AN ACT ELIMINATING THE STUDENT LOAN ADVISORY COUNCIL; AMENDING SECTIONS 20-26-103, 20-26-104, 20-26-201, AND 20-26-1101, MCA; REPEALING SECTIONS 2-15-1520 AND 20-26-1104, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-26-103, MCA, is amended to read:

**"20-26-103. Definitions.** As used in parts 1 and 2, the following definitions apply:

(1) "Postsecondary institution" includes the units of the university system and any private postsecondary institution.

~~(2) "Program advisory council" means the student loan advisory council created by 2-15-1520.~~

~~(3)~~*(2)* "Resident student" means a person who was a resident of Montana prior to enrolling and who is attending a qualified postsecondary institution within Montana."

**Section 2.** Section 20-26-104, MCA, is amended to read:

**"20-26-104. Resident student financial assistance program created.** There is a resident student financial assistance program administered by the commissioner of higher education ~~in consultation with the program advisory council~~."

**Section 3.** Section 20-26-201, MCA, is amended to read:

**"20-26-201. Duties of commissioner of higher education relative to program.** ~~In consultation with the program advisory council, the~~ *The* commissioner of higher education shall:

(1) adopt rules to administer the resident student financial assistance program, including the establishment of criteria for student eligibility which shall consider financial need;

(2) determine the amount of individual grants;

(3) establish procedures for fiscal control, fund accounting, and necessary reports; and

(4) apply for, receive, and administer federal and private ~~moneys~~ *money*."

**Section 4.** Section 20-26-1101, MCA, is amended to read:

**"20-26-1101. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Agency" means the entity designated by the board to administer student loans.

(2) "Board" means the board of regents of higher education.

~~(3) "Council" means the student loan advisory council established in 2-15-1520.~~

~~(4)~~*(3)* "Delinquency" means the failure of a debtor to abide by the terms of payment on a promissory note or other obligation created in return for an educational student loan, which failure has existed for at least 6 months and has resulted in an arrearage equal to or greater than six monthly payments called for by the note or obligation.

~~(5)~~*(4)* "Eligible educational institution" means any institution approved by the United States secretary of education as eligible to participate in the student loan program pursuant to Title IV of the Higher Education Act of 1965, as amended.

~~(6)~~*(5)* "Eligible lender" means any lender as defined under Title IV of the Higher Education Act of 1965, as amended.

~~(7)~~*(6)* "License" means a license, certificate, registration, or authorization issued by an agency of the state of Montana granting a person a right or privilege to engage in a business, occupation, or profession or any other privilege that is subject to suspension, revocation, forfeiture, or termination by the licensing authority prior to its date of expiration.

~~(8)~~*(7)* "Licensing authority" means any department, division, board, agency, or instrumentality of this state that issues a license.

~~(9)~~*(8)* "Order suspending a license" means an order issued by the agency to suspend a license. The order must contain the name of the debtor, the type of license, and the social security number of the debtor.

~~(10)~~*(9)* "Payment plan" includes but is not limited to a plan approved by the agency that provides sufficient security to ensure compliance with Title IV of the Higher Education Act of 1965, as amended, and that incorporates voluntary or involuntary income withholding or a similar plan for periodic payment of the debt outstanding.

~~(11)~~*(10)* "Student loan program" means the program established by the board pursuant to this part."

**Section 5. Repealer.** The following sections of the Montana Code Annotated are repealed:

2-15-1520. Student loan advisory council — terms — compensation.

20-26-1104. Student loan advisory council — duties.

**Section 6. Effective date.** [This act] is effective July 1, 2013.

Approved February 20, 2013

# CHAPTER NO. 40

[HB 164]

AN ACT CLARIFYING WHEN THE COUNTY COMMISSIONER DISTRICT BOUNDARIES MAY BE ALTERED; AND AMENDING SECTION 7-4-2102, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-4-2102, MCA, is amended to read:

**"7-4-2102. Division of county into commissioner districts.** (1) In each county of the state, following each federal decennial census, the board of county commissioners shall divide their respective counties into as many commissioner districts as there are county commissioners and ensure that the districts are as compact and equal in population and area as possible. The apportionment may take place at any time for the purpose of equalizing in population and area the commissioner districts. However, a commissioner district may not at any time be changed to affect the term of office of any county commissioner who has been elected. A change in the boundaries of any commissioner district ~~must~~ *may not* be made *between the date that falls* ~~within~~ 6 months ~~preceding~~ *before* a *county commissioner* primary election *and the date of the general election*.

(2) The district judge or judges of the county shall review the action of the commissioners to determine whether or not the action meets the requirements of this section."

Approved February 26, 2013

# CHAPTER NO. 41

[SB 5]

AN ACT CLARIFYING THAT ELECTRONIC RECORDS FOR A COUNTY MAY BE STORED AT A LOCATION SEPARATE FROM THE OFFICE OF THE CLERK; AND AMENDING SECTIONS 7-5-2131 AND 7-5-2133, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-5-2131, MCA, is amended to read:

**"7-5-2131. Records to be available to public.** ~~The~~ *(1) Except as provided in subsection (2), the* books, records, and accounts must be kept at the office of the clerk and must be open for public inspection free of charge.

*(2) Electronic records accessible from the office of the clerk may be stored at a separate location as long as those records are available for public inspection free of charge.*"

**Section 2.** Section 7-5-2133, MCA, is amended to read:

**"7-5-2133. Convenience fee for electronic county government services.** (1) ~~The~~ *Except as provided in 7-5-2131(2), the* county may charge a convenience fee and may allow county departments to collect the convenience fee on selected electronic government services in order to provide funding for the support and furtherance of electronic government services.

(2) As used in this section, "convenience fee" means a fee charged to recover the costs of providing electronic government services."

Approved February 26, 2013

# CHAPTER NO. 42

[SB 36]

AN ACT REVISING THE MEMBERSHIP OF THE CAPITOL COMPLEX ADVISORY COUNCIL; AND AMENDING SECTION 2-17-803, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-17-803, MCA, is amended to read:

**"2-17-803. Capitol complex advisory council established — membership — staff services — compensation.** (1) There is a capitol complex advisory council.

(2) The council consists of nine members as follows:

(a) two members of the house of representatives appointed by the speaker on a bipartisan basis;

(b) two members of the senate appointed by the committee on committees on a bipartisan basis;

(c) ~~a public representative~~ *two public members* appointed by the governor; and

(d) the director or the director's designee of each of the following agencies:

(i) the Montana historical society established in 22-3-101;

(ii) the Montana arts council established in 2-15-1513; *and*

(iii) the department of administration established in 2-15-1001~~; and~~

~~(iv) the department of fish, wildlife, and parks established in 2-15-3401~~.

(3) The council shall select a presiding officer, who may call meetings to conduct council business. The department of administration shall provide staff services to the council.

(4) (a) ~~The~~ *A* council member appointed under subsection (2)(c) is entitled to compensation not to exceed the daily allowance provided for in 5-2-301(3) for compensation of legislators for each day in which the member is actually and necessarily engaged in performing council duties and to travel expense reimbursement as provided in 2-18-501 through 2-18-503.

(b) A council member designated under subsection (2)(d) is not entitled to compensation for services as a member of the council.

(c) A council member appointed under subsection (2)(a) or (2)(b) is entitled to compensation and expenses as provided in 5-2-302."

Approved February 26, 2013

# CHAPTER NO. 43

[SB 51]

AN ACT ELIMINATING THE REPORT ON HEALTH CARE COSTS FOR MEDICAL PAROLEES; AND AMENDING SECTION 46-23-210, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 46-23-210, MCA, is amended to read:

**"46-23-210. Medical parole.** (1) The board may release on medical parole by appropriate order any person confined in a state prison or adult community corrections facility or any person sentenced to a state prison and confined in a prerelease center who:

(a) is not under sentence of death or sentence of life imprisonment without possibility of release;

(b) is unlikely to pose a detriment to the person, victim, or community; and

(c) (i) has a medical condition requiring extensive medical attention; or

(ii) has been determined by a physician to have a medical condition that will likely cause death within 6 months or less.

(2) A person designated ineligible for parole under 46-18-202(2) must have approval of the sentencing judge before being eligible for medical parole. If the court does not respond within 30 days to a written request from the department, the person is considered to be approved by the court for medical parole. The provisions of this subsection do not apply to a person who is ineligible for medical parole under subsection (1)(a).

(3) Medical parole may be requested by the board, the department, an incarcerated person, or an incarcerated person's spouse, parent, child, grandparent, or sibling by submitting a completed application to the administrator of the correctional institution in which the person is incarcerated. The application must include a detailed description of the person's proposed placement and medical care and an explanation of how the person's medical care will be financed if the person is released on medical parole. The application must include a report of an examination and written diagnosis by a physician licensed under Title 37 to practice medicine. The physician's report must include:

(a) a description of the medical attention required to treat the person's medical condition;

(b) a description of the person's medical condition, any diagnosis, and any physical incapacity; and

(c) a prognosis addressing the likelihood of the person's recovery from the medical condition or diagnosis and the extent of any potential recovery. The prognosis may include whether the person has a medical condition causing the likelihood of death within 6 months.

(4) The application must be reviewed and accepted by the department before the board may consider granting a medical parole.

(5) Upon receiving the application from the department, a hearing panel shall hold a hearing. Any interested person or the interested person's representative may submit written or oral statements, including written or oral statements from a victim. A victim's statement may be kept confidential.

(6) The hearing panel shall require as a condition of medical parole that the person agree to placement in an environment approved by the department during the parole period, including but not limited to a hospital, nursing home, hospice facility, or prerelease center, to intensive supervision, to some other appropriate community corrections facility or program, or to a family home. The hearing panel may require as a condition of parole that the person agree to periodic examinations and diagnoses at the person's expense. Reports of each examination and diagnosis must be submitted to the board and department by the examining physician. If either the board or department determines that the person's medical condition has improved to the extent that the person no longer requires extensive medical attention or is likely to pose a detriment to the person, victim, or community, a hearing panel may revoke the parole and return the person to the custody of the department.

(7) A grant or denial of medical parole does not affect the person's eligibility for nonmedical parole.

(8) Sections 46-23-203, 46-23-205 through 46-23-207, and 46-23-215 through 46-23-218 apply to medical parole.

~~(9) Before July 1 of each even-numbered year, the board and the department shall report to the children, families, health, and human services interim committee and the law and justice interim committee regarding the outcome related to any person released on medical parole since the last report, including health care costs and payments related to the care of the person released on medical parole.~~"

Approved February 26, 2013

# CHAPTER NO. 44

[SB 141]

AN ACT CLARIFYING THAT PIPELINES THAT TRANSPORT CARBON DIOXIDE FROM PLANTS OR FACILITIES THAT PRODUCE OR CAPTURE CARBON DIOXIDE ARE COMMON CARRIER PIPELINES; AMENDING SECTIONS 69-13-101, 69-13-102, 69-13-201, 69-13-301, 69-13-302, AND 69-13-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 69-13-101, MCA, is amended to read:

**"69-13-101. Common carrier pipeline — *definition.*** (1) A person, firm, corporation, limited partnership, joint-stock association, or association is a common carrier if it engages in:

(a) owning, operating, or managing any pipeline or any part of any pipeline within the state for the transportation of crude petroleum, coal, *or* the products of crude petroleum or coal~~,~~ or *of* carbon dioxide ~~produced in the combustion or gasification of fossil fuels~~ *from a plant or facility that produces or captures carbon dioxide* to or for the public for hire or engaging in the business of transporting crude petroleum, coal, *or* the products of crude petroleum or coal~~,~~ or carbon dioxide ~~produced in the combustion or gasification of fossil fuels~~ *from a plant or facility that produces or captures carbon dioxide* by pipelines;

(b) owning, operating, or managing any pipeline or any part of any pipeline for the transportation of crude petroleum, coal, *or* the products of crude petroleum or coal~~,~~ or *of* carbon dioxide ~~produced in the combustion or gasification of fossil fuels~~ *from a plant or facility that produces or captures carbon dioxide* to or for the public for hire when the pipeline is constructed or maintained upon, along, over, or under any public road or highway;

(c) owning, operating, or managing any pipeline or any part of any pipeline for transportation to or for the public for hire of crude petroleum, coal, *or* the products of crude petroleum or coal~~,~~ or *of* carbon dioxide ~~produced in the combustion or gasification of fossil fuels~~ *from a plant or facility that produces or captures carbon dioxide* when the pipeline is or may be constructed, operated, or maintained across, upon, along, over, or under the right-of-way of any railroad, corporation, or other common carrier required by law to transport crude petroleum, coal, *or* the products of crude petroleum or coal~~,~~ or *of* carbon dioxide ~~produced in the combustion or gasification of fossil fuels~~ *from a plant or facility that produces or captures carbon dioxide* as a common carrier;

(d) owning, operating, or managing or participating in ownership, operation, or management, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipeline

or any part of any pipeline for the transportation from any oil field, coal mine or field, or place of production within this state to any distributing, refining, or marketing center or reshipping point within this state of crude petroleum, coal, *or* the products of crude petroleum or coal~~,~~ or *of* carbon dioxide ~~produced in the combustion or gasification of fossil fuels~~ *from a plant or facility that produces or captures carbon dioxide* bought from others; or

(e) made a common carrier by or under the terms of contract with or in pursuance of the law of the United States.

*(2) For the purposes of this chapter, "plant or facility that produces or captures carbon dioxide" has the meaning provided for in 15-6-158.*

~~(2)~~*(3)* The provisions of this chapter do not apply to:

(a) pipelines that are limited in their use to the wells, stations, plants, and refineries of the owner and that are not a part of the pipeline transportation system of any common carrier; or

(b) any property of a common carrier that is not a part of or necessarily incident to its pipeline transportation system."

**Section 2.** Section 69-13-102, MCA, is amended to read:

**"69-13-102. Scope of chapter — enforcement.** (1) It is declared that the operation of pipelines to which this chapter applies for the transportation of crude petroleum, coal, *or* the products of crude petroleum or coal~~,~~ or *of* carbon dioxide ~~produced in the combustion or gasification of fossil fuels~~ *from a plant or facility that produces or captures carbon dioxide*, in connection with the purchase or purchase and sale of crude petroleum, coal, *or* the products of crude petroleum or coal~~,~~ or *of* carbon dioxide ~~produced in the combustion or gasification of fossil fuels~~ *from a plant or facility that produces or captures carbon dioxide*, is a business in which the public is interested and is subject to regulation by law. The business of purchasing or of purchasing and selling crude petroleum, coal, *or* the products of crude petroleum or coal~~,~~ or carbon dioxide ~~produced in the combustion or gasification of fossil fuels~~ *from a plant or facility that produces or captures carbon dioxide*, using in connection with that business a pipeline of the class subject to this chapter to transport the crude petroleum, coal, *or* the products of crude petroleum or coal~~,~~ or carbon dioxide ~~produced in the combustion or gasification of fossil fuels~~ *from a plant or facility that produces or captures carbon dioxide* ~~bought or sold~~, may not be conducted unless the pipeline used in connection with that business is a common carrier within the purview of this chapter and subject to the jurisdiction conferred upon the commission.

(2) It is the duty of the attorney general to enforce this provision by injunction or other adequate remedy."

**Section 3.** Section 69-13-201, MCA, is amended to read:

**"69-13-201. Establishment of rates and operating rules.** (1) The commission may establish and enforce rates of charges and regulations for gathering, transporting, loading, and delivering crude petroleum, coal, *or* the products of crude petroleum or coal~~,~~ or carbon dioxide ~~produced in the combustion or gasification of fossil fuels~~ *from a plant or facility that produces or captures carbon dioxide* by common carrier in this state and for the use of storage facilities necessarily incident to the transportation and may prescribe and enforce rules for the government and control of common carriers in respect to their pipelines and receiving, transferring, and loading facilities. The commission shall exercise the power upon petition by any person showing a substantial interest in the subject.

(2) An order establishing or prescribing rates and rules may not be made except after hearing and at least 10 days' and not more than 30 days' notice to the person, firm, corporation, partnership, joint-stock association, or association owning or controlling and operating the pipeline or pipelines affected.

(3) If a rate is filed by any pipeline and a complaint against the rate or a petition to reduce the rate is filed by any shipper and is sustained, in whole or in part, all shippers who have paid the rates filed by the pipeline have the right to reparation or reimbursement of all excess in transportation charges paid, over and above the proper rate as finally determined, on all shipments made after the date of the filing of the complaint."

**Section 4.** Section 69-13-301, MCA, is amended to read:

**"69-13-301. Records and reports.** (1) Common carriers of crude petroleum, coal, *or* the products of crude petroleum or coal~~,~~ or *of* carbon dioxide ~~produced in the combustion or gasification of fossil fuels~~ *from a plant or facility that produces or captures carbon dioxide* shall make and publish their tariffs under rules that may be prescribed by the commission. The commission shall require the common carriers to make reports and may investigate their books and records kept in connection with the business.

(2) The commission shall require common carrier pipelines to make monthly reports, duly verified under oath, of the total quantities of crude petroleum, coal, *or* the products of crude petroleum or coal~~,~~ or *of* carbon dioxide ~~produced in the combustion or gasification of fossil fuels~~ *from a plant or facility that produces or captures carbon dioxide* owned by the pipelines, of ~~that~~ *the quantities* held by them in storage for others, and of their unfilled storage capacity. Publicity may not be given by the commission to the reports as to stock of crude petroleum, coal, *or* the products of crude petroleum or coal~~,~~ or *of* carbon dioxide ~~produced in the combustion or gasification of fossil fuels~~ *from a plant or facility that produces or captures carbon dioxide* on hand of any particular pipeline, but the commission in its discretion may make public the aggregate amounts held by all the pipelines making the reports and of their aggregate storage capacity."

**Section 5.** Section 69-13-302, MCA, is amended to read:

**"69-13-302. Connection and interchange facilities.** (1) Each common carrier shall exchange crude petroleum tonnage, coal tonnage, petroleum or coal products tonnage, or carbon dioxide volume with each similar common carrier. The commission may require connections and facilities for the interchange of the tonnage and volume to be made at every locality reached by both pipelines whenever a necessity for the connections and facilities exists, subject to rates and regulations that may be made by the commission. Any common carrier under similar rules must be required to install and maintain facilities for the receipt and delivery *at all points on the pipeline* of crude petroleum, coal, *or* the products of crude petroleum or coal~~,~~ or *of* carbon dioxide ~~produced in the combustion or gasification of fossil fuels~~ *from a plant or facility that produces or captures carbon dioxide* ~~of patrons at all points on the pipeline~~.

(2) A carrier may not be required to receive or transport any crude petroleum, coal, *or* the products of crude petroleum or coal~~,~~ or *any* carbon dioxide ~~produced in the combustion or gasification of fossil fuels~~ *from a plant or facility that produces or captures carbon dioxide* except as may be marketable under rules prescribed by the commission. The commission shall make rules for the ascertainment of the amount of water and other foreign matter in crude oil, coal, *or* the products of crude petroleum or coal~~,~~ or *in* carbon dioxide ~~produced in the combustion or gasification of fossil fuels~~ *from a plant or facility that produces or*

*captures carbon dioxide* tendered for transportation, for deduction for water and foreign matter, and for the amount of deduction to be made for temperature, leakage, and evaporation.

(3) The particular powers delegated to the commission in this section may not be construed to limit the general powers conferred by this chapter."

**Section 6.** Section 69-13-303, MCA, is amended to read:

**"69-13-303. Prohibition of discrimination in rates or service.** (1) Except as provided in subsection (2), a common carrier in its operations may not discriminate between or against shippers in regard to facilities furnished, service rendered, or rates charged under the same or similar circumstances in the transportation of crude petroleum, coal, *or* the products of crude petroleum or coal~~,~~ or *of* carbon dioxide ~~produced in the combustion or gasification of fossil fuels~~ *from a plant or facility that produces or captures carbon dioxide*. There may not be any discrimination in the transportation of crude petroleum, coal, *or* the products of crude petroleum or coal~~,~~ or *of* carbon dioxide ~~produced in the combustion or gasification of fossil fuels~~ *from a plant or facility that produces or captures carbon dioxide when any of those products were* produced or purchased by the common carrier directly or indirectly. In this connection the pipeline must be considered as a shipper of the crude petroleum, coal, *or* the products of crude petroleum or coal~~,~~ or *of* carbon dioxide ~~produced in the combustion or gasification of fossil fuels~~ *from a plant or facility that produces or captures carbon dioxide when any of those products were* produced or purchased by the pipeline directly or indirectly and handled through its facilities. A carrier in the operation may not directly or indirectly charge, demand, collect, or receive from any one a greater or lesser compensation for any service rendered than from another for a like and contemporaneous service. Subject to the provisions of this chapter and the rules that may be prescribed by the commission, every common carrier shall receive and transport crude petroleum, coal, *or* the products of crude petroleum or coal~~,~~ or carbon dioxide ~~produced in the combustion or gasification of fossil fuels~~ *from a plant or facility that produces or captures carbon dioxide* delivered to it for transportation and shall receive and transport ~~the~~ *any of those* products and perform its other duties with respect to ~~the~~ *any of those* products without discrimination.

(2) The provisions of subsection (1) do not limit the right of the commission to prescribe rates and regulations different from or to some places from other rates or regulations for transportation from or to other places, as it may determine. A carrier is not guilty of discrimination when obeying any order of the commission. When there is offered for transportation more crude petroleum, coal, *or* the products of crude petroleum or coal~~,~~ or carbon dioxide ~~produced in the combustion or gasification of fossil fuels~~ *from a plant or facility that produces or captures carbon dioxide* than can be immediately transported, the products must be equitably apportioned. The commission may make and enforce general or specific regulations in this regard. A common carrier may not at any time be required to receive petroleum or petroleum products for shipments exceeding 3,000 barrels in any 1 day from any person, firm, corporation, or association of persons."

**Section 7. Effective date.** [This act] is effective on passage and approval.

Approved February 26, 2013

# CHAPTER NO. 45

[SB 111]

AN ACT CLARIFYING THE DEFINITION OF "URBAN POPULATION" AS IT APPLIES TO THE APPORTIONMENT OF STATE FUNDS TO THE URBAN HIGHWAY SYSTEM; AND AMENDING SECTION 60-3-211, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 60-3-211, MCA, is amended to read:

**"60-3-211. Apportionment of state funds to urban highway system.** (1) Each fiscal year, the department shall apportion the federal-aid highway funds allocated for the urban highway system to the ~~cities~~ *urban areas* in the state *as delineated and reported in the latest federal census* with populations of ~~over~~ 5,000 *or more* in the ratio of urban population in each ~~city~~ *urban area* to the total urban population in all ~~cities~~ *urban areas* in the state ~~with populations of over 5,000~~.

(2) For the purpose of this section, "urban population" is defined as population within the ~~incorporated limits of cities with populations of over 5,000~~ *urban area, as reported in the latest federal census, with a population of 5,000 or more* and that population within ~~unincorporated urban~~ *the adjusted and federal highway administration-approved* fringe areas ~~delineated and reported in~~ *based on* the latest federal census.

(3) To the extent necessary to permit orderly programming and construction of projects, obligations in any ~~city~~ *urban area* may exceed the amount apportioned to that ~~city~~ *urban area*. The amount of any excess obligations must be deducted from future apportionments to that ~~city~~ *urban area*."

Approved February 24, 2013

# CHAPTER NO. 46

[HB 36]

AN ACT REMOVING OBSOLETE REFERENCES TO THE REPEALED LOCAL GOVERNMENT SEVERANCE TAX; AND AMENDING SECTIONS 15-16-603, 15-36-315, 20-9-507, 20-10-144, AND 20-10-146, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-16-603, MCA, is amended to read:

**"15-16-603. Refund of taxes — limitations on refunds.** (1) Subject to the provisions in subsections (2) and (3), a board of county commissioners shall order a refund:

(a) on a tax, penalty, interest, or cost paid more than once or erroneously or illegally collected if an appeal pursuant to 15-1-402 was not available;

(b) on a tax paid for which a refund is allowed under 15-16-612 or 15-16-613;

(c) on a tax, penalty, or interest collected as a result of an error in the description or location of real property or improvements or for duplicate taxes paid as determined by the department of revenue;

(d) on net or gross proceeds tax, centrally assessed property tax, ~~or local government severance tax,~~ penalty, or interest when the department of revenue notifies the board of county commissioners of an assessment revision completed pursuant to 15-8-601;

(e) upon entry of a decision either by the district court or by the state tax appeal board under 15-2-306 that has not been appealed to a higher court; or

(f) on a decision that a refund is payable as a result of a taxpayer prevailing in a motor vehicle tax or fee proceeding under 15-15-201.

(2) The taxpayer shall prove that a refund is due under subsection (1)(a) or (1)(b).

(3) (a) A refund may not be granted under subsection (1)(a) or (1)(b) unless the taxpayer or a representative of the taxpayer files a written claim with the board of county commissioners within 10 years after the date when the second half of the taxes would have become delinquent if the taxes had not been paid.

(b) The refund required under subsection (1)(c) must be made for 5 tax years or for the duration of the error, whichever period is shorter.

(c) A refund may not be made under subsection (1)(c) unless the taxpayer allowed the department of revenue access to the taxpayer's property for the purposes of appraising the property."

**Section 2.** Section 15-36-315, MCA, is amended to read:

**"15-36-315. Credit or refund for overpayment — refund from county — interest on overpayment.** (1) If the department determines that the amount of tax, penalty, or interest due for any taxable period is less than the amount paid, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) (a) The amount of an overpayment credited against any tax, penalty, or interest due for any tax period or any refund or portion of a refund, which has not been distributed pursuant to 15-36-332, must be withheld from the current distribution made pursuant to 15-36-332.

(b) If the amount of the refund reduces the amount of tax previously distributed pursuant to 15-36-332 and if the current distribution, if any, is insufficient to offset the refund, then the department shall demand the amount of the refund from the county to which the tax was originally distributed. The county treasurer shall remit the amount demanded within 30 days of the receipt of notice from the department.

~~(3) A refund that is paid by the department for an overpayment of the local government severance tax for oil or natural gas production occurring after December 31, 1988, and before January 1, 1995, must be treated as issued for the current distribution period for distribution purposes, and the refund must be apportioned in the same manner as taxes are distributed pursuant to 15-36-332.~~

~~(4)~~*(3)* Except as provided in subsection ~~(5)~~ *(4)*, interest must be allowed on overpayments at the same rate as is charged on unpaid taxes provided in 15-1-216 beginning from the due date of the return or from the date of overpayment, whichever date is later, to the date on which the department approves refunding or crediting of the overpayment.

~~(5)~~*(4)* (a) Interest may not accrue during any period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date on which the return is due or from the date on which the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1."

**Section 3.** Section 20-9-507, MCA, is amended to read:

**"20-9-507. Miscellaneous programs fund.** (1) The trustees of a district receiving money from local, state, federal, or other sources provided in 20-5-324, other than money under the provisions of impact aid, as provided in 20 U.S.C. 7701, et seq., or federal money designated for deposit in a specific fund of the district, shall establish a miscellaneous programs fund for the deposit of the money. The money may be a reimbursement of miscellaneous program fund expenditures already realized by the district, indirect cost recoveries, or a grant of money for the financing of expenditures to be realized by the district for a special, approved program to be operated by the district. ~~When the money is a reimbursement or a local government severance tax payment, the money may be expended at the discretion of the trustees for school purposes.~~ *When the money is a reimbursement, the money may be expended at the discretion of the trustees for school purposes.* When the money is a grant, the money must be expended according to the conditions of the program approval by the superintendent of public instruction or any other approval agent. Within the miscellaneous programs fund, the trustees shall maintain a separate accounting for each local, state, or federal grant project and the indirect cost recoveries.

(2) The financial administration of the miscellaneous programs fund must be in accordance with the financial administration provisions of this title for a nonbudgeted fund."

**Section 4.** Section 20-10-144, MCA, is amended to read:

**"20-10-144. Computation of revenue and net tax levy requirements for district transportation fund budget.** Before the second Monday of August, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 must be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate for each bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by the district); plus

(b) the total of all individual transportation per diem reimbursement rates for the district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted in the budget for the contingency amount permitted in 20-10-143, except if the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or $100, whichever is larger, the contingency

amount on the budget must be reduced to the limitation amount and used in this determination of the schedule amount; plus

(e) any estimated costs for transporting a child out of district when the child has mandatory approval to attend school in a district outside the district of residence.

(2) (a) The schedule amount determined in subsection (1) or the total transportation fund budget, whichever is smaller, is divided by 2 and is used to determine the available state and county revenue to be budgeted on the following basis:

(i) one-half is the budgeted state transportation reimbursement; and

(ii) one-half is the budgeted county transportation fund reimbursement and must be financed in the manner provided in 20-10-146.

(b) When the district has a sufficient amount of fund balance for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of district revenue and fund balance reappropriated must be used to reduce the county financing obligation in subsection (2)(a)(ii) and, if the county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a)(i).

(c) The county revenue requirement for a joint district, after the application of any district money under subsection (2)(b), must be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each county.

(3) The total of the money available for the reduction of property tax on the district for the transportation fund must be determined by totaling:

(a) anticipated federal money received under the provisions of 20 U.S.C. 7701, et seq., or other anticipated federal money received in lieu of that federal act;

(b) anticipated payments from other districts for providing school bus transportation services for the district;

(c) anticipated payments from a parent or guardian for providing school bus transportation services for a child;

(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4);

(e) anticipated revenue from coal gross proceeds under 15-23-703;

(f) anticipated oil and natural gas production taxes;

~~(g) anticipated local government severance tax payments for calendar year 1995 production;~~

~~(h)~~*(g)* anticipated transportation payments for out-of-district pupils under the provisions of 20-5-320 through 20-5-324;

~~(i)~~*(h)* school district block grants distributed under 20-9-630;

~~(j)~~*(i)* any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year that may be used to finance the transportation fund; and

~~(k)~~*(j)* any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the transportation fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the transportation fund. The operating reserve may not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and is for the purpose of paying

transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount; and

(b) subtracting the amount of money available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

(5) The transportation fund levy requirements determined in subsection (4) for each district must be reported to the county commissioners on or before the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values by the county superintendent as the transportation fund levy requirements for the district, and the levy must be made by the county commissioners in accordance with 20-9-142."

**Section 5.** Section 20-10-146, MCA, is amended to read:

**"20-10-146. County transportation reimbursement.** (1) The apportionment of the county transportation reimbursement by the county superintendent for school bus transportation or individual transportation that is actually rendered by a district in accordance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction must be the same as the state transportation reimbursement payment, except that:

(a) if any cash was used to reduce the budgeted county transportation reimbursement under the provisions of 20-10-144(2)(b), the annual apportionment is limited to the budget amount;

(b) when the county transportation reimbursement for a school bus has been prorated between two or more counties because the school bus is conveying pupils of more than one district located in the counties, the apportionment of the county transportation reimbursement must be adjusted to pay the amount computed under the proration; and

(c) when county transportation reimbursement is required under the mandatory attendance agreement provisions of 20-5-321.

(2) The county transportation net levy requirement for the financing of the county transportation fund reimbursements to districts is computed by:

(a) totaling the net requirement for all districts of the county, including reimbursements to a special education cooperative or prorated reimbursements to joint districts or reimbursements under the mandatory attendance agreement provisions of 20-5-321;

(b) determining the sum of the money available to reduce the county transportation net levy requirement by adding:

(i) anticipated money that may be realized in the county transportation fund during the ensuing school fiscal year;

(ii) oil and natural gas production taxes;

~~(iii) anticipated local government severance tax payments for calendar year 1995 production;~~

~~(iv)~~*(iii)* coal gross proceeds taxes under 15-23-703;

~~(v)~~*(iv)* countywide school transportation block grants distributed under 20-9-632;

~~(vi)~~*(v)* any fund balance available for reappropriation from the end-of-the-year fund balance in the county transportation fund;

~~(vii)~~*(vi)* federal forest reserve funds allocated under the provisions of 17-3-213;

~~(viii)~~*(vii)* property tax reimbursements made pursuant to 15-1-123(7); and

~~(ix)~~*(viii)* other revenue anticipated that may be realized in the county transportation fund during the ensuing school fiscal year; and

(c) subtracting the money available, as determined in subsection (2)(b), to reduce the levy requirement from the county transportation net levy requirement.

(3) The net levy requirement determined in subsection (2)(c) must be reported to the county commissioners on or before the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values by the county superintendent, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements to the superintendent of public instruction on or before September 15. The report must be completed on forms supplied by the superintendent of public instruction.

(5) The county superintendent shall apportion the county transportation reimbursement from the proceeds of the county transportation fund. The county superintendent shall order the county treasurer to make the apportionments in accordance with 20-9-212(2) and after the receipt of the semiannual state transportation reimbursement payments."

Approved February 27, 2013

# CHAPTER NO. 47

[HB 114]

AN ACT REVISING THE DEFINITION OF "GARBAGE" FOR USE AS ANIMAL FEED; AND AMENDING SECTION 81-2-501, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 81-2-501, MCA, is amended to read:

**"81-2-501. Definitions.** When used in this part, the following definitions apply:

(1) "Garbage" means ~~putrescible animal and vegetable~~ wastes resulting from the handling, preparation, cooking, and consumption of ~~foods~~ *animal products*, including animal carcasses ~~or parts thereof~~ *or parts of animal carcasses, or other refuse of any character that has been associated with any animal products, including animal carcasses or parts of animal carcasses*.

(2) "Garbage feeder" means a person who handles, prepares, cooks, or otherwise treats garbage to feed to swine or other animals, as well as a person who feeds garbage to swine or other animals.

(3) "Person" means the state, any municipality, political subdivision, school district, institution, public or private corporation, individual, partnership, or other entity."

Approved February 27, 2013

# CHAPTER NO. 48

[HB 115]

AN ACT ALLOWING ALTERNATIVE LIVESTOCK RANCH ANIMALS AND RABBITS TO BE SLAUGHTERED AND PREPARED IN ESTABLISHMENTS THAT SLAUGHTER AND PREPARE CATTLE, BUFFALO, SHEEP, SWINE, OR GOATS; AMENDING SECTION 81-9-232, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 81-9-232, MCA, is amended to read:

**"81-9-232. Regulation of equine~~, alternative livestock ranch animal, or rabbit~~ carcasses or products.** (1) Equines~~, alternative livestock ranch animals, and rabbits~~ and their carcasses, parts of carcasses, and meat food products must be slaughtered and prepared in establishments separate from ~~the~~ establishments where cattle, buffalo, sheep, swine, or goats are slaughtered or their carcasses, parts of carcasses, or meat food products are prepared.

(2) The board may by rule otherwise limit the entry of equine~~, alternative livestock ranch animal, or rabbit~~ carcasses, parts of carcasses, meat food products, and other materials into any establishment where inspection under 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 is maintained~~,~~ under conditions ~~as~~ it may prescribe to ensure that allowing the entry of the articles into inspected establishments will be consistent with the purposes of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved February 27, 2013

# CHAPTER NO. 49

[HB 138]

AN ACT GENERALLY REVISING THE BANK ACT; REVISING DEFINITIONS; REVISING BANK MERGER PROVISIONS; EXTENDING THE TIME PERIOD FOR TAKING CERTAIN ACTIONS; AMENDING SECTIONS 32-1-109, 32-1-212, 32-1-370, 32-1-371, 32-1-376, 32-1-381, 32-1-383, 32-1-384, 32-1-506, 32-1-516, 32-1-904, 32-1-907, AND 32-1-908, MCA; AND REPEALING SECTION 32-1-382, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 32-1-109, MCA, is amended to read:

**"32-1-109. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

*(1) "Acquire" means:*

*(a) the direct or indirect purchase or exchange of stock;*

*(b) the direct or indirect purchase of assets and liabilities; or*

*(c) a merger.*

~~(1)~~*(2)* "Affiliate" has the meaning given ~~that term~~ in 12 U.S.C. 1841(k).

~~(2)~~*(3)* "Bank holding company" means a bank holding company or a financial holding company registered under the federal Bank Holding Company Act of 1956, as amended*, regardless of where it is located or has its headquarters*.

~~(3)~~*(4)* "Board" means the state banking board provided for in 2-15-1025.

~~(4)~~*(5)* "Branch bank" means:

(a) a banking house, other than the main banking house, maintained and operated by a bank doing business in the state and at which deposits are received, checks are paid, or money is lent, but does not include a satellite terminal, as defined in 32-6-103, or the office of an affiliated depository institution acting as an agent *under 12 U.S.C. 1828*; and

(b) in the case of a trust company, any office at which trust services are provided.

~~(5)~~*(6)* "Capital", "capital stock", and "paid-in capital" mean that fund for which certificates of stock are issued to stockholders.

~~(6)~~*(7)* "Consolidate" and "merge" mean the same thing and may be used interchangeably in this chapter.

*(8) "Control" means:*

*(a) ownership of, authority over, or power to vote, directly or indirectly, 25% or more of any class of voting security;*

*(b) authority in any manner over the election of a majority of directors; or*

*(c) power to exercise, directly or indirectly, a controlling influence over management and policies.*

~~(7)~~*(9)* "Demand deposits" means all deposits, the payment of which can legally be required when demanded.

~~(8)~~*(10)* "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

~~(9)~~*(11)* "Depository institution" means a bank or savings association organized under the laws of a state or the United States.

~~(10)~~*(12)* "Division" means the division of banking and financial institutions of the department.

*(13) "Doing business in this state" means located in this state or having a physical branch bank location in this state.*

*(14) "Headquarters" means the state in which the activities of a bank holding company or a company controlling the bank holding company are principally conducted within the meaning of the federal Bank Holding Company Act of 1956, as amended.*

~~(11)~~*(15)* "Insured depository institution" means a bank or savings association in which the deposits are insured by the federal deposit insurance corporation.

*(16) "Located in this state" means:*

*(a) in the case of a bank, that the bank is either organized under the laws of this state or is a federally chartered bank whose organizational certificate identifies an address in this state as the principal place at which the business of the federally chartered bank is conducted; and*

*(b) in the case of a bank holding company, that the entity, partnership, or trust is organized under the laws of this state.*

~~(12)~~*(17)* "Main banking house" means the designated principal place of business of a bank ~~in the state~~.

~~(13)~~*(18)* "Net earnings" means the excess of the gross earnings of a bank over expenses and losses chargeable against those earnings during any 1 year.

~~(14)~~*(19)* "Principal shareholder" means a person who directly or indirectly owns or controls, individually or through others, more than 10% of any class of voting stock.

~~(15)~~*(20)* "Profit and loss account" or "profit and loss" means that account carried on the books of the bank into which all earnings accounts and recoveries are closed, thus exhibiting "gross earnings", and against which all loss and other disbursement items are charged, revealing "net earnings", which are then properly closed to "undivided profits accounts" or "undivided profits", out of which dividends are paid and reserves set aside.

~~(16)~~*(21)* "Savings association" means a savings association or savings bank organized under the laws of the United States or a building and loan association, savings and loan association, or similar entity organized under the laws of a state.

~~(17)~~*(22)* "Shell bank" means a bank organized solely for the purpose of, and that does not conduct any banking business prior to, acquiring control of, merging with, or acquiring all or substantially all of the assets of an existing bank or savings association.

~~(18)~~*(23)* "Subsidiary" means a company 25% or more of whose voting shares or equity interests are owned and controlled by a bank.

~~(19)~~*(24)* "Surplus" means a fund paid in or created under this chapter by a bank from its net earnings or undivided profits that, when set apart and designated as surplus, is not available for the payment of dividends and cannot be used for the payment of expenses or losses so long as the bank has undivided profits.

~~(20)~~*(25)* "Time deposits" means all deposits, the payment of which cannot legally be required within 7 days.

~~(21)~~*(26)* "Undivided profits" means the credit balance of the profit and loss account of a bank."

**Section 2.** Section 32-1-212, MCA, is amended to read:

**"32-1-212. ~~Employees~~ *Bank examiner* not to be interested in banks.** A bank examiner may not be*, directly or indirectly,* interested in or a borrower from any ~~state~~ bank~~, directly or indirectly~~ *organized under the laws of this state*."

**Section 3.** Section 32-1-370, MCA, is amended to read:

**"32-1-370. Interstate merger of banks — interstate agreements.** (1) A bank located in this state that has been in existence at least 5 years ~~is authorized to~~ *may* enter into a merger transaction with a bank not located in this state. Prior approval of the department is required if ~~the resulting bank in a merger transaction authorized by this section~~ *any merger party* is a bank organized under the laws of this state.

*(2) Upon merger:*

*(a) each bank merger party merges into the resulting bank and the separate existence of every merger party except the resulting bank ceases;*

*(b) title to all real, personal, and mixed property owned by each merger party is vested in the resulting bank without reversion or impairment and without the necessity of any instrument of transfer;*

*(c) the resulting bank has all of the liabilities, duties, and obligations of each merger party, including obligations as fiduciary, personal representative, administrator, trustee, or guardian; and*

*(d) the resulting bank has all of the rights, powers, and privileges of each merger party, including appointment to the office of personal representative, administrator, trustee, or guardian under any will or other instrument made*

*prior to the merger and in which a merger party was nominated to the office by the maker of the will or other instrument.*

*(3) Upon merger, a resulting bank that is organized under the laws of this state:*

*(a) shall designate and operate one of the prior main banking houses of the merger parties as its main banking house and may maintain and continue to operate the main banking houses of each of the other merger parties as a branch bank;*

*(b) may maintain the branch banks and other offices previously maintained by the merger parties; and*

*(c) may establish, acquire, or operate additional branch banks at any location where any bank that is a party to the merger could have established, acquired, or operated a branch bank under applicable federal or state law as if that bank had not been a party to the merger.*

*(4) A resulting bank organized under the laws of this state that intends to establish, acquire, or operate a branch bank under subsection (3)(c) must receive prior approval from the department as provided for in 32-1-372, whether or not the branch bank is to be located within or outside of this state.*

*(5) A resulting bank organized under federal law or the laws of another state shall simultaneously provide the department with copies of all applications or notices filed with any federal or other state regulatory agency, including applications seeking to establish, acquire, or operate additional branch banks within this state based on circumstances applicable to banks organized under the laws of this state included in subsection (3)(c).*

~~(2)~~*(6)* With respect to interstate banking authorized in subsection (1), the department may enter into agreements with other states establishing the division of supervisory responsibilities between the state in which a bank is organized and the state or states in which branch banks may be located.

*(7) Upon merger, the resulting bank, including all depository institutions that are affiliates of the resulting bank, may not directly or indirectly control more than 22% of the total amount of deposits of insured depository institutions and credit unions located in this state.*"

**Section 4.** Section 32-1-371, MCA, is amended to read:

**"32-1-371. ~~Consolidation or merger~~ *Merger* of banks.** (1) (a) Any two or more banks doing business in this state may, with the approval of the department ~~in the case of a resulting state bank~~ *if any merger party is a bank organized under the laws of this state*, ~~consolidate or~~ merge into one bank, on terms and conditions lawfully agreed upon by a majority of the board of directors of each bank proposing to ~~consolidate or~~ merge. Except as otherwise expressly provided in this chapter, ~~the~~ *a* ~~consolidation or~~ merger *under this subsection (1)* ~~of a state bank~~ is governed by Title 35, chapter 1*, if the resulting bank is organized under the laws of this state*.

(b) A bank organized under the laws of this state may, with the approval of the department in the case of a resulting bank, ~~consolidate or~~ merge with a savings association located in this state and may, upon the ~~consolidation or~~ merger, maintain the branch banks and other offices previously maintained by both the bank and the savings association.

(2) ~~Upon consolidation or merger, the corporate franchise, the corporate life, being, and existence, and the corporate rights, powers, duties, privileges, franchises, and obligations, including the rights, powers, duties, privileges, and obligations as trustee, executor, administrator, and guardian and every right,~~

~~power, duty, privilege, and obligation as fiduciary, together with title to every species of property, real, personal, and mixed, of the consolidating or merging banks, are, without the necessity of any instrument of transfer, consolidated or merged and continued in and held, enjoyed, and assumed by the resulting bank. The resulting bank has the right equal with any other applicant to appointment by the courts to the offices of executor, administrator, guardian, or trustee under any will or other instrument made prior to the consolidation or merger and by which will or instrument the consolidating or merging bank was nominated by the maker to the office.~~ *Upon merger:*

*(a) each bank merger party merges into the resulting bank and the separate existence of every merger party except the resulting bank ceases;*

*(b) title to all real, personal, and mixed property owned by each merger party is vested in the resulting bank without reversion or impairment and without the necessity of any instrument of transfer;*

*(c) the resulting bank has all of the liabilities, duties, and obligations of each merger party, including obligations as fiduciary, personal representative, administrator, trustee, or guardian; and*

*(d) the resulting bank has all of the rights, powers, and privileges of each merger party, including appointment to the office of personal representative, administrator, trustee, or guardian under any will or other instrument made prior to the merger and in which a merger party was nominated to the office by the maker of the will or other instrument.*

(3) Upon ~~consolidation or~~ merger, the resulting bank shall designate and operate one of the prior main banking houses of the ~~consolidating or~~ merging banks as its main banking house and the bank may maintain and continue to operate the main banking houses of each of the other ~~consolidating or~~ merging banks as a branch bank.

(4) (a) Upon ~~consolidation or~~ merger, the resulting bank may:

(i) maintain the branch banks and other offices previously maintained by the ~~consolidating or~~ merging banks; and

(ii) establish, acquire, or operate additional branch banks at any location where any bank involved in the ~~consolidation or~~ merger could have established, acquired, or operated a branch bank under applicable federal or state law if that bank had not been a party to the ~~consolidation or~~ merger.

(b) A resulting bank *organized under the laws of this state* that intends to establish, acquire, or operate a branch bank ~~pursuant to~~ *under* subsection (4)(a)*(ii)* ~~that is organized under the laws of this state~~ must receive prior approval from the department as provided for in 32-1-372, whether or not the branch bank is to be located within or outside this state.

(c) A resulting bank organized under federal law or the laws of another state shall *simultaneously* provide the department with copies of all applications or notices filed with any federal or other state regulatory agency seeking to establish, acquire, or operate a branch bank ~~pursuant to~~ *under* subsection (4)(a)*(ii)* within this state. ~~The copies must be filed with the department within 5 days of their filing with the federal or other state agency.~~

(5) Upon ~~consolidation or~~ merger, the resulting bank, including all depository institutions that are affiliates of the resulting bank, may not directly or indirectly control more than 22% of the total amount of deposits of insured depository institutions and credit unions located in this state."

**Section 5.** Section 32-1-376, MCA, is amended to read:

**"32-1-376. Sale of branch bank.** ~~A bank located and doing business in this state may, with the approval of the department in the case of a state bank, buy from any other bank also located and doing business in this state all or substantially all of the business, assets, and liabilities of the selling bank's branch bank or branch banks. Upon completion of the sale, the purchasing bank may operate a branch bank at the selling bank's former branch bank location.~~ *Any bank may, with the approval of the department, buy from or sell to another bank, regardless of where either bank is located or doing business, all or substantially all of the business, assets, and liabilities of the selling bank's branch bank or branch banks that are physically located in this state.*"

**Section 6.** Section 32-1-381, MCA, is amended to read:

**"32-1-381. Purpose.** The purpose of ~~32-1-381 through~~ *32-1-383,* 32-1-384*, and this section* is to:

(1) authorize interstate banking by the acquisition of existing banks within the framework of the "Douglas amendment" to the Bank Holding Company Act of 1956*,* ~~(~~12 U.S.C. 1841 through 1850~~)~~, as amended;

(2) provide a variety of banking alternatives in Montana in terms of the numbers and ownership of banks; and

(3) conform Montana statutes with the provision of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law 103-328, 108 Stat. 2338, effective September 29, 1994. Any inconsistencies between the provisions of ~~32-1-381 through~~ *32-1-383,* 32-1-384*, and this section* and Public Law 103-328 must be resolved in favor of Public Law 103-328."

**Section 7.** Section 32-1-383, MCA, is amended to read:

**"32-1-383. Acquisition of ~~financial institution~~ *bank or bank holding company* by bank holding company not located in this state — limitations.** (1) A bank holding company with headquarters in another state may acquire control of a bank located in this state through acquisition of a ~~financial institution~~ *bank or bank holding company* if the *acquiring* bank holding company complies with 32-1-381*,* ~~through~~ 32-1-384*, and this section*. The bank to be acquired must:

(a) have been conducting business for a continuous period of at least 5 years prior to the effective date of the acquisition; or

(b) be a shell bank organized solely for the purpose of purchasing the assets of a bank that has conducted business for a continuous period of at least 5 years prior to the acquisition.

(2) A bank holding company may acquire control of a bank located in this state by purchase of stock in or by merger with a bank holding company.

(3) A bank, a bank holding company, or a subsidiary of the bank or bank holding company may not acquire control of a bank located in this state if the bank, bank holding company, or subsidiary together with its affiliates would directly or indirectly control more than 22% of the total amount of deposits of insured depository institutions and credit unions located in this state.

(4) The determination of the limit contained in subsection (3) must be based upon public reports filed with the appropriate regulatory agency as of the December 31 preceding the submission to the appropriate federal banking regulatory agency of the application seeking prior approval of the acquisition of control of the bank."

**Section 8.** Section 32-1-384, MCA, is amended to read:

**"32-1-384. Federal applications — comments.** (1) A bank holding company shall file with the department a copy of applications submitted to a federal banking regulatory agency seeking prior approval of the proposed acquisition of a ~~financial institution~~ *bank or bank holding company* located in this state. The *acquiring* bank holding company shall also file a statement verifying that the acquisition will not result in a violation of the limit in 32-1-383(3).

(2) The applications and statement are public records, and the department shall allow public inspection of all nonconfidential portions of the applications and statements. The department shall solicit public comment on the applications by promptly publishing notice of the applications in a newspaper of general circulation in the county in which the ~~financial institution~~ *bank or bank holding company* to be acquired is located. The department shall send the comments to the appropriate federal banking regulatory agency. The department may intervene in or take other action in a federal banking regulatory authority proceeding."

**Section 9.** Section 32-1-506, MCA, is amended to read:

**"32-1-506. Assessment on capital stock to make good impairment.** (1) When the department determines that an impairment of capital exists in a bank, it may notify the board of directors of the bank by written notice that the impairment exists, stating the amount of the impairment in dollars and percentage of the capital stock, and it may order the board to make good the impairment within 90 days from date of the notice.

(2) The board of directors shall, upon receipt of notice, convene and pass a resolution reciting the receipt of the notice of impairment and calling a special meeting of the stockholders of the bank in the manner provided in their bylaws.

(3) The stockholders at the meeting shall pass a resolution reciting the facts of receipt of notice from the department, notice of impairment, and notice of meeting and assessing themselves by assessing the stock of record. Payment of the assessment must be made within the time limit specified by the department in *the* notice of impairment.

(4) If there is any stock remaining on which the assessment is not paid as provided in this section, the stock or a part of the stock that is necessary to pay the assessment must be sold by the board of directors, acting through the cashier or secretary of the bank, at public or private sale, as appears best for all concerned, not less than 30 days after the day fixed for payment of assessment. Notice of the time and place of the sale must be given by certified mail to the stockholders by the board through its cashier or secretary at least ~~10~~ *14* days prior to the sale. A sale of stock as provided in this section causes an absolute cancellation of the outstanding certificate or certificates evidencing the stock sold and makes them void in the hands of the stockholder or the stockholder's assigns or pledgees. A new certificate must be issued by the bank to the purchaser for the number of shares purchased, and a new certificate must be issued to the stockholder of record and delivered to the stockholder or any pledgee or assignee of the stock for the remaining shares, if any. The record of the original certificate sold must be marked canceled on the books of the bank, and that record is prima facie evidence of the regularity of the proceedings for the sale of the stock.

(5) If a bank fails to make good its capital impairment upon demand of the department, as provided in this section, the department may immediately take charge of that bank and proceed to liquidate it as in the case of insolvency.

(6) If the stock does not sell for enough to pay the assessment on it, the board of directors may sue in the name of the corporation to collect the deficiency from the stockholder of record whose stock has been sold for the assessment."

**Section 10.** Section 32-1-516, MCA, is amended to read:

**"32-1-516. Recourse of aggrieved bank — injunction.** (1) A bank aggrieved by the action of the department in taking possession of its assets or closing its doors may, within ~~10~~ *14* days after possession has been taken, apply to the district court of the county in which its principal place of business is located, or to the judge of that court in chambers, to enjoin further proceedings by the department.

(2) The court or the judge in chambers, after notifying the department to appear at a specified time and place to show cause why further proceedings should not be enjoined and after hearing the allegations and proofs of the parties and determining facts, may on the merits dismiss the application or enjoin the department from further proceeding and direct it to surrender the business and assets of the bank.

(3) The application for injunction may be heard at any time after 5 days' notice from the time of service on the department, in the discretion of the court, or at any time prior to then by the consent of the department.

(4) Application shall be made on the verified complaint of the bank, in the form used in civil actions, and a copy of the complaint shall be served on the department with the order to show cause.

(5) The department shall, at least 2 days before the time set for hearing, file with the court and serve upon counsel for plaintiff an answer to the complaint, also in the form used in civil actions. Any questions raised by motion in other actions may be raised in the answer.

(6) On the issues raised by the complaint and answer, the court or the judge at chambers, at the time fixed for showing cause, shall try the matter on the merits by hearing the allegations and proofs of the parties and shall enter judgment, as in the trial of other civil actions.

(7) If the department makes no appearance in the time allowed, the court shall enter its default and proceed to hear the proofs of the plaintiff as in civil actions under similar circumstances and enter judgment accordingly. The judgment entered either after hearing on the merits or by default is a final judgment.

(8) During the pendency of litigation the department shall take that action in relation to the assets of the bank which is necessary to conserve them."

**Section 11.** Section 32-1-904, MCA, is amended to read:

**"32-1-904. Temporary cease and desist order — grounds for issuance — effective date — injunctive relief.** (1) Whenever the director determines that any violation or threatened violation or any unsafe or unsound practice specified in the notice of charges served upon the institution pursuant to 32-1-902(1) or the continuation thereof is likely to cause insolvency or substantial dissipation of assets or earnings of the institution or is likely to otherwise seriously prejudice the interests of its depositors, the director may issue a temporary order requiring the institution to cease and desist from ~~such~~ *the* violation or practice. ~~Such~~ *The* order ~~shall~~ *must* contain a statement of the facts constituting the alleged violation or unsafe or unsound practice. The order is effective upon service *of the order* upon the institution and unless set aside, limited, or suspended by a court in proceedings authorized by subsection (2) ~~of this section~~ remains effective and enforceable until the completion of the

administrative proceedings pursuant to ~~such~~ *the* notice of charges, until the director dismisses the charges specified in the notice, or until a cease and desist order ~~which~~ *that* is issued against the institution after the hearing becomes effective.

(2) Within ~~10~~ *14* days after the institution has been served with a temporary cease and desist order, the institution may apply to the district court for the county in which the home office of the institution is located for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the administrative proceedings held pursuant to the notice of charges served upon the institution under 32-1-902(1). The court has jurisdiction to issue the injunction."

**Section 12.** Section 32-1-907, MCA, is amended to read:

**"32-1-907. Suspension or prohibition effective upon service — stay.** (1) With respect to any board member or officer of an institution or any other person to whom notice is sent pursuant to 32-1-905, if the director considers it necessary for the protection of the institution or the interests of its depositors that the board member, officer, or other person be suspended from office or prohibited from further participation in any manner in the conduct of the affairs of the institution, the director may serve upon the board member, officer, or other person a written notice suspending the member, officer, or person from office or prohibiting the member, officer, or person from further participation in any manner in the conduct of the affairs of the institution. The notice must contain a statement of the facts constituting grounds for the order and must fix a time, not later than ~~10~~ *14* days from the date of the service of the notice, at which a hearing will be held to afford the board member, officer, or other person the opportunity to respond. The suspension or prohibition is effective upon service of the notice and unless stayed by a court in proceedings authorized by subsection (2) remains in effect until the completion of the administrative proceedings pursuant to the notice served under 32-1-904, until the time that the director dismisses the charges specified in the notice, or until the order of removal or prohibition that is issued against the board member, officer, or other person becomes effective. Copies of the notice must also be served upon the institution of which the person is a director or officer or in the conduct of whose affairs the person has participated.

(2) Within ~~10~~ *14* days after the hearing provided for in subsection (1), the board member, officer, or other person may apply to the district court for the county in which the home office of the institution is located for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon the board member, officer, or other person under 32-1-904. The court has jurisdiction to stay the suspension or prohibition."

**Section 13.** Section 32-1-908, MCA, is amended to read:

**"32-1-908. Felony charges — suspension or prohibition.** (1) Whenever any board member or officer of an institution or other person participating in the conduct of the affairs of an institution is charged in any information, indictment, warrant, or complaint authorized by a county, state, or federal authority with the commission of or participation in a felony involving dishonesty or breach of trust, the director by written notice served upon the board member, officer, or other person may suspend that individual from office or prohibit that individual from further participation in any manner in the conduct of the affairs of the institution. Suspension is effective upon service upon the individual. The notice must contain a statement of the facts constituting grounds for the order and

must fix a place and time, not later than ~~10~~ *14* days from the date of the notice, at which a hearing will be held to afford the board member, officer, or other person the opportunity to respond. A copy of the notice must also be served upon the institution. The suspension or prohibition remains in effect until the information, indictment, warrant, or complaint is finally disposed of or until terminated by the director.

(2) Within ~~10~~ *14* days after the hearing provided for in subsection (1), the board member, officer, or other person may apply to the district court for the county in which the home office of the institution is located for a stay of the suspension or prohibition pending the completion of the criminal proceedings initiated by the information, indictment, warrant, or complaint. The court has jurisdiction to stay the suspension or prohibition.

(3) If a judgment of conviction with respect to the offense is entered against the board member, officer, or other person and at the time that the judgment is not subject to further appellate review, the director may issue and serve upon the board member, officer, or other person an order removing that individual from office or prohibiting that individual from further participation in any manner in the conduct of the affairs of the institution except with the consent of the director. A copy of the order must also be served upon the institution, and upon receipt the board member or officer ceases to be a board member or officer of the institution. A finding of not guilty or other disposition of the charge does not preclude the director from instituting proceedings to suspend or remove the board member, officer, or other person from office or to prohibit further participation in the affairs of the institution pursuant to 32-1-905 or 32-1-906."

**Section 14. Repealer.** The following section of the Montana Code Annotated is repealed:

32-1-382. Definitions.

Approved February 27, 2013

# CHAPTER NO. 50

[HB 192]

AN ACT REVISING MOBILE HOME TAX LAWS; REQUIRING THE PAYMENT OR CANCELLATION OF TAXES PRIOR TO THE TRANSFER OF INTEREST IN A MOBILE HOME OR HOUSETRAILER; ALLOWING A BOARD OF COUNTY COMMISSIONERS TO CANCEL DELINQUENT PROPERTY TAXES ON A MOBILE HOME OR HOUSETRAILER TO BE MOVED FOR THE PURPOSES OF DESTRUCTION OR RECYCLING; AMENDING SECTION 15-24-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Mobile home or housetrailer — transfer of interest.** (1) Upon transfer of any interest in a mobile home or housetrailer, the application for the transfer must be made through the county treasurer's office in the county in which the mobile home or housetrailer is located at the time of the transfer. The county treasurer may not accept the application unless all taxes, interest, and penalties that have been assessed on the mobile home or housetrailer have been paid in full or canceled pursuant to [section 2].

(2) When a mobile home or housetrailer is sold under the contract conditions that title is not immediately conveyed, the parties to the transaction shall immediately file with the county clerk and recorder a notice of intention to

transfer the title. The notice must indicate the name of the party who is responsible for payment of taxes on the mobile home or housetrailer after the transfer. The clerk and recorder shall immediately notify the department of the information in the notice.

**Section 2. Cancellation of delinquent property taxes on mobile home or housetrailer.** (1) The board of county commissioners may order the cancellation of delinquent property taxes on a mobile home or housetrailer if the mobile home or housetrailer is to be moved for the purposes of destruction or recycling.

(2) An order made under subsection (1) must be included in the board's minutes. The order must include:

(a) the name and address of the delinquent taxpayer;

(b) the physical address or location of the mobile home or housetrailer;

(c) the amount of the delinquent taxes, plus interest, penalties, and costs, if any;

(d) the date the taxes became delinquent; and

(e) the taxpayer identification number.

(3) One copy of the order must be recorded with the county clerk and recorder as a public record, and one copy of the order must be filed with the county treasurer as a permanent record of the treasurer's office.

**Section 3.** Section 15-24-202, MCA, is amended to read:

**"15-24-202. Payment of tax — interest and penalty — display of tax-paid sticker.** (1) (a) The owner of a mobile home, manufactured home, or housetrailer that is not taxed as an improvement, as improvements are defined in 15-1-101, shall pay the personal property tax in two payments, except as provided in 10-1-606 or 15-24-206.

(b) The first payment is due on or before May 31 or within 30 days from the date of the notice of taxes due, whichever is later.

(c) The second payment is due no later than November 30 of the year in which the property is assessed.

(d) If not paid on or before the date due, the tax is considered delinquent and subject to the penalty and interest provisions in 15-16-102 applicable to other delinquent property taxes. The penalty must be assessed and interest begins to accrue on the first day of delinquency.

(2) Upon request, the treasurer shall notify a lienholder if taxes on a mobile home, manufactured home, or housetrailer have not been paid.

(3) Taxes assessed against a mobile home or manufactured home after the second payment date must be prorated to reflect the remaining portion of the tax year. The prorated taxes must be added to the following year's tax roll and, except as provided in 15-24-206, are due with and must be collected with the first payment due in that year.

(4) The department ~~of revenue~~ shall issue tax-paid stickers to the county treasurers. ~~Except as provided in 15-24-206 and 15-24-209, if a mobile home, manufactured home, or housetrailer is to be moved and all taxes, interest, and penalties on the mobile home or housetrailer are paid in full, the~~ *A* treasurer shall issue a tax-paid sticker to the owner of ~~the~~ *a* mobile home, manufactured home, or housetrailer *that is to be moved and on which all taxes, interest, and penalties have been paid in full unless the exceptions in 15-24-206(3), 15-24-209, or [section 2] apply*. Prior to and while in the process of moving the mobile home, manufactured home, or housetrailer, the owner shall display the tax-paid

sticker, which must be visible from the exterior of the mobile home, manufactured home, or housetrailer.

*(5)* A mobile home or manufactured home movement declaration of destination provided for in 15-24-206 may not be issued unless:

(a) the taxes have been paid in full to the county treasurer; or

(b) the exceptions in 15-24-206(3)*,* ~~or~~ 15-24-209*, or [section 2]* apply.

~~(5)~~*(6)* On the movement of a mobile home, manufactured home, or housetrailer in violation of this part, the county treasurer for the county where the mobile home, manufactured home, or housetrailer first comes to rest shall issue a written notice to the owner, showing the amount of delinquent taxes, special assessments, penalties, and interest due. In addition to the penalties provided in 15-16-102, 20% or $50, whichever is greater, must be added to the delinquent taxes as penalty for violation of this part. On receipt of the delinquent taxes, special assessments, penalties, and interest, the county treasurer shall forward all delinquent taxes, special assessments, penalties, and interest collected under 15-16-102 to the county treasurer for the county of origin. The county of destination shall retain the penalty."

**Section 4. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 15, chapter 24, part 2, and the provisions of Title 15, chapter 24, part 2, apply to [sections 1 and 2].

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved February 27, 2013

# CHAPTER NO. 51

[HB 193]

AN ACT ALLOWING A BOARD OF COUNTY COMMISSIONERS TO APPOINT AN INTERIM OFFICER TO A COUNTY OFFICE UPON OCCURRENCE OF A VACANCY; REQUIRING THE INTERIM OFFICER TO HAVE THE QUALIFICATIONS REQUIRED OF THE OFFICE; PROVIDING THAT THE INTERIM OFFICER IS AUTHORIZED TO PERFORM THE DUTIES OF THE OFFICE; AND AMENDING SECTION 7-4-2206, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-4-2206, MCA, is amended to read:

**"7-4-2206. Vacancies — *appointment of interim officer.*** (1) For the purposes of this part, "vacancy" has the same meaning as prescribed in 2-16-501.

(2) *(a)* Vacancies in all county offices, except that of county commissioner, must be filled by appointment by the board of county commissioners. Except as provided in subsections (3) through (5), the appointee holds the office, if elective, until the person elected at the next general election is certified pursuant to 13-15-406. If the office is not elective, the appointee serves at the pleasure of the commissioners.

*(b) The commissioners may appoint a person to serve as an interim officer for the time period between occurrence of the vacancy and the date on which the vacancy is filled pursuant to this section. A person appointed as an interim officer must have the qualifications required under this chapter for the office to which the person has been appointed. Upon appointment, the interim officer is authorized to perform the duties assigned by law to that office.*

(3) Whenever a vacancy occurs 75 days or more before the general election held during the second year of the term, an individual must be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 75 days or more before the primary election during the second year of the term, the same procedure must be used as is used to elect a person to that office for a full 4-year term.

(b) Whenever the vacancy occurs after the 75th day before the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-38-204. A political party shall notify the clerk and recorder of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate must be filed with the clerk and recorder on or before the 75th day before the general election. A candidate for a nonpartisan office shall file as provided in Title 13, chapter 14.

(4) Whenever a vacancy occurs after the 75th day before the general election held during the second year of the term, the person appointed by the commissioners under subsection (2) shall serve until the end of the term.

(5) Vacancies occurring in the office of justice of the peace must be filled as provided in Title 3, chapter 10, part 2."

Approved February 27, 2013

## CHAPTER NO. 52

[HB 202]

AN ACT AUTHORIZING COUNTIES, CITIES, AND TOWNS TO DEPOSIT PUBLIC MONEY NOT NECESSARY FOR IMMEDIATE USE IN IN-STATE FEDERALLY INSURED FINANCIAL INSTITUTIONS THAT ARRANGE FOR THE DEPOSIT OF FUNDS IN OTHER FINANCIAL INSTITUTIONS; PROVIDING THAT THE FULL AMOUNT OF THE DEPOSIT IS COVERED BY FEDERAL DEPOSIT INSURANCE; AMENDING SECTION 7-6-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-6-206, MCA, is amended to read:

**"7-6-206. Time deposits — repurchase agreement.** (1) Public money not necessary for immediate use by a county, city, or town that is not invested as authorized in 7-6-202 may be placed in time or savings deposits with a bank, savings and loan association, or credit union in the state or placed in repurchase agreements as authorized in 7-6-213. Money placed in repurchase agreements is subject to subsection (2).

(2) The local governing body may solicit bids for time or savings deposits from a bank, savings and loan association, or credit union in the state. The local governing body may deposit public money in the institutions unless a local financial institution agrees to pay the same rate of interest bid by a financial institution not located in the county, city, or town. The governing body may solicit bids by notice sent by mail to the investment institutions that have requested that their names be listed for bid notice with the department of administration.

(3) In addition to other investments authorized under 7-6-202 and this section, public money not necessary for immediate use by a county, city, or town may be invested in accordance with the following conditions:

(a) the money is initially invested through a federally insured financial institution in the state selected by the governing body;

(b) the selected in-state financial institution arranges for the deposit of the funds in ~~certificates of deposit for the~~ *an* account of the county, city, or town in one or more federally insured financial institutions, regardless of location;

(c) the full amount of principal and accrued interest on each ~~certificate of~~ deposit is covered by federal deposit insurance; *and*

(d) the selected in-state financial institution acts as the custodian for the county, city, or town with respect to the ~~certificates of~~ deposit issued for its account.~~; and~~

~~(e) at the same time that the county, city, or town money is deposited and the certificates of deposit are issued, the selected in-state financial institution receives an amount of deposits from customers of other federally insured financial institutions, regardless of location, equal to or greater than the amount of money initially invested by the county, city, or town through the selected in-state financial institution.~~"

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved February 27, 2013

# CHAPTER NO. 53

[SB 73]

AN ACT ABOLISHING THE DRUG ABUSE RESISTANCE EDUCATION (D.A.R.E.) PROGRAM; ABOLISHING THE D.A.R.E. TRUST FUND ACCOUNT, THE VOLUNTARY INCOME TAX CHECKOFF, AND PROGRAM ADMINISTRATION THROUGH THE MONTANA BOARD OF CRIME CONTROL; PROVIDING FOR THE TRANSFER OF FUNDS REMAINING IN THE TRUST FUND ACCOUNT TO THE GENERAL FUND; REPEALING SECTIONS 44-2-701, 44-2-702, 44-2-703, 44-2-704, AND 44-2-705, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Repealer.** The following sections of the Montana Code Annotated are repealed:

44-2-701. Montana drug abuse resistance education trust fund account — administration by board of crime control.

44-2-702. Montana drug abuse resistance education program.

44-2-703. Gifts and grants to program.

44-2-704. Program costs.

44-2-705. Restriction on use of funds.

**Section 2. Transfer of funds.** All uncommitted funds remaining in the drug abuse resistance education trust fund account provided for in 44-2-701 on June 30, 2013, must be transferred to the state general fund on July 1, 2013.

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved February 27, 2013

# CHAPTER NO. 54

[SB 75]

AN ACT AUTHORIZING THE DONATION OF HUNTING LICENSES TO DISABLED VETERANS AND DISABLED MEMBERS OF THE ARMED FORCES; GRANTING RULEMAKING AUTHORITY; EXEMPTING DONATED LICENSES FROM CERTAIN LIMITATIONS ON ISSUANCE; AMENDING SECTION 87-2-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Donation of hunting licenses to disabled veterans or disabled members of the armed forces.** (1) The holder of any hunting license issued by the department may surrender that license and any related permit to the department for reissuance to a disabled veteran or a disabled member of the armed forces for use on an expedition arranged by a nonprofit organization that is exempt from taxation under 26 U.S.C. 501(c)(3) and that uses hunting as part of the rehabilitation of disabled veterans and disabled members of the armed forces. The person surrendering the license:

(a) is not eligible for a refund for the cost of the surrendered license;

(b) may not designate to which organization, disabled veteran, or disabled member of the armed forces the license is being surrendered; and

(c) shall surrender the donated license and any related permit before the start of any season for which the license and permit are valid.

(2) In order to obtain a license and any related permit pursuant to this section, a veteran or a member of the armed forces:

(a) must be a purple heart recipient;

(b) must, as the result of wounds or injuries received in a combat zone, be medically retired, have a 70% or greater disability rating by the United States department of veterans affairs or department of defense, or have active duty status while receiving medical treatment at a medical facility;

(c) is not required to be a resident;

(d) does not have to first obtain a wildlife conservation license; and

(e) is not required to pay any fee.

(3) A license and any related permit reissued pursuant to this section entitles the disabled veteran or disabled member of the armed forces to take the same species in the same administrative region or regions, hunting district or districts, or portions thereof, as allowed by the license and any related permit that was surrendered.

(4) Any license or permit surrendered or reissued pursuant to this section may not be sold, traded, auctioned, or offered for any monetary value and may not be used by any person other than a disabled veteran or disabled member of the armed forces who meets the requirements of subsection (2).

(5) The restrictions in 87-2-702(3) and (4) do not apply to a disabled veteran or a disabled member of the armed forces who obtains a license pursuant to this section.

(6) The department may adopt rules to implement the provisions of this section.

**Section 2.** Section 87-2-702, MCA, is amended to read:

**"87-2-702. Restrictions on special licenses — availability of bear and mountain lion licenses.** (1) A person who has killed or taken any game

animal, except a deer, an elk, or an antelope, during the current license year is not permitted to receive a special license under this chapter to hunt or kill a second game animal of the same species.

(2) The commission may require applicants for special permits authorized by this chapter to obtain a valid big game license for that species for the current year prior to applying for a special permit.

(3) ~~A~~ *Except as provided in [section 1], a* person may take only one grizzly bear in Montana with a license authorized by 87-2-701.

(4) (a) Except as provided in 87-1-271(2) *and [section 1]*, a person who receives a moose, mountain goat, or limited mountain sheep license, as authorized by 87-2-701, with the exception of an antlerless moose or an adult ewe game management license issued under 87-2-104, is not eligible to receive another special license for that species for the next 7 years. For the purposes of this subsection (4)(a), "limited mountain sheep license" means a license that is valid for an area in which the number of licenses issued is restricted.

(b) Except as provided in 87-1-271(2) *and [section 1]*, a person who takes a mountain sheep using an unlimited mountain sheep license, with the exception of a mountain sheep taken pursuant to an adult ewe license, as authorized by 87-2-701, is not eligible to receive another special license for that species for the next 7 years. For the purposes of this subsection (4)(b), "unlimited mountain sheep license" means a license that is valid for an area in which the number of licenses issued is not restricted.

(5) An application for a wild buffalo or bison license must be made on the same form and is subject to the same license application deadline as the special license for moose, mountain goat, and mountain sheep.

(6) (a) Licenses for spring bear hunts must be available for purchase at department offices after April 15 of any license year. However, a person who purchases a license for a spring bear hunt after April 15 of any license year may not use the license until 5 days after the license is issued.

(b) Licenses for fall bear hunts must be available for purchase at department offices after August 31 of any license year. However, a person who purchases a license for a fall bear hunt after August 31 of any license year may not use the license until 5 days after the license is issued.

(7) Licenses for mountain lion hunts must be available for purchase at department offices after August 31 of any license year. However, a person who purchases a license for a mountain lion hunt after August 31 of any license year may not use the license until 5 days after the license is issued."

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, part 8, and the provisions of Title 87, chapter 2, part 8, apply to [section 1].

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved February 27, 2013

## CHAPTER NO. 55

[SB 90]

AN ACT REVISING LAWS RELATED TO THE OPERATION OF RURAL ELECTRIC COOPERATIVES; REQUIRING A THREE-FIFTHS VOTE OF DISTRIBUTION COOPERATIVE BOARDS OF TRUSTEES AND A TWO-THIRDS VOTE OF GENERATION AND TRANSMISSION

COOPERATIVE BOARDS OF TRUSTEES WHEN ENTERING INTO AGREEMENTS FOR CONSTRUCTION OF CERTAIN ELECTRIC GENERATING FACILITIES OR ENTERING INTO CERTAIN CONTRACTS; ESTABLISHING VOTE REQUIREMENTS; REQUIRING DISCLOSURE OF LOAD FORECAST INFORMATION; ESTABLISHING REQUIREMENTS FOR GENERATION AND TRANSMISSION COOPERATIVES; AMENDING SECTIONS 35-18-317 AND 35-18-318, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 35-18-317, MCA, is amended to read:

**"35-18-317. Disposition or encumbrance of property.** (1) Except as provided in subsection (2) *and in accordance with 35-18-318*, a cooperative may not sell, mortgage, lease, or otherwise dispose of or encumber all or any substantial portion of its property unless ~~such~~ *the* sale, mortgage, lease, or other disposition or encumbrance is*:*

*(a)* authorized at a duly held meeting of *cooperative* members*;* ~~thereof~~

*(b) approved* by ~~the affirmative vote of~~ not less than two-thirds of all the members of the cooperative*;* and ~~unless the notice of such proposed sale, mortgage, lease, or other disposition or encumbrance shall have been contained~~

*(c) described* in the notice of the meeting.

(2) ~~The~~ *Except as provided in 35-18-318, the* board of trustees of a cooperative, without authorization by the *cooperative* members*,* ~~thereof, shall have full power and authority to~~ *may:*

*(a)* authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon or the pledging or encumbrancing of any or all of*:*

*(i)* the property, assets, rights, privileges, licenses, franchises, and permits of the cooperative, whether acquired or to be acquired and wherever situated~~, as well as~~*; and*

*(ii)* the ~~revenues~~ *revenue* and income ~~therefrom,~~ *from the property, assets, rights, privileges, licenses, franchises, and permits; and* ~~all upon such~~

*(b) determine the* terms and conditions ~~as the board of trustees shall determine,~~ *necessary* to secure any indebtedness of the cooperative to ~~the~~*:*

*(i) the* United States of America*;* ~~or~~

*(ii)* any instrumentality or agency ~~thereof~~ *of the United States;* or ~~to~~

*(iii)* any other financing sources within the United States.

(3) Before a meeting is held to vote on authorization of disposition of cooperative property, the board of trustees shall:

(a) have the property appraised by three appraisers chosen by the board and not associated with the cooperative or a proposed buyer of cooperative property;

(b) notify all cooperative members, at least 90 days in advance, of a meeting to vote on disposition of cooperative property. Detailed proposals for disposition of ~~such~~ *the* property must accompany the notice.

(c) at least 30 days before the meeting, notify all other cooperatives situated and operating in the state that the property is available for disposition and include with the notice one copy of each appraisal on the cooperative property; and

(d) at least 30 days before the meeting, mail to all members any alternative proposal made by cooperative members if it has been submitted to the board and signed by 50 or more members.

(4) The vote on property disposition may take place at an annual meeting if the board notifies the members as provided in this section.

(5) This section does not apply to the transfer of cooperative property in a merger or consolidation of cooperatives."

**Section 2.** Section 35-18-318, MCA, is amended to read:

**"35-18-318. Long-term indebtedness — membership approval *and review — cooperative requirements.*** *(1)* Before a cooperative ~~may create~~ *creates* or ~~enter~~ *enters* into an agreement that results in any direct or indirect obligation for the repayment of long-term bonded indebtedness for financing directly or indirectly the construction, maintenance, or operation of nuclear power generating facilities that may result in a rate increase to the cooperative's members for repayment of the obligation, the cooperative must receive approval from a majority of those members present and voting at the meeting. The approval must be obtained at a special meeting held for that purpose.

*(2) Except as provided in subsection (6) and in accordance with subsections (3) and (4), a generation and transmission cooperative must receive approval from a two-thirds majority of the distribution cooperative members of the generation and transmission cooperative before the generation and transmission cooperative:*

*(a) creates or enters into an agreement that results in direct or indirect obligation for the repayment of long-term bonded indebtedness for financing directly or indirectly the construction of electric generating facilities with a nameplate capacity exceeding 10% of a generation and transmission cooperative's maximum 1-hour demand for the prior year; or*

*(b) enters into an energy contract allowing for the purchase of electricity that exceeds the generation and transmission cooperative's load levels after factoring in existing supply contracts and generation, if any, for the period to be contracted.*

*(3) Approval required pursuant to subsection (2) is granted using a three-fifths majority of the board of trustees of each distribution cooperative that is a member of the generation and transmission cooperative.*

*(4) (a) Approval of each distribution cooperative's board of trustees pursuant to subsection (3) must be obtained at a special meeting held for that purpose.*

*(b) Notice of the need for a vote by each distribution cooperative's board of trustees must be provided at least 60 days in advance of the vote.*

*(5) (a) A member distribution cooperative may provide a study by an independent entity of rate impact and comparative costs of projects similar to those proposed by a generation and transmission cooperative. The study must be conducted in the most cost-effective manner practicable.*

*(b) If the study is provided pursuant to this subsection (5), the generation and transmission cooperative must reimburse up to 50% of the cost of the study to the distribution cooperative that provides the study.*

*(c) If the study is provided pursuant to this subsection (5), it must be considered by the generation and transmission cooperative's board of trustees prior to the vote required in subsection (2).*

*(6) Vote requirements pursuant to subsection (2) are not required for agreements created or entered into by generation and transmission cooperatives with regional generation and transmission cooperatives or federal power marketing administrations or their successors.*

*(7) At least 60 days before a vote required pursuant to subsection (2), a generation and transmission cooperative must provide each distribution cooperative that is a member of the generation and transmission cooperative with load forecasts completed within the previous 12-month period for the generation and transmission cooperative.*

*(8) A member of a distribution cooperative may inspect a summary of the annual load forecasts provided pursuant to subsection (7). The summary is not required to include projected growth of industrial loads.*

*(9) A generation and transmission cooperative must:*

*(a) give member distribution cooperatives the right to determine who serves as its representative on a generation and transmission cooperative's board of trustees;*

*(b) in accordance with 35-18-311, give member distribution cooperatives the authority to certify the replacement of a trustee to fill a distribution cooperative's seat on a generation and transmission cooperative's board of trustees in the event of a vacancy;*

*(c) permit all members of a distribution cooperative's board of trustees and all distribution cooperative managers to be present at all generation and transmission cooperative board of trustees meetings, including teleconferences. Board members must be allowed to speak on any item on the meeting agenda.*

*(d) limit executive sessions of the generation and transmission cooperative's board of trustees to confidential matters and matters of individual privacy; and*

*(e) make available to members of a distribution cooperative's board of trustees and managers:*

*(i) financial reports of the generation and transmission cooperative; and*

*(ii) minutes of generation and transmission cooperative board meetings.*

*(10) As used in this section, the following definitions apply:*

*(a) "Distribution cooperative" means a cooperative organized in accordance with this chapter that is directly responsible for supplying electricity to and billing its members who are the ultimate consumers of the electricity.*

*(b) "Generation and transmission cooperative" means a Montana-based cooperative organized in accordance with this chapter that files articles of incorporation pursuant to 35-18-203 that either generates power or enters into contracts for power, or both. It enters into contracts for the sale of wholesale electricity to two or more distribution cooperative members and may or may not own transmission services.*

*(c) "Load forecast" means an estimate or projection of end-use electricity consumption based on projected changes in future end use, taking into account residential, commercial, industrial, and irrigation loads, populations, business cycles, appliance saturation, and efficiencies. It may be forecasted by sector or consumer class.*

*(d) "Regional generation and transmission cooperative" means a cooperative serving more than 400 megawatts of load with multiple generating facilities. Its members are in multiple states and are distribution cooperatives, generation and transmission cooperatives, or both.*"

**Section 3. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

**Section 4. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 5. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 6. Effective date.** [This act] is effective July 1, 2013.

**Section 7. Applicability.** [This act] applies to contracts, agreements, and forecasts begun after July 1, 2013.

Approved February 27, 2013

# CHAPTER NO. 56

[HB 148]

AN ACT CLARIFYING THE AUTHORITY OF LOCAL GOVERNING BODIES TO REGULATE AMATEUR RADIO OPERATIONS; AMENDING SECTIONS 7-1-111, 76-2-206, AND 76-2-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-1-111, MCA, is amended to read:

**"7-1-111. Powers denied.** A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39 (labor, collective bargaining for public employees, unemployment compensation, or workers' compensation), except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of public convenience and necessity;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of compliance;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of $500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms, except that a local government has the power to regulate the carrying of concealed weapons;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 (professions and occupations) as prerequisites to the carrying on of a profession or occupation;

(12) except as provided in 7-3-1105, 7-3-1222, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1 (streambeds), or Title 87 (fish and wildlife);

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction.

(14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

(15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments, except that a local government may enter into a cooperative agreement with the department of agriculture concerning the use and application of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or fire codes governing the physical location or siting of fertilizer manufacturing, storage, and sales facilities*;*

*(16) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle, including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;*

*(17) subject to [sections 3 and 4], any power that prevents the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States*."

**Section 2. Amateur radio station operation from motor vehicle.** A local governing body may not by ordinance, resolution, or rule prohibit the operation of a mobile amateur radio station from a motor vehicle, including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States.

**Section 3. Effect on amateur radio antenna.** A resolution or rule adopted pursuant to this part may not:

(1) prevent the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States; or

(2) establish a maximum height limit for an amateur radio antenna of less than 100 feet above the ground.

**Section 4. Effect on amateur radio antenna.** A resolution or rule adopted pursuant to this part may not:

(1) prevent the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States; or

(2) establish a maximum height limit for an amateur radio antenna of less than 100 feet above the ground.

**Section 5.** Section 76-2-206, MCA, is amended to read:

**"76-2-206. Interim zoning district or regulation.** (1) ~~Subject~~ *Except as provided in [section 3] and subject* to subsection (3) *of this section*, the board of county commissioners may establish an interim zoning district or interim regulation as an emergency measure in order to promote the public health, safety, morals, and general welfare if:

(a) the purpose of the interim zoning district or interim regulation is to classify and regulate those uses and related matters that constitute the emergency; and

(b) the county:

(i) is conducting or in good faith intends to conduct studies within a reasonable time; or

(ii) has held or is holding a hearing for the purpose of considering any of the following:

(A) a growth policy;

(B) zoning regulations; or

(C) a revision to a growth policy, to a master plan, as provided for in 76-1-604(6) and 76-2-201(2), or to zoning regulations pursuant to this part.

(2) A resolution for an interim zoning district or interim regulation must be limited to 1 year from the date it becomes effective. Subject to subsection (3), the board of county commissioners may extend the resolution for 1 year, but not more than one extension may be made.

(3) The board of county commissioners shall observe the following procedures in the establishment of an interim zoning district or interim regulation:

(a) Notice of a public hearing on the proposed interim zoning district boundaries or of the interim regulation must be published once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

(i) the boundaries of the proposed district;

(ii) the specific emergency or exigent circumstance compelling the establishment of the proposed interim zoning district or interim regulation;

(iii) the general character of the proposed interim zoning district or interim regulation;

(iv) the time and place of the public hearing; and

(v) that the proposed interim zoning district or interim regulation is on file for public inspection at the office of the county clerk and recorder.

(b) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed establishment of an interim zoning district or interim regulation.

(c) After the hearing, the board of county commissioners may adopt a resolution to establish an interim zoning district or interim regulation."

**Section 6.** Section 76-2-306, MCA, is amended to read:

**"76-2-306. Interim zoning ordinances.** (1) ~~The~~ *Except as provided in [section 4], the* city or town council or other legislative body of ~~such~~ *the* municipality, to protect the public safety, health, and welfare and without following the procedures otherwise required ~~preliminary~~ *prior* to the adoption of a zoning ordinance, may adopt as an urgency measure an interim *zoning* ordinance prohibiting any uses ~~which~~ *that* may be in conflict with a contemplated zoning proposal ~~which~~ *that* the legislative body is considering or studying or intends to study within a reasonable time.

(2) ~~Such~~ *An* interim *zoning* ordinance ~~shall only~~ *may* be applicable *only* within the city limits and up to 1 mile beyond the corporate boundaries of the city or town and ~~shall take~~ *takes* effect upon passage~~; provided, however,~~ *if* a hearing is first held upon notice reasonably designed to inform all affected parties. ~~and in no event shall~~ *A* notice *must* be *published* ~~less than publication~~ in a newspaper of general circulation at least 7 days before the hearing.

(3) ~~Such~~ *An* interim *zoning* ordinance ~~shall be of no further force and~~ *is no longer in* effect 6 months from the date of *its* adoption ~~thereof~~. However, after notice pursuant to 76-2-303 and pursuant to public hearing, the legislative body may extend ~~such~~ *the* interim *zoning* ordinance for 1 year. Any ~~such~~ extension ~~shall require~~ *requires* a two-thirds vote for passage and ~~shall become~~ *becomes* effective upon passage. ~~Not~~ *No* more than two ~~such~~ extensions may be adopted."

**Section 7. Codification instruction.** (1) [Section 2] is intended to be codified as an integral part of Title 7, chapter 31, and the provisions of Title 7, chapter 31, apply to [section 2].

(2) [Section 3] is intended to be codified as an integral part of Title 76, chapter 2, part 2, and the provisions of Title 76, chapter 2, part 2, apply to [section 3].

(3) [Section 4] is intended to be codified as an integral part of Title 76, chapter 2, part 3, and the provisions of Title 76, chapter 2, part 3, apply to [section 4].

**Section 8. Effective date.** [This act] is effective on passage and approval.

Approved February 28, 2013

## CHAPTER NO. 57

[HB 152]

AN ACT ESTABLISHING DEADLINES FOR GOVERNING BODIES TO APPROVE OR DISAPPROVE VARIOUS PROPERTY TAX ABATEMENTS AND PROPERTY TAX EXEMPTIONS; PROVIDING DEADLINES FOR GOVERNING BODIES TO REVIEW APPLICATIONS, NOTICE PUBLIC MEETINGS, CONDUCT PUBLIC HEARINGS, AND ISSUE DECISIONS; PROVIDING THAT AN APPLICANT MAY APPEAL TO DISTRICT COURT FOR A WRIT OF MANDAMUS IF A GOVERNING BODY DOES NOT MAKE A TIMELY DECISION; AMENDING SECTIONS 15-24-1402, 15-24-1501, 15-24-1502, 15-24-1603, 15-24-1605, 15-24-1802, 15-24-1902, AND 15-24-2002,

MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-24-1402, MCA, is amended to read:

**"15-24-1402. New or expanding industry — assessment — notification.** (1) In the first 5 years after a construction permit is issued, qualifying improvements or modernized processes that represent new industry or expansion of an existing industry, as designated in the approving resolution, must be taxed at 50% of their taxable value. Subject to 15-10-420, each year thereafter, the percentage must be increased by equal percentages until the full taxable value is attained in the 10th year. In subsequent years, the property must be taxed at 100% of its taxable value.

(2) (a) ~~In~~ *In* order for a taxpayer to receive the tax benefits described in subsection (1), the *taxpayer must have applied by March 1 of the year during which the benefit is first applicable. The* governing body of the affected county or the incorporated city or town must have approved by separate resolution for each project, following due notice as ~~defined in 76-15-103~~ *provided in 7-1-2121 if a county or 7-1-4127 if an incorporated city or town* and a public hearing, the use of the schedule provided for in subsection (1) for its respective jurisdiction. The governing body may not grant approval for the project until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval.

*(b) The governing body shall:*

*(i) publish due notice within 60 days of receiving a taxpayer's complete application for the tax treatment provided for in this section; and*

*(ii) conduct a public hearing regarding an application for the tax treatment provided for in this section and deny or approve it within 120 days of receiving the application as provided in subsection (2)(b)(i).*

*(c) If the governing body fails to hold a hearing or deny or approve the application within 120 days of receiving the application, the applicant may seek from the district court in the jurisdiction in which the county, city, or town is located a writ of mandamus to compel the governing body to make a determination.*

~~(b)~~*(d)* Subject to 15-10-420, the governing body may end the tax benefits by majority vote at any time, but the tax benefits may not be denied an industrial facility that previously qualified for the benefits.

~~(c)~~*(e)* The resolution provided for in subsection (2)(a) must include a definition of the improvements or modernized processes that qualify for the tax treatment that is to be allowed in the taxing jurisdiction. The resolution may provide that real property other than land, personal property, improvements, or any combination thereof is eligible for the tax benefits described in subsection (1).

~~(d)~~*(f)* Property taxes abated from the reduction in taxable value allowed by this section are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of 15-24-1401, this section, or the resolution required by subsections (2)(a) and ~~(2)(c)~~ *(2)(e)* of this section. The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not

allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer.

(3) The taxpayer shall apply to the department for the tax treatment allowed under subsection (1). The application by the taxpayer must ~~first~~ *first* be approved by the governing body of the appropriate local taxing jurisdiction~~, and the~~*, and the* governing body shall indicate in its approval that the property of the applicant qualifies for the tax treatment provided for in this section. Upon receipt of the form with the approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change pursuant to this section.

(4) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for local high school district and elementary school district purposes and to the number of mills levied and assessed by the governing body approving the benefit over which the governing body has sole discretion. The benefit described in subsection (1) may not apply to levies or assessments required under Title 15, chapter 10, 20-9-331, 20-9-333, or 20-9-360 or otherwise required under state law.

(5) Prior to approving the resolution under this section, the governing body shall notify by certified mail all taxing jurisdictions affected by the tax benefit."

**Section 2.** Section 15-24-1501, MCA, is amended to read:

**"15-24-1501. Remodeling, reconstruction, or expansion of buildings or structures — assessment provisions — levy limitations.** (1) Subject to 15-10-420 and the authority contained in subsection ~~(4)~~ *(5)* of this section, remodeling, reconstruction, or expansion of existing buildings or structures, which increases their taxable value by at least 2 1/2% as determined by the department, may receive tax benefits during the construction period and for the following 5 years in accordance with subsections (2)*,* ~~through~~ (4)*, and (5)* and the following schedule. The percentages must be applied as provided in subsections ~~(3)~~ *(4)* and ~~(4)~~ *(5)* and are limited to the increase in taxable value caused by remodeling, reconstruction, or expansion:

| | |
|---|---|
| Construction period | 0% |
| First year following construction | 20% |
| Second year following construction | 40% |
| Third year following construction | 60% |
| Fourth year following construction | 80% |
| Fifth year following construction | 100% |
| Following years | 100% |

(2) ~~In~~ *In* order ~~to confer~~ *for a taxpayer to receive* the tax benefits described in subsection (1), the *taxpayer must have applied by March 1 of the year during which the benefit is first applicable. The* governing body of the affected county or, if the construction will occur within an incorporated city or town, the governing body of the incorporated city or town shall*, following due notice as provided in 7-1-2121 if a county or 7-1-4127 if an incorporated city or town and a public hearing,* approve by resolution for each remodeling, reconstruction, or expansion project the use of the schedule provided for in subsection (1) or a schedule adopted pursuant to subsection ~~(4)~~ *(5)*.

*(3) (a) The governing body shall:*

*(i) publish due notice within 60 days of receiving a taxpayer's complete application for the tax treatment provided for in this section; and*

*(ii) conduct a public hearing regarding an application for the tax treatment provided for in this section and deny or approve it within 120 days of receiving the application as provided in subsection (3)(a)(i).*

*(b) If the governing body fails to hold a hearing or deny or approve the application within 120 days of receiving the application, the applicant may seek from the district court in the jurisdiction in which the county, city, or town is located a writ of mandamus to compel the governing body to make a determination.*

~~(3)~~*(4)* The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for high school district and elementary school district purposes and to the number of mills levied and assessed by the local governing body approving the benefit. The benefit described in subsection (1) may not apply to statewide levies.

~~(4)~~*(5)* A local government may, in the resolution required by subsection (2), modify the percentages contained in subsection (1) that apply to the first year following construction through the fourth year following construction. A local government may not modify the percentages contained in subsection (1) that apply to the fifth year following construction or years following the fifth year. A local government may not modify the time limits contained in subsection (1). The modifications to the percentages in subsection (1) adopted by a local government apply uniformly to each remodeling, reconstruction, or expansion project approved by the governing body.

~~(5)~~*(6)* Property taxes abated from the reduction in property taxes allowed by this section are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of this section or the resolution required by subsection (2). The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer."

**Section 3.** Section 15-24-1502, MCA, is amended to read:

**"15-24-1502. Tax exemption and abatement for remodeling, reconstruction, or expansion of certain commercial property — approval.** (1) (a) Subject to the conditions of this section, remodeling, reconstruction, or expansion of an existing commercial building or structure that increases its taxable value by at least 5%, as determined by the department, may receive a property tax exemption during the construction period, not to exceed 12 months, and for up to 5 years following completion of construction. The property tax exemption is limited to 100% of the increase in taxable value caused by remodeling, reconstruction, or expansion.

(b) (i) In addition to the property tax exemption described in subsection (1)(a), the buildings and structures may receive a property tax reduction for 4 years following the exemption period as provided in this subsection (1)(b). The

percentages must be applied to the increase in taxable value caused by remodeling, reconstruction, or expansion according to the following schedule:

| | |
|---|---|
| First year following the exemption period | 20% |
| Second year following the exemption period | 40% |
| Third year following the exemption period | 60% |
| Fourth year following the exemption period | 80% |
| Fifth year following the exemption period | 100% |
| Following years | 100% |

(ii) Mill levies are assessed against the reduced taxable value of the remodeling, reconstruction, or expansion determined under subsection (1)(b)(i).

(c) To be eligible for the property tax exemption and the property tax reduction, the commercial building or structure may not have been used in a business for at least 6 months immediately preceding the date of application to the governing body for approval under subsection (2).

(2) (a) ~~In~~ *In* order ~~to confer~~ *for a taxpayer to receive* the tax benefits described in subsection (1), the *taxpayer must have applied by March 1 of the year during which the benefit is first applicable. The* governing body of the affected county or consolidated government or, if the construction will occur within an incorporated city or town, the governing body of the incorporated city or town shall*, following due notice as provided in 7-1-2121 if a county or consolidated local government or 7-1-4127 if an incorporated city or town and a public hearing,* approve by resolution for each remodeling, reconstruction, or expansion project the use of the property tax exemption and property tax reduction.

(b) The governing body may not grant the property tax benefits described in subsection (1) if property taxes on the buildings or structures are delinquent.

*(3) (a) The governing body shall:*

*(i) publish due notice within 60 days of receiving a taxpayer's complete application for the tax treatment provided for in this section; and*

*(ii) conduct a public hearing regarding an application for the tax treatment provided for in this section and deny or approve it within 120 days of receiving the application as provided in subsection (3)(a)(i).*

*(b) If the governing body fails to hold a hearing or deny or approve the application within 120 days of receiving the application, the applicant may seek from the district court in the jurisdiction in which the county, consolidated local government, city, or town is located a writ of mandamus to compel the governing body to make a determination.*

~~(3)~~*(4)* Property taxes abated from the reduction in property taxes allowed by this section are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of this section or the resolution required by subsection (2). The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local

governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer."

**Section 4.** Section 15-24-1603, MCA, is amended to read:

**"15-24-1603. Historic property tax abatement — levy limitations.** (1) Subject to 15-10-420, a historic property undergoing rehabilitation, restoration, expansion, or new construction that meets criteria established by the review process described in 15-24-1605 or 15-24-1606 may receive a tax abatement during the construction period, not to exceed 12 months, and for up to 5 years following completion of the construction in accordance with subsections (2) and ~~(3)~~ *(4)*. The tax abatement is limited to 100% of the increase in taxable value caused by the rehabilitation, restoration, expansion, or new construction.

(2) In order to confer the tax benefits described in subsection (1), the governing body of the county or incorporated city or town where the improvement occurs shall establish by resolution the process for the use of the tax abatement provisions described in subsection (1). *In order for a taxpayer to receive the tax benefits described in subsection (1), the taxpayer must have applied by March 1 of the year during which the benefit is first applicable. The governing body must have approved by separate resolution for each project, following due notice as provided in 7-1-2121 if a county or 7-1-4127 if an incorporated city or town and a public hearing, the use of the property tax abatement.*

*(3) (a) The governing body shall:*

*(i) publish due notice within the lesser of:*

*(A) 60 days of receiving a taxpayer's complete application for the tax treatment provided for in this section; or*

*(B) 30 days of receiving the board's recommendation under 15-24-1605(3); and*

*(ii) conduct a public hearing regarding an application for the tax treatment provided for in this section and deny or approve it within 120 days of receiving the application as provided in subsection (3)(a)(i).*

*(b) If the governing body fails to hold a hearing or deny or approve the application within 120 days of receiving the application, the applicant may seek from the district court in the jurisdiction in which the county, city, or town is located a writ of mandamus to compel the governing body to make a determination.*

~~(3)~~*(4)* Property that receives a tax benefit under this part is not entitled to any other exemption or special valuation provided by Montana law during the period of the abatement.

~~(4)~~*(5)* (a) The tax abatement applies only to the number of mills levied:

(i) for high school and elementary school district purposes; and

(ii) by the local governing body approving the abatement.

(b) The abatement may not apply to statewide levies."

**Section 5.** Section 15-24-1605, MCA, is amended to read:

**"15-24-1605. Responsibilities of local governing bodies — local review board — design review process.** (1) A local governing body that approves the tax benefit may designate a local review board to establish an application and review process to certify eligible properties. The review process must include design review criteria based on the secretary of the interior's standards for preservation projects or other standards approved by the state historic preservation office.

(2) The board shall include:

(a) at least three members with professional expertise in history, planning, archaeology, architectural history, historic archaeology, or another historic preservation-related discipline;

(b) at least one architect; and

(c) up to two members of the general public.

(3) The board shall determine whether a property is eligible under 15-24-1604 and is qualified for the tax abatement. The board shall approve or deny an application for the tax abatement *within 30 days of receiving a taxpayer's complete application* and report its recommendation to the local governing body."

**Section 6.** Section 15-24-1802, MCA, is amended to read:

**"15-24-1802. Business incubator tax exemption — procedure.** (1) A business incubator owned or leased and operated by a local economic development organization is eligible for an exemption from property taxes as provided in this section.

(2) ~~In~~ *In* order *for a taxpayer* to qualify for the tax exemption described in this section, the *taxpayer must have applied by March 1 of the year during which the benefit is first applicable. The* governing body of the county, consolidated government, incorporated city or town, or school district in which the property is located shall approve the tax exemption by resolution, after due notice, as ~~defined in 76-15-103~~ *provided in 7-1-2121 if a county, consolidated government, or school district or 7-1-4127 if an incorporated city or town*, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). If a tax exemption is approved, the governing body shall do so by a separate resolution for each business incubator in its respective jurisdiction. The governing body may not grant approval for the business incubator until all of the applicant's taxes have been paid in full or, if the property is leased to a business incubator, until all of the owner's property taxes on that property have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that the local economic development organization:

(a) is a private, nonprofit corporation as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(b) is engaged in economic development and business assistance work in the area; and

(c) owns or leases and operates or will operate the business incubator.

*(3) (a) The governing body shall:*

*(i) publish due notice within 60 days of receiving a taxpayer's complete application for the tax treatment provided for in this section; and*

*(ii) conduct a public hearing regarding an application for the tax treatment provided for in this section and deny or approve it within 120 days of receiving the application as provided in subsection (3)(a)(i).*

*(b) If the governing body fails to hold a hearing or deny or approve the application within 120 days of receiving the application, the applicant may seek from the district court in the jurisdiction in which the county, consolidated government, city, town, or school district is located a writ of mandamus to compel the governing body to make a determination.*

~~(3)~~*(4)* Upon receipt of approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change for the tax exemption provided for in this section.

~~(4)~~*(5)* The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies and assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 or otherwise required under state law.

~~(5)~~*(6)* Property taxes abated from the reduction in property taxes allowed by this section are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of 15-24-1801, this section, or the resolution required by subsection (2) of this section. The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer."

**Section 7.** Section 15-24-1902, MCA, is amended to read:

**"15-24-1902. Industrial park tax exemption — procedure — termination.** (1) An industrial park owned and operated by a local economic development organization or a port authority is eligible for an exemption from property taxes as provided in this section.

(2) ~~In~~ *In* order *for a taxpayer* to qualify for the tax exemption described in this section, the *taxpayer must have applied by March 1 of the year during which the benefit is first applicable. The* governing body of the county, consolidated government, incorporated city or town, or school district in which the property is located shall approve the tax exemption by resolution, after due notice, as ~~defined in 76-15-103~~ *provided in 7-1-2121 if a county, consolidated government, or school district or 7-1-4127 if an incorporated city or town*, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). If a tax exemption is approved, the governing body shall do so by a separate resolution for each industrial park in its respective jurisdiction. The governing body may not grant approval for the industrial park until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that:

(a) the local economic development organization:

(i) is a private, nonprofit corporation as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(ii) is engaged in economic development and business assistance work in the area; and

(iii) owns and operates or will own and operate the industrial development park; or

(b) the port authority legally exists under the provisions of 7-14-1101 or 7-14-1102.

*(3) (a) The governing body shall:*

*(i) publish due notice within 60 days of receiving a taxpayer's complete application for the tax treatment provided for in this section; and*

*(ii) conduct a public hearing regarding an application for the tax treatment provided for in this section and deny or approve it within 120 days of receiving the application as provided in subsection (3)(a)(i).*

*(b) If the governing body fails to hold a hearing or deny or approve the application within 120 days of receiving the application, the applicant may seek from the district court in the jurisdiction in which the county, consolidated government, city, town, or school district is located a writ of mandamus to compel the governing body to make a determination.*

~~(3)~~*(4)* Upon receipt of approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change for the tax exemption provided for in this section.

~~(4)~~*(5)* The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies or assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 or otherwise required under state law.

~~(5)~~*(6)* If a local economic development organization sells, leases, or otherwise disposes of the exempt property to a purchaser or lessee that is not a local economic development organization or a unit of federal, state, or local government, the tax exemption provided in this section terminates. The termination of the exemption applies January 1 of the taxable year immediately following the sale, lease, or other disposition of the property. Upon termination of the exemption, the property must be assessed as provided in 15-16-203.

~~(6)~~*(7)* Property taxes abated from the reduction in property taxes allowed by this section are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of 15-24-1901, this section, or the resolution required by subsection (2) of this section. The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer."

**Section 8.** Section 15-24-2002, MCA, is amended to read:

**"15-24-2002. Building and land tax exemption — procedure — termination.** (1) A building and land owned by a local economic development organization that the local economic development organization intends to sell or

lease to a profit-oriented, employment-stimulating business are eligible for an exemption from property taxes as provided in this section.

(2) ~~In~~ *In* order *for a taxpayer* to qualify for the tax exemption described in this section, the *taxpayer must have applied by March 1 of the year during which the benefit is first applicable. The* governing body of the affected county, consolidated government, incorporated city or town, or school district in which the building and land are located shall approve the tax exemption by resolution, after due notice, as ~~defined in 76-15-103~~ *provided in 7-1-2121 if a county, consolidated government, or school district or 7-1-4127 if an incorporated city or town*, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). The governing body shall approve a tax exemption by a separate resolution. The governing body may not grant approval for the building and land until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that the local economic development organization:

(a) is a private, nonprofit corporation, as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(b) is engaged in economic development and business assistance work in the area; and

(c) owns or will own the building and land.

*(3) (a) The governing body shall:*

*(i) publish due notice within 60 days of receiving a taxpayer's complete application for the tax treatment provided for in this section; and*

*(ii) conduct a public hearing regarding an application for the tax treatment provided for in this section and deny or approve it within 120 days of receiving the application as provided in subsection (3)(a)(i).*

*(b) If the governing body fails to hold a hearing or deny or approve the application within 120 days of receiving the application, the applicant may seek from the district court in the jurisdiction in which the county, consolidated government, city, town, or school district is located a writ of mandamus to compel the governing body to make a determination.*

~~(3)~~*(4)* Upon receipt of approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change for the tax exemption provided for in this section.

~~(4)~~*(5)* The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies or assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 and other levies required under state law.

~~(5)~~*(6)* When a local economic development organization sells, leases, or otherwise disposes of the exempt property to a purchaser or lessee that is not a local economic development organization or a unit of federal, state, or local government, the tax exemption provided in this section terminates. The termination of the exemption applies January 1 of the taxable year immediately following the sale, lease, or other disposition of the property. Upon termination of the exemption, the property must be assessed as provided in 15-16-203.

~~(6)~~*(7)* Property taxes abated from the reduction in property taxes allowed by this section are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of this section or the resolution required by subsection (2). The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer."

**Section 9. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 10. Effective date.** [This act] is effective on passage and approval.

**Section 11. Applicability.** [This act] applies to applications for tax benefits submitted to a governing body on or after [the effective date of this act].

Approved February 28, 2013

# CHAPTER NO. 58

[HB 155]

AN ACT REVISING LAWS ON SCHOOL BUS SAFETY; INCREASING THE FOOTAGE REQUIREMENT IN WHICH A MOTOR VEHICLE MUST STOP BEFORE REACHING A SCHOOL BUS WHEN BUS LIGHTS ARE FLASHING; AND AMENDING SECTION 61-8-351, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-8-351, MCA, is amended to read:

**"61-8-351. Meeting or passing school bus — vehicle operator liability for violation — penalty.** (1) Upon overtaking from either direction a school bus that has stopped on the highway or street to receive or discharge school children, a driver of a motor vehicle:

(a) shall stop the motor vehicle not less than approximately ~~15~~ *30* feet before reaching the school bus when there is in operation on the bus a visual flashing red signal as specified in 61-9-402; and

(b) may not proceed until the children have entered the school bus or have alighted and reached the side of the highway or street and until the school bus ceases operation of its visual flashing red signal.

(2) The driver of a motor vehicle shall slow to a rate of speed that is reasonable under the conditions existing at the point of operation and must be prepared to stop when meeting or overtaking from either direction a school bus that is preparing to stop on the highway or street to receive or discharge school children as indicated by flashing amber lights as specified in 61-9-402.

(3) Each bus used for the transportation of school children must bear upon the front and rear plainly visible signs containing the words "SCHOOL BUS" in letters not less than 8 inches in height and, in addition, must be equipped with visual signals meeting the requirements of 61-9-402. Amber flashing lights

must be actuated by the driver approximately 150 feet in cities and approximately 500 feet in other areas before the bus is stopped to receive or discharge school children on the highway or street. Red lights must be actuated by the driver of the school bus whenever but only whenever the school bus is stopped on the highway or street whether inside or outside the corporate limits of any city or town to receive or discharge school children. However, a school district board of trustees may, in its discretion, adopt a policy prohibiting the operation of amber or red lights when a school bus is stopped at the school site to receive or discharge school children and the receipt or discharge does not involve street crossing by the children. The lights may not be operated in violation of that policy.

(4) The requirements that a driver of a motor vehicle shall stop when a school bus receives or discharges school children under subsection (1) and the requirements that amber and red lights must be actuated by a school bus driver under subsection (3) do not apply when a school bus receives or discharges school children in a designated school bus pullout on a state highway. A designated school bus pullout must meet the following requirements:

(a) The pullout must be located on a roadway separated by a physical barrier, such as a guardrail, raised median, drainage ditch, or irrigation ditch.

(b) The separate roadway must be designed, constructed, and signed specifically for use by school buses, with sufficient space for safe ingress and egress from the main traveled way.

(c) The pullout must be approved by the local affected school district, by a resolution of the district trustees, and by the district superintendent as a mandatory school bus stop for receiving and discharging school children.

(5) When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school or for school functions, all markings on the bus indicating "SCHOOL BUS" must be covered or concealed.

(6) The driver of a motor vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus that is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone that is a part of or adjacent to the highway and where pedestrians are not permitted to cross the roadway.

(7) (a) A person who observes a violation of this section may prepare a written, in addition to an oral, report indicating that a violation has occurred. The report may contain information concerning the violation, including:

(i) the time and approximate location at which the violation occurred;

(ii) the license plate number and color of the motor vehicle involved in the violation;

(iii) identification of the motor vehicle as a passenger car, truck, bus, motorcycle, or other type of motor vehicle; and

(iv) a description of the person operating the motor vehicle when the violation occurred.

(b) A report under subsection (7)(a) constitutes particularized suspicion under 46-5-401(1) that an operator of the vehicle committed a violation of this section.

(8) Violation of subsection (1) is punishable upon conviction by a fine of not more than $500."

Approved February 28, 2013

# CHAPTER NO. 59

[HB 77]

AN ACT REMOVING OBSOLETE STATUTORY LANGUAGE REGARDING COUNTY GOVERNMENT DUTIES FOR LOCAL OFFICES OF PUBLIC ASSISTANCE; AMENDING SECTIONS 53-2-301, 53-2-304, AND 53-2-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 53-2-301, MCA, is amended to read:

**"53-2-301. Local offices of public assistance to be established *by department*.** ~~There must be established in each county of the state~~ *The department shall establish* one or more local offices of public assistance *in each county of the state*. If conditions warrant, two or more counties may be combined into one administrative unit and the department may use the same local office of public assistance and staff to administer public assistance in the combined counties."

**Section 2.** Section 53-2-304, MCA, is amended to read:

**"53-2-304. Staff of public assistance program.** ~~(1) (a)~~ The staff in each local office of public assistance must consist of at least one qualified staff worker. The department ~~of public health and human services~~ shall hire and supervise all public assistance staff. ~~A fully qualified person must be employed by the department pursuant to subsections (1)(b) and (1)(c) to supervise the staff.~~

~~(b) In accordance with subsection (1)(a), the department shall establish a hiring committee for the purpose of choosing a qualified applicant to serve as primary supervisor of the public assistance staff. The hiring committee must consist of two county commissioners from the county where the vacancy exists and two representatives or designees of the department. If the primary supervisor is to supervise staff in more than one county, then the county commissioners from each of the counties shall designate two county commissioners to represent the county as members of the hiring committee.~~

~~(c) The department shall screen the applicants who apply for the position of primary supervisor and shall compile a list of the most qualified applicants on the basis of merit. The department shall present the list to the hiring committee. The committee shall rank the applicants in the order it considers most appropriate, and the department shall offer the primary supervisor position to the applicants in the order determined by the hiring committee unless the department is unable to contact a particular applicant after having made a good faith effort. An offer of employment may not be made to a lower-ranking applicant until all available higher-ranking applicants have been offered the primary supervisor position and have either refused the offer or withdrawn their applications.~~

~~(2) Public assistance staff must be paid from state public assistance funds both their salaries and their travel expenses, as provided for in 2-18-501 through 2-18-503, when traveling in the performance of their duties. However, the county shall reimburse the department from county funds for the full amount of the salaries and travel expenses that are not reimbursed to the department by the federal government and for the full amount of the department's administrative costs that are allocated by the department to the county for the administration of public assistance programs and that are not reimbursed to the department by the federal government. Under circumstances prescribed by the department, the reimbursement by the county may be less~~

~~than the county share as prescribed in this subsection. All other administrative costs of the local office of public assistance must be paid from county funds.~~

~~(3) On or before the 20th day of the month following the month for which the payments to the public assistance staff were made, the department shall present to the county a claim for the required reimbursements. The county shall make reimbursements within 20 days after the presentation of the claim, and the department shall credit all reimbursements to its account for administrative costs.~~"

**Section 3.** Section 53-2-305, MCA, is amended to read:

**"53-2-305. Local offices of public assistance under supervision of department.** ~~(1)~~*(1)* Local offices of public assistance are *offices of the department* under the supervision of the department ~~and are subject to audit by the department. However, the department shall enter into agreements with the counties regarding minimum standards of operation, including but not limited to office hours, staffing, significant program changes, administration of county public assistance programs, and office facilities. If the board of county commissioners in a county disagrees with a specific method used, approach taken, or decision made that has a broad impact on the provision of public assistance in the county, the board of county commissioners may present their objections to the department in accordance with subsection (2). Prior to and during the development of an agreement, the department shall ensure the participation of the tribal government in the development of a plan for any county that serves an Indian reservation.~~

~~(2) All objections made by the board of county commissioners pursuant to subsection (1) must be presented to the department in writing. Within 45 days of receiving a written objection, the department shall convene a resolution committee. The committee must be composed of two county commissioners to be appointed for 2-year terms by the Montana association of counties, two representatives or designees of the department, and a fifth member selected by the other members. If the other members cannot agree on the fifth member, the attorney general shall appoint the fifth member. The resolution committee shall review the objections made by the county and shall attempt, in good faith, to develop an alternative method, approach, or resolution that is satisfactory to both the department and the county. The resolution committee shall present the results of its deliberations to the director of the department to carry out the alternative method, approach, or resolution.~~

*(2) The department shall ensure the participation of the tribal government in the development of a plan for any county that serves an Indian reservation.*"

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved March 1, 2013

# CHAPTER NO. 60

[SB 47]

AN ACT REVISING LAWS RELATED TO MINE SAFETY; PROVIDING FOR MINE SAFETY TRAINING AND ALLOWING FOR RECOVERY OF REASONABLE EXPENSES; PROVIDING FOR MINE SAFETY AND HEALTH CONSULTATION SERVICES AND ALLOWING FOR RECOVERY OF REASONABLE EXPENSES; AMENDING SECTION 50-73-406, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Mine safety training — recovery of expenses.** (1) The department may conduct mine safety training for mine operators, miners, and other persons working in and around mines.

(2) When providing mine safety training, the department shall schedule the training in a cost-effective manner, while taking into account the needs of training participants and the mining industry.

(3) The department shall provide mine safety training without charge for instruction, but the department may recover reasonable expenses incurred in producing materials distributed to participants.

**Section 2. Safety and industrial health consultation services authorized — recovery of expenses.** (1) The department may provide onsite safety and industrial health consultation services to mine operators that request onsite safety and industrial health consultation services.

(2) The department may not charge for the consultation provided by this section, but it may recover from the mine operator the cost of test kits, sampling media, associated laboratory fees, and other reasonable expenses incurred during the consultation.

**Section 3.** Section 50-73-406, MCA, is amended to read:

**"50-73-406. Minimum inspection intervals.** The department shall carefully examine all the coal mines in operation in this state at least ~~quarterly~~ *semiannually* and more often if necessary to see that every precaution is taken to ensure the safety of all workers that may be working in the coal mine."

**Section 4. Codification instruction.** (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 50, chapter 72, part 1, and the provisions of Title 50, chapter 72, part 1, apply to [sections 1 and 2].

(2) [Sections 1 and 2] are intended to be codified as an integral part of Title 50, chapter 73, part 1, and the provisions of Title 50, chapter 73, part 1, apply to [sections 1 and 2].

**Section 5. Effective date.** [This act] is effective July 1, 2013.

Approved March 1, 2013

## CHAPTER NO. 61

[SB 65]

AN ACT BROADENING THE LIST OF PERSONS TO WHOM THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES MAY RELEASE CHILD ABUSE OR NEGLECT CASE RECORDS; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO PROVIDE SPECIFIED INFORMATION UPON REQUEST FROM ANY REPORTER OF ALLEGED CHILD ABUSE OR NEGLECT; AND AMENDING SECTIONS 41-3-202 AND 41-3-205, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 41-3-202, MCA, is amended to read:

**"41-3-202. Action on reporting.** (1) Upon receipt of a report that a child is or has been abused or neglected, the department shall promptly assess the information contained in the report and make a determination regarding the level of response required and the timeframe within which action must be initiated. If the department determines that an investigation is required, a social worker, the county attorney, or a peace officer shall promptly conduct a thorough investigation into the circumstances surrounding the allegations of

abuse or neglect of the child. The investigation may include an investigation at the home of the child involved, the child's school or day-care facility, or any other place where the child is present and into all other nonfinancial matters that in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care, except as necessary to ascertain eligibility for state or federal assistance programs or to comply with the provisions of 41-3-446.

(2) An initial investigation of alleged abuse or neglect may be conducted when an anonymous report is received. However, the investigation must within 48 hours result in the development of independent, corroborative, and attributable information in order for the investigation to continue. Without the development of independent, corroborative, and attributable information, a child may not be removed from the home.

(3) The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer, consistent with reasonable medical practice, has the right of access to the child for interviews, photographs, and securing physical evidence and has the right of access to relevant hospital and medical records pertaining to the child. If an interview of the child is considered necessary, the social worker, county attorney, or peace officer may conduct an interview of the child. The interview may be conducted in the presence of the parent or guardian or an employee of the school or day-care facility attended by the child.

(4) Subject to 41-3-205(3), if the child's interview is audiotaped or videotaped, an unedited audiotape or videotape with audio track must be made available, upon request, for unencumbered review by the family.

(5) (a) If from the investigation the department has reasonable cause to suspect that the child suffered abuse or neglect, the department may provide emergency protective services to the child, pursuant to 41-3-301, or voluntary protective services pursuant to 41-3-302, and may provide protective services to any other child under the same care. The department shall:

(i) after interviewing the parent or guardian, if reasonably available, document its determination regarding abuse or neglect of a child; and

(ii) notify the child's family of its investigation and determination, unless the notification can reasonably be expected to result in harm to the child or other person.

(b) If from the investigation it is determined that the child has not suffered abuse or neglect and the initial report is determined to be unfounded, the department and the social worker, county attorney, or peace officer who conducted the investigation into the circumstances surrounding the allegations of abuse or neglect shall destroy all of their records concerning the report and the investigation. The destruction must be completed within 30 days of the determination that the child has not suffered abuse or neglect.

(c) (i) If the report is unsubstantiated, the department and the social worker who conducted the investigation into the circumstances surrounding the initial allegations of abuse or neglect shall destroy all of the records, except for medical records, concerning the unsubstantiated report and the investigation within 30 days after the end of the 3-year period starting from the date the report was determined to be unsubstantiated, unless:

(A) there had been a previous or there is a subsequent substantiated report concerning the same person; or

(B) an order has been issued under this chapter based on the circumstances surrounding the initial allegations.

(ii) A person who is the subject of an unsubstantiated report that was made prior to October 1, 2003, and after which a period of 3 years has elapsed without there being submitted a subsequent substantiated report or an order issued under this chapter based on the circumstances surrounding the initial allegations may request that the department destroy all of the records concerning the unsubstantiated report as provided in subsection (5)(c)(i).

(6) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department and, upon request, to the family. Subject to subsections (5)(b) and (5)(c), the department shall maintain a record system documenting investigations and determinations of child abuse and neglect cases.

(7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public or private residential institution, home, facility, or agency is responsible for ensuring that the report is made to the department.

*(8) The department shall, upon request from any reporter of alleged child abuse or neglect, verify whether the report has been received, describe the level of response and timeframe for action that the department has assigned to the report, and confirm that it is being acted upon.*"

**Section 2.** Section 41-3-205, MCA, is amended to read:

**"41-3-205. Confidentiality — disclosure exceptions.** (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (7) and (8), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, *grandparent, aunt, uncle, brother, sister,* guardian, *mandatory reporter provided for in 41-3-201(2),* or person designated by a parent or guardian of the child who is the subject of a report in the records or other person

responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a juvenile probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's assigned attorney, guardian ad litem, or special advocate.

(5) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

(6) The confidentiality provisions of this section must be construed to allow a court of this state to share information with other courts of this state or of another state when necessary to expedite the interstate placement of children.

(7) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(8) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (7) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(9) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(10) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, ~~the~~ *grandparent, aunt, uncle, brother, sister,* guardian, or ~~the~~ parent or guardian's attorney must be provided without cost."

Approved March 1, 2013

# CHAPTER NO. 62

[HB 47]

AN ACT REVISING DATES BY WHICH A COUNTY MUST FIX CERTAIN SALARIES, ADOPT A BUDGET, FIX TAX LEVIES, AND ESTIMATE SPECIAL DISTRICT COSTS; AMENDING SECTIONS 7-4-2504, 7-6-4024, 7-6-4036, 7-11-1025, 20-9-152, AND 20-15-313, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-4-2504, MCA, is amended to read:

**"7-4-2504. Salaries to be fixed by resolution — cost-of-living increments.** The county governing body shall ~~by~~ *annually adopt a* resolution ~~on or before August 1 of each year~~ *by the date established in 7-6-4036 to* adjust and uniformly fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, clerk of district court, county auditor (if there is one), justice of the peace, county coroner, and county surveyor (if the surveyor receives a salary) by adding to the annual salary provided for in 7-4-2503(1) a cost-of-living increment based upon the schedule developed and approved by the county compensation board provided for in 7-4-2503(4)."

**Section 2.** Section 7-6-4024, MCA, is amended to read:

**"7-6-4024. Hearing on preliminary budget.** (1) The governing body shall hold a hearing in accordance with the notice given pursuant to 7-6-4021.

(2) Local government officials shall attend the budget hearing to answer questions on their proposed budgets if called upon:

(a) by the governing body; or

(b) by a taxpayer or resident.

(3) The hearing may be continued from day to day and must be concluded and the budget finally approved and adopted by resolution by the later of the ~~second Monday in August or within 45~~ *first Thursday after the first Tuesday in September or within 30* calendar days of receiving certified taxable values from the department of revenue."

**Section 3.** Section 7-6-4036, MCA, is amended to read:

**"7-6-4036. Fixing tax levy.** (1) The governing body shall fix the tax levy for each taxing jurisdiction within the county or municipality:

(a) by the later of the first Thursday *after the first Tuesday* in September or within 30 calendar days after receiving certified taxable values;

(b) after the approval and adoption of the final budget; and

(c) at levels that will balance the budgets as provided in 7-6-4034.

(2) Each levy:

(a) must be made in the manner provided by 15-10-201; and

(b) ~~except for a judgment levy under 2-9-316 or 7-6-4015,~~ is subject to 15-10-420."

**Section 4.** Section 7-11-1025, MCA, is amended to read:

**"7-11-1025. Notice of resolution for assessment — assessment.** (1) The governing body shall estimate, as near as practicable, the cost of each established special district annually by the later of the ~~second Monday in August or within 45~~ *first Thursday after the first Tuesday in September or*

*within 30* calendar days after receiving certified taxable values from the department of revenue.

(2) The governing body shall pass and finally adopt a resolution specifying the special district assessment option and levying and assessing all the property within the special district with an amount equal to the annual cost of the program and improvements.

(3) The resolution levying the assessment to defray the cost of the special district must contain or refer to a list that describes the lot or parcel of land assessed with the name of the owner of the lot or parcel, if known, and the amount assessed.

(4) The resolution must be kept on file in the office of the clerk of the governing body.

(5) A notice, signed by the clerk of the governing body, stating that the resolution levying a special assessment or changing the method of assessment to defray the cost of the special district is on file in the clerk's office and subject to inspection must be published as provided in 7-1-2121 or 7-1-4127. The notice must state the time and place at which objections to the final adoption of the resolution will be heard by the governing body and must contain a statement setting out the method of assessment being proposed for adoption or the change in assessment being proposed for adoption. The time for the hearing must be at least 5 days after the final publication of the notice.

(6) The notice and hearing process may be included in the local government's general budgeting process as provided in Title 7, chapter 6, part 40.

(7) At the time set, the governing body shall meet and hear all objections that may be made to the assessment or any part of the assessment, may adjourn from time to time for that purpose, and may by resolution modify the assessment.

(8) A copy of the resolution, certified by the clerk of the governing body, must be delivered to the department of revenue by the ~~third Monday in August or within 45~~ *later of the first Thursday after the first Tuesday in September or within 30* calendar days after receiving certified taxable values from the department of revenue."

**Section 5.** Section 20-9-152, MCA, is amended to read:

**"20-9-152. Fixing and levying taxes for joint districts.** (1) At the time of fixing levies for county and school purposes by the later of the first Thursday *after the first Tuesday* in September or within 30 calendar days after receiving certified taxable values, the board of county commissioners of each county in which a part of a joint district is located shall fix and levy taxes on that portion of the joint district located in each board's county at the number of mills for each levy recommended by the joint statement of the county superintendents.

(2) The board of county commissioners shall include in the amounts to be raised by the county levies for schools all the amounts required for the final budget of each part of a joint district located in the county, in accordance with the recommendations of the county superintendent."

**Section 6.** Section 20-15-313, MCA, is amended to read:

**"20-15-313. Tax levy.** By the later of the first Thursday *after the first Tuesday* in September or within 30 calendar days after receiving certified taxable values, the board of county commissioners of any county where a community college district is located shall, subject to 15-10-420, fix and levy a tax on all the real and personal property within the community college district at the rate required to finance the mandatory mill levy prescribed by 20-15-312(1)(b) and the voted levy prescribed by 20-15-311(5) if one has been

approved by the voters. When a community college district has territory in more than one county, the board of county commissioners in each county shall fix and levy the community college district tax on all the real and personal property of the community college district situated in its county."

**Section 7. Effective date.** [This act] is effective July 1, 2013.

Approved March 5, 2013

# CHAPTER NO. 63

[HB 63]

AN ACT GENERALLY REVISING THE MONTANA RETAIL INSTALLMENT SALES ACT; REVISING DEFINITIONS; PROVIDING FOR NOTICE AND OPPORTUNITY FOR HEARING; ADDING PENALTIES FOR VIOLATIONS; ELIMINATING REQUIREMENTS THAT COPIES OF ALL RULES MUST BE MAILED TO LICENSEES; REVISING LICENSE APPLICATION REQUIREMENTS; REVISING LICENSE DENIAL REQUIREMENTS; REVISING CONTRACT DISCLOSURE REQUIREMENTS; CLARIFYING DELINQUENCY FEES AND CHARGES; REQUIRING SELLERS TO GIVE 45 DAYS' NOTICE PRIOR TO CHANGING TERMS OF REVOLVING CHARGE ACCOUNTS; REVISING PROVISIONS ON PREPAYMENT REFUNDS; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO PARTICIPATE IN A NATIONWIDE LICENSING SYSTEM FOR PURPOSES OF LICENSING SALES FINANCE COMPANIES; GRANTING ADDITIONAL RULEMAKING AUTHORITY; AND AMENDING SECTIONS 31-1-202, 31-1-203, 31-1-211, 31-1-221, 31-1-222, 31-1-231, 31-1-232, 31-1-235, 31-1-236, 31-1-241, AND 31-1-242, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 31-1-202, MCA, is amended to read:

**"31-1-202. Definitions — scope.** (1) Unless the context requires otherwise, in this part the following definitions apply:

(a) "Cash sale price" means the price stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge account agreement for which the seller would have sold or furnished to the buyer and the buyer would have bought or obtained from the seller the goods or services that are the subject matter of the retail installment transaction, if the sale had been a sale for cash. The cash sale price may include any taxes, registration, certificate of title, license, and official fees and cash sale prices for services, if any, and for accessories and their installation and for delivering, servicing, repairing, or improving the goods.

*(b) "Conspicuous" means that:*

*(i) a heading is in capital letters equal to or greater in size than the surrounding text or in contrasting type, font, or color than the surrounding text of the same or lesser size; or*

*(ii) language in the body of a record or display is in larger type than the surrounding text, is in contrasting type, font, or color than the surrounding text of the same size, or is set off from the surrounding text of the same size by symbols or other marks that call attention to the language.*

~~(b)~~*(c)* "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

~~(e)~~*(d)* "Finance charge" means the amount, as limited by 31-1-241, in addition to the principal balance, agreed upon between the buyer and the seller, to be paid by the buyer for the privilege of purchasing goods or services to be paid for by the buyer in one or more deferred installments.

~~(d)~~*(e)* "Goods" means all chattels personal, including motor vehicles and merchandise certificates or coupons exchangeable for chattels personal but not including money, things in action, or dwellings as defined in 15 U.S.C. ~~1602(v)~~ *1602(w)*.

~~(e)~~*(f)* "Holder" means:

(i) the retail seller of the goods or services under the retail installment contract or retail charge account agreement or a person who establishes and administers retail charge account agreements with retail buyers;

(ii) the assignee, if the retail installment contract or the retail charge account agreement or the balance in the account under either has been sold or otherwise transferred; or

(iii) any other person entitled to the rights of the retail seller under any retail installment contract or any retail charge account agreement.

~~(f)~~*(g)* "Manufactured structure" means any structure, transportable in one or more sections, designed to be used as a single-family dwelling or commercial building with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure.

~~(g)~~*(h)* (i) "Motor vehicle" means any new or used automobile, motorcycle, quadricycle, truck, trailer, semitrailer, truck tractor, and all vehicles with any power, other than muscular power, primarily designed or used to transport persons or property on a public highway.

(ii) The term does not include any vehicle that runs only on rails or tracks or in the air.

(iii) The term does not include a dwelling as defined in 15 U.S.C. ~~1602(v)~~ *1602(w)*.

~~(h)~~*(i)* "Official fees" means:

(i) the fees prescribed by law for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction; or

(ii) the premium for insurance in lieu of filing, recording, or otherwise perfecting any title or lien retained or taken by a seller in connection with a retail installment transaction to the extent that the premium does not exceed the fees that would otherwise be payable for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction.

~~(i)~~*(j)* "Person" means an individual, partnership, corporation, association, and any other group, however organized.

~~(j)~~*(k)* "Principal balance" means the cash sale price of the goods or services that are the subject matter of a retail installment transaction plus the amounts, if any, included in the sale, if a separate identified charge is made and stated in the contract, for insurance and other benefits and official fees, minus the amount of the buyer's downpayment in money or goods.

~~(k)~~*(l)* "Recreational vehicle" means a vehicular type unit that either has its own motor power or is mounted on or drawn by another vehicle, primarily designed as temporary living quarters for recreational, camping, or travel use.

~~(l)~~*(m)* "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller in a retail installment transaction and not for the purpose of resale.

~~(m)~~*(n)* "Retail charge account agreement" means an instrument in writing prescribing the terms of retail installment transactions that may be made under it from time to time under which a retail seller gives to a retail buyer the privilege of using a credit card issued by the retail seller or any other person or other credit confirmation or identification for the purpose of purchasing goods or services from the retail seller, from the retail seller and any other person, or from a person licensed or franchised by the retail seller and under the terms of which a finance charge may be computed in relation to the buyer's average daily balance in the account during the billing cycle or the buyer's balance from time to time.

~~(n)~~*(o)* "Retail installment contract" or "contract" means an agreement evidencing a retail installment transaction entered into in this state under which a buyer promises to pay in one or more deferred installments the time sale price of goods or services, or both. The term includes a chattel mortgage, a conditional sales contract, and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no further or a merely nominal consideration has the option of becoming, the owner of the goods upon full compliance with the provisions of the contract.

~~(o)~~*(p)* "Retail installment transaction" means a written contract to sell or furnish, or the sale or furnishing of, goods or services by a retail seller to a retail buyer pursuant to a retail charge account agreement or under a retail installment contract.

~~(p)~~*(q)* "Retail seller" or "seller" means a person who sells goods or furnishes services to a retail buyer in a written retail installment contract or written retail installment transaction.

~~(q)~~*(r)* (i) "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more sellers. The term includes but is not limited to a bank, trust company, investment company, *credit union,* or savings and loan association, if engaged in purchasing retail installment contracts.

(ii) The term does not include a person who makes only isolated purchases of retail installment contracts that are not being made in the course of repeated and successive purchases of retail installment contracts from the same seller.

~~(r)~~*(s)* "Services" means work, labor, and services furnished in the delivery, installation, servicing, repair, or improvement of goods.

~~(s)~~*(t)* "Time sale price" means the total of the cash sale price of the goods or services and the amount, if any, included for insurance and other benefits, if a separate identified charge is made for insurance and benefits, and the amounts of the official fees and the finance charge.

(2) (a) This part does not apply to the lending of money by banks or other lending institutions and securing loans by chattel mortgages of goods in the ordinary course of lending by those banks or other lending institutions.

(b) This part applies to the extension of credit by those banks or other lending institutions under retail installment contracts or credit cards issued by those banks or other lending institutions.

(c) This part does not apply to a transaction governed by Title 32, chapter 9, part 1."

**Section 2.** Section 31-1-203, MCA, is amended to read:

**"31-1-203. ~~Penalties — prohibited activities~~ *Notice and opportunity for hearing — service — penalties — exception.*** (1) ~~Any person who knowingly violates a provision of this part or engages in the business of a sales finance company in this state without a license as provided in this part is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months, or both.~~ *The department shall provide a 14-day written notice of alleged violations of this part and opportunity for an administrative hearing under the Montana Administrative Procedure Act. The notice must be based on reasonable cause to believe that a licensee or any person, whether licensed or not, has:*

*(a) violated any of the provisions of this part;*

*(b) failed to comply with the rules or orders promulgated by the department;*

*(c) furnished false information to the department; or*

*(d) operated without a required license.*

*(2) The department may impose a civil penalty not to exceed $1,000 for each violation and may require restitution to buyers and reimbursement of the department's costs in bringing an administrative action.*

*(3) The department may suspend, revoke, or condition the license of a person violating this part. The suspension, revocation, or conditioning of a license does not affect the rights and obligations of the parties to retail installment contracts acquired previously by the licensee. If a licensee is a legal entity, it is sufficient cause for the suspension, revocation, or conditioning of a license that any officer, director, or trustee of a licensed association or corporation, any member or manager of a licensed limited liability company, or any partner of a licensed partnership has acted or failed to act so as to provide cause for suspending, revoking, or conditioning a license. Each licensee is responsible for the acts of the licensee's employees and agents acting within the course and scope of their employment or agency relationship with the licensee.*

~~(2)~~*(4) In addition to other penalties provided by law, any* ~~Any~~ person violating 31-1-231 through 31-1-243, except as the result of an *isolated* accidental and bona fide error of computation, ~~shall be~~ *is* barred from recovery of any finance, delinquency, or collection charge on the contract. *A person violating 31-1-231 through 31-1-243 as a result of an isolated accidental and bona fide error of computation may not recover or retain any overcharge resulting from the error.*

*(5)* In addition to other penalties provided by law, a violation of ~~subsection (3)~~ *this part* and a contract made in violation of the finance charge limitations imposed by 31-1-241 is a violation of Title 30, chapter 14, part 1.

~~(3) A person may not engage in any device or subterfuge intended to evade the requirements of this chapter including assisting a borrower to obtain a loan at a rate of interest prohibited by Montana law, making loans disguised as personal property sales and leaseback transactions, or disguising loan proceeds as cash rebates for the pretextual installment sale of goods or services.~~

*(6) All notices, hearing schedules, and orders must be mailed by certified mail to the licensee's Montana address of record with the department or in the case of an unlicensed person to the last address known to the department. For licensees authorized to do business in this state and having no physical business location or address in this state, service of process must be made by certified mail*

*upon the licensee's registered agent of record with the secretary of state, and subsequent hearing schedules and orders must be mailed by certified mail to the licensee's out-of-state address of record with the department.*"

**Section 3.** Section 31-1-211, MCA, is amended to read:

**"31-1-211. Powers of department.** (1) The department may adopt rules necessary to carry out the intent and purposes of this part. ~~All rules of general application must be filed in the office of the department. A copy of every rule must be mailed to each licensee, postage prepaid, at least 15 days in advance of its effective date. However, the failure of a licensee to receive a copy of the rules does not exempt the licensee from the duty of compliance with those rules lawfully adopted under the provisions of this section.~~

(2) The department may issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction, control, or supervision pertaining to this part. The department may administer oaths and affirmations to a person whose testimony is required.

(3) If a person refuses to obey a subpoena or to give testimony or produce evidence as required by it, a judge of the district court of the county in which the licensed premises are located may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear before the department to give testimony and produce evidence as may be required. The clerk of court shall then issue the subpoena, as directed, under the seal of the court, requiring the person to whom it is directed to appear at the time and place designated in it.

(4) If a person served with a subpoena refuses to obey it or to give testimony or produce evidence as required by the subpoena, the department may apply to the judge of the court issuing the subpoena for an arrest warrant for that person, as for a contempt. The judge, upon satisfactory proof of the refusal, shall issue an arrest warrant, directed to any sheriff, constable, or police officer, for the arrest of that person and, upon that person being brought before the judge, proceed to a hearing of the case. The judge may compel:

(a) obedience to the subpoena;

(b) the answering of any question;

(c) the production of any evidence that may be proper; or

(d) the witness to pay the costs of the proceeding.

(5) Failure to comply with the requirements of subsection (4)(a), (4)(b), or (4)(c) is punishable by a fine not exceeding $100 or by imprisonment in the county jail, or both."

**Section 4.** Section 31-1-221, MCA, is amended to read:

**"31-1-221. Licensing of sales finance companies required.** (1) A person may not engage in the business of a sales finance company, including the purchase of retail installment contracts that are entered into in this state, without a license as provided in this part, except that a bank, trust company, ~~or~~ savings and loan association*, or credit union* authorized to do business in this state is not required to obtain a license under this part but shall comply with all of the other provisions of this part.

(2) The application for a license must be in writing~~, under oath, and in the form prescribed by~~ *in the form and submitted in the manner that* the department *may direct*. ~~The application must contain:~~

~~(a) the name of the applicant;~~

~~(b) the date of incorporation, if incorporated;~~

~~(c) the address where the business is or is to be conducted and similar information with regard to any branch office of the applicant;~~

~~(d) the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees, and principal officers; and~~

~~(e) other pertinent information as the department may require.~~

(3) The license fee for each calendar year or part of a year is $100 for ~~each place of business of the licensee in this state~~ *the applicant's principal place of business and for each additional branch location at which the applicant engages in sales finance company activities concerning retail installment contracts between retail sellers and buyers in this state. A licensee need not maintain a physical place of business within this state*.

~~(4) Each license must specify the location of the office or branch and must be conspicuously displayed there. If the location is changed, the department shall endorse the change of location of the license without charge.~~

~~(5)~~*(4) Except as provided in 31-1-222, upon the submission of a complete* ~~Upon the filing of a~~ license application and the payment of ~~the license fee~~ *required fees*, the department shall issue a license to the applicant to engage in the business of a sales finance company in accordance with the provisions of this part for a period that expires December 31 following the date of the license's issuance. The license is not transferable or assignable. A licensee may not transact any business provided for by this part under any other name.

~~(6)~~*(5) The department may direct that fees chargeable under subsection (3) be remitted to the department through a nationwide licensing system. The department's portion of fees charged and* ~~Fees~~ collected under this chapter must be deposited in the state special revenue fund for the use of the department in its supervision function."

**Section 5.** Section 31-1-222, MCA, is amended to read:

**"31-1-222. Denial~~, suspension, or revocation~~ of licenses.** ~~(1)~~ *Subject to the notice and opportunity for hearing provisions of 31-1-203, initial licensure or license renewal* ~~Renewal of a license originally granted under 31-1-221~~ may be denied ~~or a license may be suspended or revoked~~ by the department on the following grounds:

~~(a)~~*(1)* material misstatement of fact *or material omission of fact* in the application for license *or renewal*;

*(2) a civil judgment against the applicant for defrauding a retail buyer in relation to financing terms of a retail installment contract; or*

*(3) having had a sales finance company license or other financial services license revoked by a regulatory agency in any jurisdiction.*

~~(b) willful failure to comply with any provision of this part relating to retail installment contracts;~~

~~(c) defrauding any retail buyer to the buyer's damage;~~

~~(d) fraudulent misrepresentation, circumvention, or concealment by the licensee through subterfuge or device of any of the material particulars or the nature of those particulars required to be stated or furnished to the retail buyer under this part.~~

~~(2) If a licensee is a partnership, association, or corporation, it is sufficient cause for the suspension or revocation of a license that any officer, director, or trustee of a licensed association or corporation or any member of a licensed partnership has acted or failed to act so as to provide cause for suspending or~~

~~revoking a license to that party as an individual. Each licensee is responsible for the acts of the licensee's employees while acting as the licensee's agent if the licensee after actual knowledge of the acts retained the benefits, proceeds, profits, or advantage accruing from the acts or otherwise ratified the acts.~~

~~(3) (a) A license may not be denied, suspended, or revoked except after hearing. The department shall give the licensee at least 10 days' written notice, in the form of an order to show cause, of the time and place of the hearing by certified mail addressed to the licensee's principal place of business in this state. The notice must contain the grounds of complaint against the licensee.~~

~~(b) An order suspending or revoking a license must recite the grounds upon which it is based. The order must be entered upon the records of the department and is not effective until 30 days after written notice has been forwarded by certified mail to the licensee at the licensee's principal place of business.~~

~~(c) A revocation, suspension, or surrender of a license does not impair or affect the obligation of a lawful retail installment contract acquired previously by the licensee.~~"

**Section 6.** Section 31-1-231, MCA, is amended to read:

**"31-1-231. Requirements of retail installment contracts.** (1) Each retail installment contract must be in writing, signed by both the buyer and the seller, and completed as to all essential provisions prior to the signing of the contract by the buyer. However, if a retail installment transaction is a sale of goods other than a motor vehicle where title, lien, or other security interest is not retained or taken by the seller, then the retail installment contract is not required to be contained in a single document. In that case, if the contract is contained in more than one document, then one document may be an original document executed by the retail buyer applicable to purchases of goods or services to be made by the retail buyer from time to time, and in that case the document, together with the sales slip, account book, or other written statement relating to each purchase, must set forth all of the information required by this section and constitutes the retail installment contract for each purchase.

(2) The printed portion of the contract, other than instructions for completion, must be in at least 8-point type. The contract must *conspicuously disclose* ~~contain~~ the following notice ~~in a size equal to at least 10-point bold type~~:

"1. Notice to the buyer. Do not sign this contract before you read it or if it contains any blank spaces *other than blank spaces for the serial number of the goods or other similar information and the due date of the first installment if the goods have not been delivered to you at the time you sign the contract*.

2. You are entitled to an exact copy of the contract ~~you sign~~ *bearing your signature*.

3. Under the law, you have the right to pay off in advance the full amount due and to obtain a partial refund of the finance charge."

(3) If the contract covers the sale of a motor vehicle, it must also contain~~, in a size equal to at least 10-point bold type,~~ a specific statement *that is conspicuously disclosed* that liability insurance coverage for bodily injury and property damage caused to others is not included if that is the case.

(4) The contract must contain the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer, and a description of the goods sold or services furnished or to be furnished and must clearly state and describe any collateral security taken for the buyer's obligation.

(5) The contract must contain the following items:

(a) the cash sale price of the goods or services;

(b) the amount of the buyer's downpayment and whether made in money or goods or partly in money and partly in goods, including a brief description of the goods traded in;

(c) the difference between items in subsections (5)(a) and (5)(b);

(d) the amount, if any, included for insurance and other benefits if a separate charge is made for insurance and other benefits, specifying the types of coverage and benefits;

(e) the amount of official fees;

(f) the principal balance, which is the sum of items in subsections (5)(c) through (5)(e);

(g) the amount of the finance charge;

(h) the total amount of the time balance, stated as one sum in dollars and cents, which is the sum of items in subsections (5)(f) and (5)(g), payable in installments by the buyer to the seller;

(i) the number of installments;

(j) the amount of each installment; and

(k) the due date or period of installments.

(6) The items in subsection (5) need not be stated in the sequence or order set forth, and additional items may be included to explain the computations made in determining the amount to be paid by the buyer.

(7) A retail installment contract may not be signed by any party when it contains blank spaces to be filled in after it has been signed, except that if delivery of the goods is not made at the time of the ~~execution~~ *signing* of the contract, the ~~identifying numbers or marks~~ *serial number* of the goods or similar information and the due date of the first installment may be inserted in the contract after ~~its execution~~ *it is signed. The buyer's written acknowledgment, conforming to the requirements of 31-1-232, of delivery of a copy of a contract, in any action or proceeding by or against a holder of the contract without knowledge to the contrary when the holder purchases the contract, must be conclusive proof:*

*(a) of the delivery;*

*(b) that the contract when signed did not contain any blank spaces except as provided in this subsection (7); and*

*(c) of compliance with 31-1-231 through 31-1-236.* ~~The buyer's written acknowledgment, conforming to the requirements of 31-1-232, of delivery of a copy of a contract must, in any action or proceeding by or against a holder of the contract without knowledge to the contrary when the holder purchases the contract, be conclusive proof:~~

~~(a) of the delivery;~~

~~(b) that the contract when signed did not contain any blank spaces except as provided in this subsection (7); and~~

~~(c) of compliance with 31-1-231 through 31-1-236.~~

(8) If a retail installment transaction is subject to the federal Truth in Lending Act, 15 U.S.C. 1601-1667e, ~~the~~ *a* seller ~~may, instead of complying with~~ *that has complied with all of the requirements of the Act must be considered to have satisfied* the requirements of subsections (2) through ~~(7)~~ *(6)*, ~~comply with all requirements of the federal law. A seller who complies with the federal requirements is subject only to the provisions of subsection (1)~~ of this section.

*(9) A person may not engage in any device or subterfuge intended to evade the requirements of this part, including making loans or assisting another in making loans disguised as personal property sales and leaseback transactions or disguising or assisting another in disguising loan proceeds as cash rebates for the pretextual installment sale of goods or services.*"

**Section 7.** Section 31-1-232, MCA, is amended to read:

**"31-1-232. Buyer's right of rescission.** The seller shall deliver to the buyer *in person* or mail to the buyer at the address shown in the contract a copy of the contract, signed by the seller. *If the contract is mailed, the seller shall retain proof of delivery.* Until the seller delivers or mails the contract, a buyer who has not received delivery of the goods or been furnished the services has the right to rescind the agreement and to receive a refund of all payments made and return of all goods traded in to the seller on account of or in contemplation of the contract or, if the goods cannot be returned, the value of the goods. Any acknowledgment by the buyer of *personal* delivery of a copy of the contract *signed by the seller* must be *conspicuous* ~~in a size equal to at least 10-point bold type~~ and, if contained in the contract, must appear directly above the buyer's signature."

**Section 8.** Section 31-1-235, MCA, is amended to read:

**"31-1-235. Delinquency fee.** *(1)* The holder of a retail installment contract or a retail charge account agreement may collect a delinquency charge on each installment in default for a period not less than 10 days in an amount not to exceed $10 or, ~~in lieu of the charge, interest after maturity on each installment not exceeding the highest lawful contract rate~~ *alternatively, the holder may calculate a fixed delinquency fee that is expressed as an interest rate not exceeding 15% of each installment in default. The delinquency charge expressed in this subsection (1) as a simple interest rate represents a method of calculating a fixed delinquency charge and is not interest.*

*(2) This section does not preclude a holder of a retail installment contract or retail charge account agreement from collecting, in addition to the delinquency charge, regularly accruing interest at the current contract rate applicable under the terms of the buyer's and seller's contract, provided the contract was made on simple interest and is not a precomputed contract.*

*(3)* ~~In addition to a delinquency charge, the~~ *A retail installment* contract may provide for the payment of *both a delinquency charge as permitted in subsection (1) and* attorney fees not exceeding 15% of the amount due and payable under the contract when the contract is referred for collection to an attorney not a salaried employee of the holder of the contract and for court costs and actual and reasonable out-of-pocket expenses incurred in connection with the delinquency."

**Section 9.** Section 31-1-236, MCA, is amended to read:

**"31-1-236. Notice and receipt of payment.** (1) Upon written request from the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under the contract. A buyer must be given a written receipt for any payment when made in cash.

(2) After payment of all sums for which the buyer is obligated under a contract ~~and upon written demand made by the buyer~~, the holder shall deliver or mail to the buyer, at the buyer's last-known address, one or more good and sufficient instruments to acknowledge payment in full and shall release all security in the goods or in any collateral security."

**Section 10.** Section 31-1-241, MCA, is amended to read:

**"31-1-241. Finance charge limitation.** (1) The finance charge included in a retail installment contract must be at a rate agreed upon by the retail seller and the buyer, but the finance charge may not exceed 36% per annum.

(2) The finance charge included in a retail charge account agreement must be at a rate agreed upon by the retail seller and the buyer, but the finance charge may not exceed 36% per annum.

(3) The finance charge must be computed from month to month (which need not be a calendar month) or over another regular billing cycle period by using either:

(a) the average daily balance in the account in the billing cycle period; or

(b) the ending balance of the account as of the last day of the billing cycle period less the amount of total purchases charged to the account during that billing cycle.

(4) A seller may change the terms of a revolving charge account whether or not the change is authorized by prior agreement. The seller shall give the buyer written notice of any change ~~in the billing cycle~~ *at least 45 days before* ~~prior to~~ the effective date of the change.

(5) If the retail seller increases the finance charge on a retail charge account agreement, then the increased rate may only be applied to the balance consisting of purchases on other charges incurred on or after the effective date of the increase.

(6) For purposes of determining the balance to which the increased rate applies, all payments may be considered to be applied to the balance existing prior to the change in rate until that balance is paid in full.

(7) If the finance charge determined pursuant to subsection (3) for a monthly period is less than 50 cents, a maximum finance charge not in excess of 50 cents may be charged and collected for the period."

**Section 11.** Section 31-1-242, MCA, is amended to read:

**"31-1-242. Refunds on prepayment.** ~~(1)~~ Notwithstanding *any other provision of law or terms* ~~the provisions~~ of any retail installment contract to the contrary, any buyer may prepay in full, at any time before maturity, the debt of any retail installment contract and ~~in so~~ *upon* paying ~~such~~ *the* debt ~~shall~~ *must* receive a refund credit ~~thereon~~ for ~~such~~ *the* anticipation of payments *on a precomputed contract or for any other unearned fees calculated by use of the actuarial method. The refund amount is the portion of the original finance charge that is applicable to all fully unexpired months in the contract as originally scheduled or, if deferred, as deferred, following the date of prepayment.*

~~(2) In a contract where the period of the contract does not exceed 61 months, the amount of such refund shall represent at least as great a proportion of the finance charge as the sum of the monthly time balances beginning 1 month after prepayment is made bears to the sum of all the monthly time balances under the schedule of payment in the contract. Where the amount of credit is less than $1, no refund need be made.~~

~~(3) In any contract where the period of the contract exceeds 61 months, the amount of such refund is the portion of the original finance charge that is applicable to all fully unexpired months in the contract as originally scheduled or, if deferred, as deferred, following the date of prepayment. For this purpose, the applicable charge is the charge that would have been earned for that period if the contract were not precomputed, by applying to the unpaid principal~~

~~balance, according to the actuarial method, the annual percentage rate disclosed pursuant to federal law, based on the assumption that all payments were made as originally scheduled.~~"

**Section 12. Department authorized to participate in nationwide licensing system for purposes of licensing sales finance companies — rulemaking.** (1) The department is authorized to participate in a nationwide licensing system for licensing purposes under this part and may require sales finance companies to apply for licensure in the manner and form that the department may direct.

(2) The department may establish requirements through rulemaking as necessary to comply with the protocols and procedures of a nationwide licensing system pertaining to fees, renewal dates, amending or surrendering a license, and any other activity necessary for participation in the nationwide licensing system.

(3) The department's portion of the licensing fees collected under this part must be deposited into the department's account in the state special revenue fund to be used for administering this part.

**Section 13. Codification instruction.** [Section 12] is intended to be codified as an integral part of Title 31, chapter 1, part 2, and the provisions of Title 31, chapter 1, part 2, apply to [section 12].

Approved March 5, 2013

# CHAPTER NO. 64

[HB 141]

AN ACT REVISING GAMBLING CONTROL LAWS; REVISING PRIZE AMOUNTS; CREATING LARGE-STAKES AND SMALL-STAKES TOURNAMENTS; AMENDING MACHINE PERMIT FEES; AMENDING SECTIONS 23-5-312, 23-5-317, 23-5-318, AND 23-5-612, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 23-5-312, MCA, is amended to read:

**"23-5-312. Prizes not to exceed ~~$300~~ *$800*.** (1) A prize for an individual live card game may not exceed the value of ~~$300~~ *$800*. Games may not be combined in any manner so as to increase the value of the ultimate prize awarded. Except during a tournament conducted under 23-5-317, all prizes must be awarded immediately upon completion of each hand.

(2) If a licensed operator conducts a promotional game of chance involving a live card game, the prize limit provided for in subsection (1) applies to prizes awarded as a result of the promotional game of chance."

**Section 2.** Section 23-5-317, MCA, is amended to read:

**"23-5-317. Tournaments — *large-stakes* — *small-stakes*.** ~~(1) Subject to the department's approval, a licensed operator who has a permit for placing at least 1 live card game table on the operator's premises may conduct up to 12 live card game tournaments a year on the operator's premises. Each tournament may be conducted for no more than 5 consecutive days. If an operator conducts more than one tournament a year, at least 7 days must lapse between the conclusion of one tournament and the beginning of the next tournament.~~

~~(2) (a) Before the start of a tournament, the operator shall submit to the department an application for a tournament permit. The permit application~~

~~must be accompanied by a $10 fee. The department shall retain the fee for administrative purposes.~~

~~(b) If a tournament is to be conducted on the premises of more than one licensed operator, each operator shall submit a permit application and processing fee. The permit is applied toward each operator's annual 12-tournament limit.~~

*(1) (a) A licensed operator who has a permit for placing at least one live card game table on the operator's premises may apply to the department for an annual large-stakes live card game tournament permit. A large-stakes tournament permit allows the operator to conduct up to 16 large-stakes tournaments a year on the operator's premises.*

*(b) The department shall charge an annual fee of $120 for a large-stakes tournament permit. The permit fee may not be prorated and must be retained by the department for administrative purposes.*

*(c) A large-stakes tournament may not be conducted for more than 5 consecutive days.*

*(d) The operator shall notify the department at least 5 days before the start of a large-stakes tournament. If a tournament will be conducted on the premises of more than one licensed operator, each operator shall notify the department at least 5 days before the start of the tournament. Except as provided in subsection (1)(f), each large-stakes tournament is counted toward each operator's annual 16-tournament limit.*

~~(c)~~*(e)* ~~A licensed~~ *An* operator *issued a large-stakes tournament permit* may participate ~~in~~ *with other large-stakes tournament permitholders to conduct* a progressive *large-stakes* ~~card game~~ tournament in which the ultimate prize is not awarded until the final round of the tournament is completed.

~~(d) At least 50% of the total of all entrance fees for any tournament that is represented as a charitable tournament must be paid to a charitable, educational, or recreational nonprofit organization.~~

~~(3) Permits for placement of additional live card game tables, as provided in 23-5-306, are not required for additional tables authorized under a tournament permit.~~

*(f) An operator issued a large-stakes tournament permit may conduct up to three charitable large-stakes tournaments a year that are not counted toward the operator's annual 16-tournament limit. The operator shall notify the department of the charitable tournament at least 5 days before the start of the tournament.*

*(g) An operator may charge an entry fee for a large-stakes tournament, which may include a fee to cover expenses incurred from conducting the tournament. The total amount paid by a participant to enter a large-stakes tournament, including any additional purchase of chips or other payment during the tournament, may not exceed $1,875. A participant in a large-stakes tournament who has been eliminated from competition during the tournament may reenter the tournament by paying an additional fee if the tournament rules allow the participant to reenter the tournament.*

*(h) The prize for a large-stakes tournament may include the right to participate in another tournament if the value of a seat in the higher-level tournament equals the value of the expected top prize for the tournament.*

*(2) (a) A licensed operator who has a permit for placing at least one live card game table on the operator's premises may apply to the department for an annual small-stakes live card game tournament permit. A small-stakes tournament*

*permit allows the operator to conduct daily small-stakes tournaments on the operator's premises.*

*(b) The department shall charge an annual fee of $500 for a small-stakes tournament permit. The permit fee may not be prorated and must be retained by the department for administrative purposes.*

*(c) An operator may charge an entry fee for a small-stakes tournament, which may include a fee to cover expenses incurred from conducting the tournament. The total amount paid by a participant to enter a small-stakes tournament may not exceed $80. A participant in a small-stakes tournament may not repurchase or add chips or reenter the tournament after elimination.*

*(d) A small-stakes tournament permitholder may place one additional live card table on the permitholder's premises, which may be used only for a small-stakes tournament. The tournament may be conducted on permitted card tables and the additional tournament card table.*

~~(4)~~*(3)* Tournament participants must be provided with a copy of the tournament rules before the start of ~~the~~ *a large-stakes or small-stakes* tournament. A copy of the rules must be posted in a conspicuous location in each area where the tournament is conducted.

*(4) Permits for the placement of additional live card game tables as provided in 23-5-306 are not required for:*

*(a) additional tables authorized under a large-stakes tournament permit; or*

*(b) an additional small-stakes tournament table authorized under subsection (2)(d).*

(5) A person must be present on the premises during ~~the~~ *a large-stakes or small-stakes* tournament to oversee the conduct of the card games and to settle disputes among players. This person may be a dealer licensed under 23-5-308.

(6) Only a dealer licensed under 23-5-308 may deal cards at a *large-stakes or small-stakes* poker or panguingue tournament.

~~(7) A licensed operator may charge a tournament participant an entry fee, which may include a fee to cover expenses incurred in conducting the tournament. A participant who has been eliminated from competition during the tournament may reenter the tournament by paying an additional fee if permitted to do so under tournament rules. A rake-off may not be taken during a tournament card game.~~

~~(8)~~*(7)* The face value of the chips used does not govern the value of the pot awarded at the end of the tournament.

*(8) At least 50% of the total amount of the entrance fees for any large-stakes or small-stakes tournament that is represented as a charitable tournament must be paid to a charitable, educational, or recreational nonprofit organization.*

~~(9) The prize for a tournament may be the right to participate in another tournament if the value of a seat in the higher-level tournament is equivalent to the value of the expected top prize for the tournament.~~

~~(10) The total amount paid by an individual to enter a tournament, including any additional purchase of chips or other payment during the tournament, may not exceed $2,500.~~

*(9) A rake-off may not be taken during a large-stakes or small-stakes tournament card game.*

~~(11)~~*(10)* The provisions of this part and the department rules governing live card games apply to live card games conducted as part of a tournament unless otherwise provided."

**Section 3.** Section 23-5-318, MCA, is amended to read:

**"23-5-318. Poker run defined — authorization — conditions.** (1) For the purposes of this section, "poker run" means a gambling activity involving a live poker card game conducted in the following manner:

(a) Each person pays valuable consideration to participate.

(b) A participant travels to designated locations and obtains a playing card at each location. Cards accumulated by the participant constitute a poker hand.

(c) After each participant has accumulated the required number of cards, the participants' poker hands are ranked as described in the poker run rules to determine the winner.

(2) It is lawful to conduct or participate in a poker run subject to the following conditions:

(a) Each participant must receive a copy of the rules for conducting the poker run before the poker run begins. The rules must include:

(i) the amount of the entry fee;

(ii) the type of poker game being played and ranking of poker hands;

(iii) the value of the prizes to be awarded;

(iv) a description of the locations where playing cards may be obtained; and

(v) the date and time during which the poker run will be conducted.

(b) The rules may provide for more than one winner of the ranked hands, with each winner receiving a prize, but a prize may not exceed ~~$300~~ *$800* in value.

(c) Except as provided in subsection (2)(d), all consideration paid to participate in a poker run must be expended on the prize or prizes.

(d) If a poker run is conducted by a nonprofit organization, as defined in 23-5-112, the organization may retain a portion of the total amount paid to participate."

**Section 4.** Section 23-5-612, MCA, is amended to read:

**"23-5-612. Machine permits — fees.** (1) The department, upon payment by the operator of the fee provided in subsection (2) and in conformance with rules adopted under this part, shall issue to the operator an annual permit for an approved video gambling machine.

(2) (a) The department shall charge an annual permit fee of ~~$220~~ *$240* for each video gambling machine permit. The fee must be prorated on a quarterly basis but may not be prorated to allow a permit to expire before June 30. The department may not grant a refund if the video gambling machine ceases operation before the permit expires.

(b) If the person holding the gambling operator's license for the premises in which the machine is located changes during the first quarter of the permit year and the new operator has received an operator's license and if a machine transfer processing fee of $25 per machine is paid to the department, the permit remains valid for the remainder of the permit year.

(3) The department shall deposit ~~$120~~ *$140* of the annual permit fee or for a prorated fee shall deposit ~~$90~~ *$105* for three quarters, ~~$60~~ *$70* for two quarters, and ~~$30~~ *$35* for one quarter collected under subsection (2)(a) and 100% of the machine transfer processing fee collected under subsection (2)(b) in the state special revenue fund for purposes of administering this part and for other purposes provided by law. The balance of the fee collected under subsection (2)(a) must be returned on a quarterly basis to the local government jurisdiction

in which the gambling machine is located. The local government portion of the fee is statutorily appropriated to the department, as provided in 17-7-502, for deposit in the local government treasury."

**Section 5. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective October 1, 2013.

(2) [Section 4 and this section] are effective July 1, 2013.

Approved March 5, 2013

# CHAPTER NO. 65

[HB 169]

AN ACT ALLOWING A LOCAL GOVERNING BODY TO USE OR MODIFY A GROWTH POLICY FOR THE PURPOSES OF COORDINATING AND COOPERATING WITH FEDERAL LAND MANAGEMENT AGENCIES; AND AMENDING SECTION 76-1-601, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Growth policy — use and amendment for coordination and cooperation with federal agencies.** (1) A local governing body may use a growth policy as a resource management plan for the purposes of establishing coordination or cooperating agency status with a federal land management agency.

(2) The governing body may amend the growth policy to include any elements required by a federal land management agency to establish coordination or cooperating agency status.

**Section 2.** Section 76-1-601, MCA, is amended to read:

**"76-1-601. Growth policy — contents.** (1) A growth policy may cover all or part of the jurisdictional area.

(2) The extent to which a growth policy addresses the elements listed in subsection (3) is at the full discretion of the governing body.

(3) A growth policy must include:

(a) community goals and objectives;

(b) maps and text describing an inventory of the existing characteristics and features of the jurisdictional area, including:

(i) land uses;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) public facilities;

(vii) natural resources;

(viii) sand and gravel resources; and

(ix) other characteristics and features proposed by the planning board and adopted by the governing bodies;

(c) projected trends for the life of the growth policy for each of the following elements:

(i) land use;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) natural resources; and

(vii) other elements proposed by the planning board and adopted by the governing bodies;

(d) a description of policies, regulations, and other measures to be implemented in order to achieve the goals and objectives established pursuant to subsection (3)(a);

(e) a strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges;

(f) an implementation strategy that includes:

(i) a timetable for implementing the growth policy;

(ii) a list of conditions that will lead to a revision of the growth policy; and

(iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if necessary;

(g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that explains:

(i) if a governing body is a city or town, how the governing body will coordinate and cooperate with the county in which the city or town is located on matters related to the growth policy;

(ii) if a governing body is a county, how the governing body will coordinate and cooperate with cities and towns located within the county's boundaries on matters related to the growth policy;

(h) a statement explaining how the governing bodies will:

(i) define the criteria in 76-3-608(3)(a); and

(ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in 76-3-608(3)(a);

(i) a statement explaining how public hearings regarding proposed subdivisions will be conducted; and

(j) an evaluation of the potential for fire and wildland fire in the jurisdictional area, including whether or not there is a need to:

(i) delineate the wildland-urban interface; and

(ii) adopt regulations requiring:

(A) defensible space around structures;

(B) adequate ingress and egress to and from structures and developments to facilitate fire suppression activities; and

(C) adequate water supply for fire protection.

(4) A growth policy may:

(a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth policy.

(b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;

(c) establish an infrastructure plan that, at a minimum, includes:

(i) projections, in maps and text, of the jurisdiction's growth in population and number of residential, commercial, and industrial units over the next 20 years;

(ii) for a city, a determination regarding if and how much of the city's growth is likely to take place outside of the city's existing jurisdictional area over the next 20 years and a plan of how the city will coordinate infrastructure planning with the county or counties where growth is likely to take place;

(iii) for a county, a plan of how the county will coordinate infrastructure planning with each of the cities that project growth outside of city boundaries and into the county's jurisdictional area over the next 20 years;

(iv) for cities, a land use map showing where projected growth will be guided and at what densities within city boundaries;

(v) for cities and counties, a land use map that designates infrastructure planning areas adjacent to cities showing where projected growth will be guided and at what densities;

(vi) using maps and text, a description of existing and future public facilities necessary to efficiently serve projected development and densities within infrastructure planning areas, including, whenever feasible, extending interconnected municipal street networks, sidewalks, trail systems, public transit facilities, and other municipal public facilities throughout the infrastructure planning area. For the purposes of this subsection (4)(c)(vi), public facilities include but are not limited to drinking water treatment and distribution facilities, sewer systems, wastewater treatment facilities, solid waste disposal facilities, parks and open space, schools, public access areas, roads, highways, bridges, and facilities for fire protection, law enforcement, and emergency services;

(vii) a description of proposed land use management techniques and incentives that will be adopted to promote development within cities and in an infrastructure planning area, including land use management techniques and incentives that address issues of housing affordability;

(viii) a description of how and where projected development inside municipal boundaries for cities and inside designated joint infrastructure planning areas for cities and counties could adversely impact:

(A) threatened or endangered wildlife and critical wildlife habitat and corridors;

(B) water available to agricultural water users and facilities;

(C) the ability of public facilities, including schools, to safely and efficiently service current residents and future growth;

(D) a local government's ability to provide adequate local services, including but not limited to emergency, fire, and police protection;

(E) the safety of people and property due to threats to public health and safety, including but not limited to wildfire, flooding, erosion, water pollution, hazardous wildlife interactions, and traffic hazards;

(F) natural resources, including but not limited to forest lands, mineral resources, sand and gravel resources, streams, rivers, lakes, wetlands, and ground water; and

(G) agricultural lands and agricultural production; and

(ix) a description of measures, including land use management techniques and incentives, that will be adopted to avoid, significantly reduce, or mitigate the adverse impacts identified under subsection (4)(c)(viii).

*(d) include any elements required by a federal land management agency in order for the governing body to establish coordination or cooperating agency status as provided in [section 1].*

(5) The planning board may propose and the governing bodies may adopt additional elements of a growth policy in order to fulfill the purpose of this chapter."

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 76, chapter 1, part 6, and the provisions of Title 76, chapter 1, part 6, apply to [section 1].

Approved March 5, 2013

# CHAPTER NO. 66

[HB 81]

AN ACT AUTHORIZING DEPOSIT OF A PERCENTAGE OF CERTAIN SECURITIES REGISTRATION, FILING, OR RENEWAL FEES FOR USE IN THE SECURITIES RESTITUTION ASSISTANCE FUND; AMENDING SECTIONS 30-10-115, 30-10-209, AND 30-10-1004, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 30-10-115, MCA, is amended to read:

**"30-10-115. Deposits to general fund — ~~exception~~ *exceptions.*** (1) ~~All~~ *Except as provided in subsection (2), all* fees and miscellaneous charges received by the commissioner pursuant to parts 1 through 3 of this chapter~~, except for notice filing fees described in 30-10-209(1)(d) and examination costs collected under 30-10-210,~~ must be deposited in the general fund.

(2) *(a)* All notice filing fees collected under 30-10-209(1)(d) and examination costs collected under 30-10-210 must be deposited in the state special revenue fund in an account to the credit of the state auditor's office. The funds allocated by this ~~section~~ *subsection (2)(a)* to the state special revenue account may be used only to defray the expenses of the state auditor's office in discharging its administrative and regulatory powers and duties in relation to notice filing under ~~33-10-209(1)(d)~~ *30-10-209(1)(d)* and examinations.

*(b)* Any ~~excess~~ fees *in excess of the amount required for the purposes listed in subsection (2)(a)* must be deposited in the general fund.

*(c) From [the effective date of this act] through June 30, 2017, 4.5% of the total fees collected annually under 30-10-209(1)(b) must be deposited in the securities restitution assistance fund provided for in 30-10-1004. The remainder must be deposited in the general fund. On or after July 1, 2017, all fees collected annually under 30-10-209(1)(b) must be deposited in the general fund.*"

**Section 2.** Section 30-10-209, MCA, is amended to read:

**"30-10-209. Fees.** The following fees must be paid in advance under the provisions of parts 1 through 3 of this chapter:

(1) (a) For the registration of securities by notification, coordination, or qualification or for notice filing of a federal covered security, there must be paid to the commissioner for the initial year of registration or notice filing a fee of $200 for the first $100,000 of initial issue or portion of the first $100,000 in this state, based on offering price, plus 1/10 of 1% for any excess over $100,000, with a maximum fee of $1,000.

(b) Each succeeding year, a registration of securities or a notice filing of a federal covered security may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and payment of a renewal fee to be computed at 1/10 of 1% of the aggregate offering price of the securities that are to be offered in this state during that year. The renewal fee may not be less than $200 or more than $1,000. The registration or the notice filing may be amended to increase the amount of securities to be offered.

(c) If a registrant or issuer of federal covered securities sells securities in excess of the aggregate amount registered for sale in this state or for which a notice filing has been submitted, the registrant or issuer may file an amendment to the registration statement or notice filing to include the excess sales. If the registrant or issuer of a federal covered security fails to file an amendment before the expiration date of the registration order or notice, the registrant or issuer shall pay a filing fee for the excess sales of three times the amount calculated in the manner specified in subsection (1)(b). Registration or notice of the excess securities is effective retroactively to the date of the existing registration or notice.

(d) Each series, portfolio, or other subdivision of an investment company or similar issuer is treated as a separate issuer of securities. The issuer shall pay a notice filing fee to be calculated as provided in subsections (1)(a) through (1)(c). The notice filing fee collected by the commissioner must be deposited in the state special revenue account provided for in 30-10-115. The issuer shall pay a fee of $50 for each filing made for the purpose of changing the name of a series, portfolio, or other subdivision of an investment company or similar issuer.

(2) (a) For registration of a broker-dealer or investment adviser, the fee is $200 for original registration and $200 for each annual renewal.

(b) For registration of a salesperson or investment adviser representative, the fee is $50 for original registration with each employer, $50 for each annual renewal, and $50 for each transfer. A salesperson who is registered as an investment adviser representative with a broker-dealer registered as an investment adviser is not required to pay the $50 fee to register as an investment adviser representative.

(c) For a federal covered adviser, the fee is $200 for the initial notice filing and $200 for each annual renewal.

(3) For certified or uncertified copies of any documents filed with the commissioner, the fee is the cost to the department.

(4) For a request for an exemption under 30-10-105(15), the fee must be established by the commissioner by rule. For a request for any other exemption or an exception to the provisions of parts 1 through 3 of this chapter, the fee is $50.

(5) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 may be refunded.

(6) *(a)* Except ~~for notice filing fees established in subsection (1)(d) and examination costs collected under 30-10-210,~~ *as provided in subsection (6)(b),* all fees, miscellaneous charges, fines, and penalties collected by the commissioner pursuant to parts 1 through 3 of this chapter and the rules adopted under parts 1 through 3 of this chapter must be deposited in the general fund.

*(b) From [the effective date of this act] through June 30, 2017, the fees collected under subsection (1)(b), the notice filing fees provided for in subsection (1)(d), and the amounts collected for examination costs under 30-10-210 are subject to deposit as provided in 30-10-115(2). On or after July 1, 2017, the notice*

filing fees provided for in subsection (1)(d) and the amounts collected for examination costs under 30-10-210 are subject to deposit as provided in 30-10-115(2)."

**Section 3.** Section 30-10-1004, MCA, is amended to read:

**"30-10-1004. (Temporary) Creation of securities restitution assistance fund.** (1) There is an account in the state special revenue fund to the credit of the commissioner for use only for securities restitution assistance. This account may be referred to as the "securities restitution assistance fund" or "fund". The money in the fund is statutorily appropriated, as provided in 17-7-502, to the commissioner for the purposes provided in subsection (4) of this section.

(2) (a) The fund consists of amounts received by the commissioner from*:*

*(i)* persons who have committed securities violations ~~and from~~*;*

*(ii)* persons who have voluntarily contributed to the fund*; and*

*(iii) a portion of fees collected under 30-10-209(1)(b) as provided in 30-10-209(6)(b).*

(b) Amounts received by the commissioner for deposit in the fund do not include administrative penalties or fines imposed under this chapter and as referenced under the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

(c) The amounts received for the fund may not be placed in the general fund.

(3) Amounts received by the commissioner for deposit in the fund must be promptly turned over to the state treasurer for deposit in the fund created under subsection (1).

(4) The fund may be used by the commissioner only to pay awards of restitution assistance under this part. (Terminates June 30, 2017—sec. 16, Ch. 58, L. 2011.)"

**Section 4. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved March 7, 2013

## CHAPTER NO. 67

[HB 28]

AN ACT REVISING THE FETAL, INFANT, AND CHILD MORTALITY PREVENTION ACT TO ALLOW FOR REVIEW OF MATERNAL MORTALITY; ESTABLISHING MEMBERSHIP REQUIREMENTS FOR TEAMS REVIEWING MATERNAL DEATHS; REVISING CONFIDENTIALITY REQUIREMENTS; AND AMENDING SECTIONS 50-16-522, 50-16-804, 50-16-805, 50-19-401, 50-19-402, 50-19-403, AND 50-19-404, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 50-16-522, MCA, is amended to read:

**"50-16-522. Representative of deceased patient.** ~~A~~ *Except as provided in 50-19-402, a* personal representative of a deceased patient may exercise all of the deceased patient's rights under this part. If there is no personal

representative or upon discharge of the personal representative, a deceased patient's rights under this part may be exercised by the surviving spouse, a parent, an adult child, an adult sibling, or any other person who is authorized by law to act for the deceased patient."

**Section 2.** Section 50-16-804, MCA, is amended to read:

**"50-16-804. Representative of deceased patient's estate.** ~~A~~ *Except as provided in 50-19-402, a* personal representative of a deceased patient's estate may exercise all of the deceased patient's rights under this part. If there is no personal representative or upon discharge of the personal representative, a deceased patient's rights under this part may be exercised by the surviving spouse, a parent, an adult child, an adult sibling, or any other person who is authorized by law to act for the deceased person."

**Section 3.** Section 50-16-805, MCA, is amended to read:

**"50-16-805. Disclosure of information ~~for workers' compensation and occupational disease claims and law enforcement purposes~~ *allowed for certain purposes.*** (1) To the extent provided in 39-71-604 and 50-16-527, a signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, by the health care provider.

(2) A health care provider may disclose health care information about an individual for law enforcement purposes if the disclosure is to:

(a) federal, state, or local law enforcement authorities to the extent required by law; or

(b) a law enforcement officer about the general physical condition of a patient being treated in a health care facility if the patient was injured by the possible criminal act of another.

*(3) A health care provider may disclose health care information to a fetal, infant, child, and maternal mortality review team for the purposes of 50-19-402.*"

**Section 4.** Section 50-19-401, MCA, is amended to read:

**"50-19-401. Short title.** This part may be cited as the "Fetal, Infant, ~~and~~ Child*, and Maternal* Mortality Prevention Act"."

**Section 5.** Section 50-19-402, MCA, is amended to read:

**"50-19-402. Statement of policy — access to information.** (1) The prevention of fetal, infant, ~~and~~ child*, and maternal* deaths is both the policy of the state of Montana and a community responsibility. Many community professionals have expertise that can be used to promote the health, safety, and welfare of fetuses, infants, ~~and~~ children*, and postnatal women*. The use of these professionals in reviewing fetal, infant, ~~and~~ child*, and maternal* deaths can lead to a greater understanding of the causes of death and the methods of preventing deaths. It is the intent of the legislature to encourage local communities to establish voluntary multidisciplinary fetal, infant, ~~and~~ child*, and maternal* mortality review teams to study the incidence and causes of fetal, infant, ~~and~~ child*, and maternal* deaths and *to* make recommendations for community or statewide change, if appropriate, that may help prevent future deaths.

(2) *(a)* A health care provider may disclose information about a patient without the patient's authorization or without the authorization of the representative of a patient who is deceased upon request of a local fetal, infant, ~~and~~ child*, and maternal* mortality review team. The review team may request and may receive information from*:*

*(i)* a county attorney as provided in 44-5-303(4)~~, from~~*;*

*(ii)* a tribal attorney~~, and from~~*; and*

*(iii)* a health care provider as permitted in*:*

*(A)* Title 50, chapter 16, part 5~~,~~ *or 8;* or

*(B)* applicable federal law.

*(b)* The review team shall maintain the confidentiality of the information received.

(3) *(a)* The local fetal, infant, ~~and~~ child*, and maternal* mortality review team may:

~~(a)~~*(i)* perform an indepth analysis of fetal, infant, and child deaths~~, including a review of records available by law~~;

*(ii) perform an indepth analysis of maternal deaths that occur within a year of the time a woman gave birth;*

~~(b)~~*(iii)* compile statistics of fetal, infant, ~~and~~ child*, and maternal* mortality and communicate the statistics to the department of public health and human services for inclusion in statistical reports;

~~(c)~~*(iv)* analyze the preventable causes of fetal, infant, ~~and~~ child*, and maternal* deaths, including child abuse and neglect *and postpartum complications*; and

~~(d)~~*(v)* recommend measures to prevent future fetal, infant, ~~and~~ child*, and maternal* deaths.

*(b) The analysis authorized under this subsection (3) may include a review of records available by law.*

(4) A local fetal, infant, ~~and~~ child*, and maternal* mortality review team may not review deaths ~~of~~ *under this section if:*

*(a) the deaths involve* fetuses, infants, ~~or~~ children*, or women* who are Indians ~~and which deaths~~*;*

*(b) the deaths* occur within the boundaries of an Indian reservation ~~with a~~*; and*

*(c) the* tribal government ~~that~~ opposes the review."

**Section 6.** Section 50-19-403, MCA, is amended to read:

**"50-19-403. Local fetal, infant, ~~and~~ child*, and maternal* mortality review team.** (1) A local fetal, infant, ~~and~~ child*, and maternal* mortality review team must be approved by the department of public health and human services. Approval may be given if:

(a) the county health department, a tribal health department~~,~~ if the tribal government agrees, or both are represented on the team and the plan provided for in subsection ~~(1)(d)~~ *(1)(e)* includes the roles of the county health department, tribal health department, or both;

(b) a lead person has been designated for the purposes of management of the review team;

(c) at least five of the individuals listed in subsection (2) have agreed to serve on the review team; ~~and~~

*(d) a team reviewing a maternal death includes at least one obstetrician, one family practice physician, or one physician assistant whose duties and delegation agreement includes obstetrical care; and*

~~(d)~~*(e)* ~~a plan has been developed by~~ the team *has developed a plan* that includes, at a minimum, operating policies of the review team covering collection and destruction of information obtained pursuant to 44-5-303(4) or 50-19-402(2).

(2) If a local fetal, infant, ~~and~~ child, *and maternal* mortality review team is established, the team must be multidisciplinary and may include only:

(a) the county attorney or a designee;

(b) a law enforcement officer;

(c) the medical examiner or coroner for the jurisdiction;

(d) a physician;

(e) a school district representative;

(f) a representative of the local health department;

(g) a representative from a tribal health department, appointed by the tribal government;

(h) a representative from a neighboring county or tribal government if there is an agreement to review deaths for that county or tribe;

(i) a representative of the department of public health and human services;

(j) a forensic pathologist;

(k) a pediatrician;

(l) a family practice physician;

(m) an obstetrician;

(n) a nurse practitioner;

(o) a public health nurse;

(p) a mental health professional;

(q) a local trauma coordinator;

(r) a representative of the bureau of Indian affairs or the Indian health service, or both, who is located within the county; and

(s) representatives of the following:

(i) local emergency medical services;

(ii) a local hospital;

(iii) a local hospital medical records department;

(iv) a local governmental fire agency organized under Title 7, chapter 33; and

(v) the local registrar.

(3) The designated lead person for the team shall submit membership lists to the department of public health and human services annually."

**Section 7.** Section 50-19-404, MCA, is amended to read:

**"50-19-404. Records — confidentiality.** Material and information obtained by a local fetal, infant, ~~and~~ child, *and maternal* mortality review team are not subject to disclosure under the public records law. Material and information obtained by a ~~local fetal, infant, and child mortality~~ review team are not subject to subpoena."

**Section 8. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Approved March 18, 2013

# CHAPTER NO. 68

[HB 123]

AN ACT REVISING DEVELOPMENTAL DISABILITY LAWS TO UPDATE TERMINOLOGY; REPLACING THE TERM "MENTAL RETARDATION" WITH THE TERM "INTELLECTUAL DISABILITY"; AMENDING SECTIONS 15-67-101, 33-22-304, 33-22-506, 33-30-1003, 33-30-1004, 39-30-103, 50-8-101, 53-6-401, 53-6-402, 53-20-102, 53-20-127, 53-20-128, 53-20-141, 53-20-142, 53-20-146, 53-20-148, 53-20-161, 53-20-164, 53-20-202, AND 53-21-102, MCA; AND PROVIDING FOR CONTINGENT VOIDNESS.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-67-101, MCA, is amended to read:

**"15-67-101. (Temporary) Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Calendar quarter" means the period of 3 consecutive months ending March 31, June 30, September 30, or December 31.

(2) "Department" means the department of revenue established in 2-15-1301.

(3) "Intermediate care facility" or "facility" means an intermediate care facility for the developmentally disabled licensed pursuant to 50-5-238 or an intermediate care facility for the ~~mentally retarded~~ *intellectually disabled* that is in compliance with the federal standards provided in 42 CFR, part 483, subpart I, for medicaid conditions of participation.

(4) (a) "Quarterly revenue" means all revenue received during a calendar quarter by a facility operating in Montana for providing for client care.

(b) For facilities operated by the state, the term means total expenditures for the quarter.

(5) "Report" means the report of resident bed days required in 15-67-201.

(6) "Resident" means an individual obtaining care in an intermediate care facility.

(7) "Resident bed day" means each 24-hour period that a resident in an intermediate care facility is present in the facility and receiving care or in which a bed is held for a resident while the resident is on temporary leave from the facility. The term includes all benefit days as defined for medicare reporting purposes in section 242.1 of Publication 12, the Skilled Nursing Facility Manual, published by the centers for medicare and medicaid services, regardless of the source of payment.

(8) "Utilization fee" or "fee" means the fee required to be paid for each resident bed day in an intermediate care facility, as provided in 15-67-102. (Void on occurrence of contingency—sec. 17, Ch. 531, L. 2003—see chapter compiler's comment.)"

**Section 2.** Section 33-22-304, MCA, is amended to read:

**"33-22-304. Continuation of coverage for individuals with disabilities — individual contracts.** (1) An individual hospital or medical expense insurance policy or hospital or medical service plan contract delivered or issued for delivery in this state that provides that coverage of a dependent child terminates upon attainment of the limiting age for dependent children specified in the policy or contract must also provide in substance that attainment of the limiting age may not operate to terminate the coverage of the child while the child is and continues to be both incapable of self-sustaining

employment by reason of ~~mental retardation~~ *intellectual disability* or physical disability and chiefly dependent upon the policyholder or subscriber for support and maintenance. Proof of ~~retardation or the disability~~ *intellectual disability or physical disability* and dependency must be furnished to the insurer or hospital or medical service plan corporation by the policyholder or subscriber within 31 days of the child's attainment of the limiting age and subsequently as may be required by the insurer or corporation. Proof may not be required more frequently than annually after the 2-year period following the child's attainment of the limiting age.

(2) Notwithstanding any other exemption or contrary law, the provisions of this section have equal application to hospital or medical expense insurance policies and hospital and medical service plan contracts."

**Section 3.** Section 33-22-506, MCA, is amended to read:

**"33-22-506. Continuation of coverage for persons with disabilities — group contracts.** (1) A group hospital or medical expense insurance policy or hospital or medical service plan contract delivered or issued for delivery in this state that provides that coverage of a dependent child of an employee or other member of the covered group terminates upon attainment of the limiting age for dependent children specified in the policy or contract must also provide in substance that attainment of the limiting age may not operate to terminate the coverage of the child while the child is and continues to be both incapable of self-sustaining employment by reason of ~~mental retardation~~ *intellectual disability* or physical disability and chiefly dependent upon the employee or member for support and maintenance. Proof of ~~retardation or the disability~~ *intellectual disability or physical disability* and dependency must be furnished to the insurer or hospital or medical service plan corporation by the employee or member within 31 days of the child's attainment of the limiting age and subsequently as may be required by the insurer or corporation. Proof may not be required more frequently than annually after the 2-year period following the child's attainment of the limiting age.

(2) Notwithstanding any other exemption or contrary law, the provisions of this section have equal application to hospital or medical expense insurance policies and hospital and medical service plan contracts."

**Section 4.** Section 33-30-1003, MCA, is amended to read:

**"33-30-1003. Continuation of coverage for persons with disabilities — individual contracts.** (1) An individual hospital or medical service plan contract delivered or issued for delivery in this state that provides that coverage of a dependent child terminates upon attainment of the limiting age for dependent children specified in the contract must also provide in substance that attainment of the limiting age may not operate to terminate the coverage of the child while the child is and continues to be both incapable of self-sustaining employment by reason of ~~mental retardation~~ *intellectual disability* or physical disability and chiefly dependent upon the subscriber for support and maintenance. Proof of ~~retardation or the disability~~ *intellectual disability or physical disability* and dependency must be furnished to the hospital or medical service plan corporation by the subscriber within 31 days of the child's attainment of the limiting age and subsequently as may be required by the corporation. Proof may not be required more frequently than annually after the 2-year period following the child's attainment of the limiting age.

(2) Notwithstanding any other exemption or contrary law, the provisions of this section have equal application to hospital or medical expense insurance policies and hospital and medical service plan contracts."

**Section 5.** Section 33-30-1004, MCA, is amended to read:

**"33-30-1004. Continuation of coverage for persons with disabilities — group contracts.** (1) A group hospital or medical service plan contract delivered or issued for delivery in this state that provides that coverage of a dependent child of an employee or other member of the covered group terminates upon attainment of the limiting age for dependent children specified in the contract must also provide in substance that attainment of the limiting age may not operate to terminate the coverage of the child while the child is and continues to be both incapable of self-sustaining employment by reason of ~~mental retardation~~ *intellectual disability* or physical disability and chiefly dependent upon the employee or member for support and maintenance. Proof of ~~the retardation or disability~~ *intellectual disability or physical disability* and dependency must be furnished to the hospital or medical service plan corporation by the employee or member within 31 days of the child's attainment of the limiting age and subsequently as may be required by the corporation. Proof may not be required more frequently than annually after the 2-year period following the child's attainment of the limiting age.

(2) Notwithstanding any other exemption or contrary law, the provisions of this section have equal application to hospital or medical expense insurance policies and hospital and medical service plan contracts."

**Section 6.** Section 39-30-103, MCA, is amended to read:

**"39-30-103. Definitions.** For the purposes of this chapter, the following definitions apply:

(1) "Eligible spouse" means the spouse of a person with a disability determined by the department of public health and human services to have a 100% disability and who is unable to use the employment preference because of the person's disability.

(2) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the ranks of the current employees of:

(i) a department, as defined in 2-15-102, for a position within the executive branch;

(ii) a legislative agency for a position within the legislative branch;

(iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;

(iv) a city or town for a municipal position, including a city or municipal court position; and

(v) a county for a county position, including a justice's court position.

(b) A personnel action limited to current employees of a specific public entity identified in this subsection (2), current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in this subsection (2), or current participants in a federally authorized employment program is not an initial hiring.

(3) (a) "Mental impairment" means:

(i) a disability attributable to ~~mental retardation~~ *intellectual disability*, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to ~~mental retardation~~ *intellectual disability* and requiring treatment similar to that required by ~~mentally retarded~~ *intellectually disabled* individuals; or

(ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge.

(4) "Person with a disability" means an individual certified by the department of public health and human services to have a physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability to obtain, retain, or advance in employment.

(5) "Position" means a position occupied by a permanent or seasonal employee as defined in 2-18-101 for the state or a position occupied by a similar permanent or seasonal employee with a public employer other than the state. However, the term does not include:

(a) a position occupied by a temporary employee as defined in 2-18-101 for the state or a similar temporary employee with a public employer other than the state;

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal adviser, court reporter, or administrative, legislative, or other immediate or first-line aide;

(d) appointment by an elected official to a body such as a board, commission, committee, or council;

(e) appointment by an elected official to a public office if the appointment is provided for by law;

(f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government;

(g) engagement as an independent contractor or employment by an independent contractor; or

(h) a position occupied by a student intern, as defined in 2-18-101.

(6) (a) "Public employer" means:

(i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of Montana; and

(ii) any county, city, or town.

(b) The term does not include a school district, a vocational-technical program, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

(7) "Substantially equal qualifications" means the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons."

**Section 7.** Section 50-8-101, MCA, is amended to read:

**"50-8-101. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Facility" means:

(a) nonmedical facilities including:

(i) mental health transitional living facilities; and

(ii) inpatient freestanding or intermediate transitional living facilities for alcohol or drug treatment or emergency detoxification;

(b) community homes for persons with developmental disabilities, community homes for physically disabled persons, and adult foster family care homes;

(c) youth care facilities;

(d) public accommodations, including roominghouses, retirement homes, hotels, and motels;

(e) health care facilities or services, including hospitals, skilled and intermediate nursing home services, and intermediate care nursing home services for the ~~mentally retarded~~ *intellectually disabled*;

(f) freestanding medical facilities or care, including infirmaries, kidney treatment centers, and home health agencies; and

(g) assisted living facilities.

(3) "Inspecting authority" means the department or agency authorized by statute to perform a given inspection necessary for certification for licensure.

(4) "Licensing agency" means the agency that is authorized by statute to issue the license."

**Section 8.** Section 53-6-401, MCA, is amended to read:

**"53-6-401. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Home and community-based services" means, as provided for in section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n(c), and any regulations implementing that statute, long-term medical, habilitative, rehabilitative, and other services provided in personal residences or in community settings and funded by the department with medicaid money.

(3) "Level-of-care determination" means an assessment of a person and the resulting determination establishing whether long-term care facility services to be provided to the person are appropriate to meet the health care and related circumstances and needs of the person.

(4) "Long-term care facility" means a facility that is certified by the department, as provided in 53-6-106, to provide skilled or intermediate nursing care services, including intermediate nursing care services for persons with developmental disabilities or, for the purposes of implementation of medicaid-funded programs of home and community-based services, that is recognized by the U.S. department of health and human services to be an institutional setting from which persons may be diverted through the receipt of home and community-based services.

(5) "Long-term care preadmission screening" means, in accordance with section 1919 of Title XIX of the Social Security Act, 42 U.S.C. 1396r, a process conducted according to a specific set of criteria for determining whether a person

with ~~mental retardation~~ *intellectual disability* or mental illness may be admitted to a long-term care facility.

(6) "Persons with disabilities or persons who are elderly" means, for purposes of establishing home and community-based services, those categories of persons who are elderly and disabled as defined in accordance with section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n."

**Section 9.** Section 53-6-402, MCA, is amended to read:

**"53-6-402. Medicaid-funded home and community-based services — waivers — funding limitations — populations — services — providers — long-term care preadmission screening — powers and duties of department — rulemaking authority.** (1) The department may obtain waivers of federal medicaid law in accordance with section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n, and administer programs of home and community-based services funded with medicaid money for categories of persons with disabilities or persons who are elderly.

(2) The department may seek and obtain any necessary authorization provided under federal law to implement home and community-based services for seriously emotionally disturbed children pursuant to a waiver of federal law as permitted by section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n(c). The home and community-based services system ~~must~~ *shall* strive to incorporate the following components:

(a) flexibility in design of the system to attempt to meet individual needs;

(b) local involvement in development and administration;

(c) encouragement of culturally sensitive and appropriately trained mental health providers;

(d) accountability of recipients and providers; and

(e) development of a system consistent with the state policy as provided in 52-2-301.

(3) The department may, subject to the terms and conditions of a federal waiver of law, administer programs of home and community-based services to serve persons with disabilities or persons who are elderly who meet the level of care requirements for one of the categories of long-term care services that may be funded with medicaid money. Persons with disabilities include persons with physical disabilities, chronic mental illness, developmental disabilities, brain injury, or other characteristics and needs recognized as appropriate populations by the U.S. department of health and human services. Programs may serve combinations of populations and subsets of populations that are appropriate subjects for a particular program of services.

(4) The provision of services to a specific population through a home and community-based services program must be less costly in total medicaid funding than serving that population through the categories of long-term care facility services that the specific population would be eligible to receive otherwise.

(5) The department may initiate and operate a home and community-based services program to more efficiently apply available state general fund money, other available state and local public and private money, and federal money to the development and maintenance of medicaid-funded programs of health care and related services and to structure those programs for more efficient and effective delivery to specific populations.

(6) The department, in establishing programs of home and community-based services, shall administer the expenditures for each program

within the available state spending authority that may be applied to that program. In establishing covered services for a home and community-based services program, the department shall establish those services in a manner to ensure that the resulting expenditures remain within the available funding for that program. To the extent permitted under federal law, the department may adopt financial participation requirements for enrollees in a home and community-based services program to foster appropriate utilization of services among enrollees and to maintain fiscal accountability of the program. The department may adopt financial participation requirements that may include but are not limited to copayments, payment of monthly or yearly enrollment fees, or deductibles. The financial participation requirements adopted by the department may vary among the various home and community-based services programs. The department, as necessary, may further limit enrollment in programs, reduce the per capita expenditures available to enrollees, and modify and reduce the types and amounts of services available through a home and community-based services program when the department determines that expenditures for a program are reasonably expected to exceed the available spending authority.

(7) The department may consider the following populations or subsets of populations for home and community-based services programs:

(a) persons with developmental disabilities who need, on an ongoing or frequent basis, habilitative and other specialized and supportive developmental disabilities services to meet their needs of daily living and to maintain the persons in community-integrated residential and day or work situations;

(b) persons with developmental disabilities who are 18 years of age and older and who are in need of habilitative and other specialized and supportive developmental disabilities services necessary to maintain the persons in personal residential situations and in integrated work opportunities;

(c) persons 18 years of age and older with developmental disabilities and chronic mental illness who are in need of mental health services in addition to habilitative and other developmental disabilities services necessary to meet their needs of daily living, to treat the their mental illness, and to maintain the persons in community-integrated residential and day or work situations;

(d) children under 21 years of age who are seriously emotionally disturbed and in need of mental health and other specialized and supportive services to treat their mental illness and to maintain the children with their families or in other community-integrated residential situations;

(e) persons 18 years of age and older with brain injuries who are in need, on an ongoing or frequent basis, of habilitative and other specialized and supportive services to meet their needs of daily living and to maintain the persons in personal or other community-integrated residential situations;

(f) persons 18 years of age and older with physical disabilities who are in need, on an ongoing or frequent basis, of specialized health services and personal assistance and other supportive services necessary to meet their needs of daily living and to maintain the persons in personal or other community-integrated residential situations;

(g) persons with human immunodeficiency virus (HIV) infection who are in need of specialized health services and intensive pharmaceutical therapeutic regimens for abatement and control of the HIV infection and related symptoms in order to maintain the persons in personal residential situations;

(h) persons with chronic mental illness who suffer from serious chemical dependency and who are in need of intensive mental health and chemical dependency services to maintain the persons in personal or other community-integrated residential situations;

(i) persons 65 years of age and older who are in need, on an ongoing or frequent basis, of health services, personal assistance, and other supportive services necessary to meet their needs of daily living and to maintain the persons in personal or other community-integrated residential situations; or

(j) persons 18 years of age and older with chronic mental illness who are in need, on an ongoing or frequent basis, of specialized health services and other supportive services necessary to meet their needs of daily living and to maintain the persons in personal or other community-integrated residential situations.

(8) For each authorized program of home and community-based services, the department shall set limits on overall expenditures and enrollment and limit expenditures as necessary to conform with the requirements of section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n, and the conditions placed upon approval of a program authorized through a waiver of federal law by the U.S. department of health and human services.

(9) A home and community-based services program may include any of the following categories of services as determined by the department to be appropriate for the population or populations to be served and as approved by the U.S. department of health and human services:

(a) case management services;

(b) homemaker services;

(c) home health aide services;

(d) personal care services;

(e) adult day health services;

(f) habilitation services;

(g) respite care services; and

(h) other cost-effective services appropriate for maintaining the health and well-being of persons and to avoid institutionalization of persons.

(10) Subject to the approval of the U.S. department of health and human services, the department may establish appropriate programs of home and community-based services under this section in conjunction with programs that have limited pools of providers or with managed care arrangements, as implemented through 53-6-116 and as authorized under section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n, or in conjunction with a health insurance flexibility and accountability demonstration initiative or other demonstration project as authorized under section 1115 of Title XI of the Social Security Act, 42 U.S.C. 1315.

(11) (a) The department may conduct long-term care preadmission screenings in accordance with section 1919 of Title XIX of the Social Security Act, 42 U.S.C. 1396r.

(b) Long-term care preadmission screenings are required for all persons seeking admission to a long-term care facility.

(c) A person determined through a long-term care preadmission screening to have ~~mental retardation~~ *an intellectual disability* or a mental illness may not reside in a long-term care facility unless the person meets the long-term care level-of-care determination applicable to the type of facility and is determined to have a primary need for the care provided through the facility.

(d) The long-term care preadmission screenings must include a determination of whether the person needs specialized ~~mental retardation~~ *intellectual disability* or mental health treatment while residing in the facility.

(12) The department may adopt rules necessary to implement the long-term care preadmission screening process as required by section 1919 of Title XIX of the Social Security Act, 42 U.S.C. 1396r. The rules must provide criteria, procedures, schedules, delegations of responsibilities, and other requirements necessary to implement long-term care preadmission screenings.

(13) The department shall adopt rules necessary for the implementation of each program of home and community-based services. The rules may include but are not limited to the following:

(a) the populations or subsets of populations, as provided in subsection (7), to be served in each program;

(b) limits on enrollment;

(c) limits on per capita expenditures;

(d) requirements and limitations for service costs and expenditures;

(e) eligibility categories criteria, requirements, and related measures;

(f) designation and description of the types and features of the particular services provided for under subsection (9);

(g) provider requirements and reimbursement;

(h) financial participation requirements for enrollees as provided in subsection (6);

(i) utilization measures;

(j) measures to ensure the appropriateness and quality of services to be delivered; and

(k) other appropriate provisions necessary to the administration of the program and the delivery of services in accordance with 42 U.S.C. 1396n and any conditions placed upon approval of a program by the U.S. department of health and human services."

**Section 10.** Section 53-20-102, MCA, is amended to read:

**"53-20-102. Definitions.** As used in this part, the following definitions apply:

(1) (a) "Available" means:

(i) that services of an identified provider or providers have been found to be necessary and appropriate for the habilitation of a specific person by the person's individual treatment planning team;

(ii) that funding for the services has been identified and committed for the person's immediate use; and

(iii) that all providers have offered the necessary services for the person's immediate use.

(b) A service is not available simply because similar services are offered by one or more providers in one or more locations to other individuals or because the person has been placed on a waiting list for services or funding.

(2) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(3) "Case manager" means a person who is responsible for service coordination, planning, and crisis intervention for persons who are eligible for community-based developmental disability services from the department.

(4) "Community treatment plan" means a comprehensive, individualized plan of care that addresses the habilitation needs of and the risks posed by the behaviors of a respondent who is found to be seriously developmentally disabled.

(5) "Community-based facilities" or "community-based services" means those facilities and services that are available for the evaluation, treatment, and habilitation of persons with developmental disabilities in a community setting.

(6) "Court" means a district court of the state of Montana.

(7) "Developmental disabilities professional" means a licensed psychologist, a licensed psychiatrist, or a person with a master's degree in psychology, who:

(a) has training and experience in psychometric testing and evaluation;

(b) has experience in the field of developmental disabilities; and

(c) is certified, as provided in 53-20-106, by the department of public health and human services.

(8) "Developmental disability" means a disability that:

(a) is attributable to ~~mental retardation~~ *intellectual disability*, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to ~~mental retardation~~ *intellectual disability*;

(b) requires treatment similar to that required by ~~mentally retarded~~ *intellectually disabled* individuals;

(c) originated before the individual attained age 18;

(d) has continued or can be expected to continue indefinitely; and

(e) results in the person having a substantial disability.

(9) "Habilitation" means the process by which a person who has a developmental disability is assisted in acquiring and maintaining those life skills that enable the person to cope more effectively with personal needs and the demands of the environment and in raising the level of the person's physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

(10) "Individual treatment planning team" means the interdisciplinary team of persons involved in and responsible for the habilitation of a resident. The resident is a member of the team.

(11) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(12) "Qualified ~~mental retardation~~ *intellectual disability* professional" means a professional program staff person for the residential facility who the department of public health and human services determines meets the professional requirements necessary for federal certification of the facility.

(13) "Resident" means a person committed to a residential facility.

(14) "Residential facility" or "facility" means the Montana developmental center.

(15) "Residential facility screening team" means a team of persons, appointed as provided in 53-20-133, that is responsible for screening a respondent to determine if the commitment of the respondent to a residential facility or imposition of a community treatment plan is appropriate.

(16) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously developmentally disabled and for whom the petition requests commitment to a residential facility or imposition of a community treatment plan.

(17) "Responsible person" means a person willing and able to assume responsibility for a person who is seriously developmentally disabled or alleged to be seriously developmentally disabled.

(18) "Seriously developmentally disabled" means a person who:

(a) has a developmental disability;

(b) is impaired in cognitive functioning; and

(c) cannot be safely and effectively habilitated through voluntary use of community-based services because of behaviors that pose an imminent risk of serious harm to self or others."

**Section 11.** Section 53-20-127, MCA, is amended to read:

**"53-20-127. Transfer to another facility — release to community-based alternative — hearing.** (1) If, at any time during the period for which a resident is committed to a residential facility for an extended period of habilitation and treatment, the qualified ~~mental retardation~~ *intellectual disability* professional responsible for the resident's habilitation decides that the resident no longer requires placement in a residential facility and that there exist sufficient community-based alternatives to provide adequate treatment and habilitation for the resident and adequate protection of the life and physical safety of the resident and others, the qualified ~~mental retardation~~ *intellectual disability* professional may release the resident to the community-based alternative.

(2) Notice of the proposed release must be sent at least 15 days prior to the date of release to:

(a) the resident;

(b) the resident's parents or guardian;

(c) the attorney who most recently represented the resident, if any;

(d) the responsible person appointed by the court, if any;

(e) the resident's advocate, if any; and

(f) the court that ordered the commitment.

(3) If a party that was notified objects to the release, the party may petition the court for a hearing to determine whether the release should be allowed. The hearing must comply with the procedures set forth in 53-20-125. The court may on its own initiative inquire concerning the propriety of the release.

(4) A resident may be transferred without the notice provided in subsection (2) to a hospital or other medical facility for necessary medical treatment or to a mental health facility for emergency treatment provided that the emergency transfer complies with the statutory requirements for emergency detention of the mentally ill. Within 24 hours of an emergency medical or psychiatric transfer, notice must be given to the parents or guardian of the resident, the responsible person appointed by the court, if any, and the court.

(5) If a person is committed to a residential facility for an extended course of habilitation without a hearing and if subsequent to commitment one of the parties who could have requested a hearing learns that an alternative course of treatment is available that is more suitable to the needs of the resident, the party may request the qualified ~~mental retardation~~ *intellectual disability* professional responsible for the resident's habilitation to release the resident to the alternative if it is a community-based alternative. A release must comply with the requirements of subsections (1) through (4). If the qualified ~~mental retardation~~ *intellectual disability* professional in charge of the resident refuses to authorize the release, the party may petition the court for a hearing to

determine whether the resident's commitment should be continued. The hearing must comply with the procedures set forth in 53-20-125."

**Section 12.** Section 53-20-128, MCA, is amended to read:

**"53-20-128. Recommitment — extension of community treatment plan.** (1) The qualified ~~mental retardation~~ *intellectual disability* professional responsible for a resident's habilitation or the case manager responsible for habilitation of a person under a community treatment plan may request that the county attorney file a petition for recommitment or extension of the order imposing the community treatment plan.

(2) A petition for recommitment or extension must be filed with the district court before the end of the current period of commitment or the expiration of the order imposing the current community treatment plan.

(3) A petition for recommitment or extension of a community treatment plan must be accompanied by a written report containing the recommendation of the qualified ~~mental retardation~~ *intellectual disability* professional or case manager and a summary of the current habilitation plan or community treatment plan for the respondent.

(4) The petition must be reviewed in accordance with 53-20-133 by the residential facility screening team.

(5) Copies of the petition for recommitment and the report of the qualified ~~mental retardation~~ *intellectual disability* professional or case manager must be sent to:

(a) the court that issued the current order;

(b) the residential facility screening team;

(c) the resident;

(d) the resident's parents or guardian or next of kin, if any;

(e) the attorney who most recently represented the resident, if any;

(f) the responsible person appointed by the court, if any; and

(g) the resident's advocate, if any.

(6) The provisions of 53-20-125 apply to a petition for recommitment or extension of an order imposing a community treatment plan.

(7) If either the court or the residential facility screening team finds that the respondent has been placed voluntarily in community-based services or that the need for developmental disabilities services no longer exists, the court shall dismiss the petition.

(8) The court may not order recommitment to a residential facility that does not have an individualized habilitation plan for the resident.

(9) The court may not extend an order imposing a community treatment plan unless the residential facility screening team certifies that all services in the proposed plan meet the conditions set forth in 53-20-133(4)(c) and (4)(d)."

**Section 13.** Section 53-20-141, MCA, is amended to read:

**"53-20-141. Denial of legal rights.** (1) Unless specifically stated in an order by the court, a person committed to a residential facility or for whom a community treatment plan has been imposed for an extended course of habilitation does not forfeit any legal right or suffer any legal disability by reason of the provisions of this part, except to the extent that it may be necessary to detain the person for habilitation, evaluation, or care.

(2) Whenever a person is admitted to a residential facility or a community treatment plan is imposed for the person for a period of more than 30 days, the

court ordering the commitment or imposing the community treatment plan may make an order stating specifically any legal rights that are denied and any legal disabilities that are imposed on the respondent. As part of its order, the court may appoint a person to act as conservator of the respondent's property. Any conservatorship created pursuant to this section terminates upon the conclusion of the commitment or expiration of the order imposing the community treatment plan if not previously terminated by the court. A conservatorship or guardianship extending beyond the period of the commitment or order imposing a community treatment plan may not be created except according to the procedures set forth under Montana law for the appointment of conservators and guardians generally.

(3) A person who has been committed to a residential facility or for whom a community treatment plan has been imposed pursuant to this part is, upon the termination of the commitment or expiration of the order imposing the community treatment plan, automatically restored to all of the person's civil and legal rights that may have been lost when the person was committed or the community treatment plan was imposed. However, this subsection does not affect any guardianship or conservatorship created independently of the proceedings according to the provisions of Montana law relating to the appointment of conservators and guardians generally. Upon termination of any commitment or order imposing a community treatment plan under this part, the qualified ~~mental retardation~~ *intellectual disability* professional or case manager in charge of the person's care shall give the person a written statement setting forth the substance of this subsection."

**Section 14.** Section 53-20-142, MCA, is amended to read:

**"53-20-142. Rights while in residential facility.** Persons admitted to a residential facility for a period of habilitation ~~shall enjoy~~ *have* the following rights:

(1) Residents have a right to dignity, privacy, and humane care.

(2) Residents are entitled to send and receive sealed mail. Moreover, it is the duty of the facility to foster the exercise of this right by furnishing the necessary materials and assistance.

(3) Residents must have the same rights and access to private telephone communication as patients at any public hospital except to the extent that the individual treatment planning team or the qualified ~~mental retardation~~ *intellectual disability* professional responsible for formulation of a particular resident's habilitation plan writes an order imposing special restrictions and explains the reasons for the restrictions. The written order must be renewed monthly if any restrictions are to be continued.

(4) Residents have an unrestricted right to visitation except to the extent that the individual treatment planning team or the qualified ~~mental retardation~~ *intellectual disability* professional responsible for formulation of a particular resident's habilitation plan writes an order imposing special restrictions and explains the reasons for the restrictions. The written order must be renewed monthly if restrictions are to be continued.

(5) Residents have a right to receive suitable educational and habilitation services regardless of chronological age, degree of ~~retardation~~ *intellectual disability*, or accompanying disabilities.

(6) Each resident must have an adequate allowance of neat, clean, suitably fitting, and seasonable clothing. Except when a particular kind of clothing is required because of a particular condition, residents must have the opportunity

to select from various types of neat, clean, and seasonable clothing. The clothing must be considered the resident's throughout the resident's stay in the facility. Clothing, both in amount and type, must make it possible for residents to go out of doors in inclement weather, to go for trips or visits appropriately dressed, and to make a normal appearance in the community. The facility shall make provision for the adequate and regular laundering of the residents' clothing.

(7) Each resident has the right to keep and use the resident's own personal possessions except insofar as the clothes or personal possessions may be determined by the individual treatment planning team or the qualified ~~mental retardation~~ *intellectual disability* professional to be dangerous either to the resident or to others.

(8) Each resident has a right to a humane physical environment within the residential facility. The facility must be designed to make a positive contribution to the efficient attainment of the habilitation goals of the resident. To accomplish this purpose:

(a) regular housekeeping and maintenance procedures that will ensure that the facility is maintained in a safe, clean, and attractive condition must be developed and implemented;

(b) pursuant to an established routine maintenance and repair program, the physical plant must be kept in a continuous state of good repair and operation so as to ensure the health, comfort, safety, and well-being of the residents and so as not to impede in any manner the habilitation programs of the residents;

(c) the physical facilities ~~shall~~ *must* meet all fire and safety standards established by the state and locality. In addition, the facility ~~shall~~ *must* meet the provisions of the life safety code of the national fire protection association that are applicable to it.

(d) there must be special facilities for nonambulatory residents to ensure their safety and comfort, including special fittings on toilets and wheelchairs. Appropriate provision must be made to permit nonambulatory residents to communicate their needs to staff.

(9) Residents have a right to receive prompt and adequate medical treatment for any physical or mental ailments or injuries or physical disabilities and for the prevention of any illness or disability. The medical treatment must meet standards of medical practice in the community. However, nothing in this subsection may be interpreted to impair other rights of a resident in regard to involuntary commitment for mental illness, use of psychotropic medication, use of hazardous, aversive, or experimental procedures, or the refusal of treatment.

(10) Corporal punishment is not permitted.

(11) The opportunity for religious worship must be accorded to each resident who desires worship. Provisions for religious worship must be made available to all residents on a nondiscriminatory basis. An individual may not be compelled to engage in any religious activities.

(12) Residents have a right to a nourishing, well-balanced diet. The diet for residents must provide at a minimum the recommended daily dietary allowance as developed by the national academy of sciences. Provisions must be made for special therapeutic diets and for substitutes at the request of the resident, the resident's parents, guardian, or next of kin, or the responsible person appointed by the court in accordance with the religious requirements of any resident's faith. Denial of a nutritionally adequate diet may not be used as punishment.

(13) Residents have a right to regular physical exercise several times a week. It is the duty of the facility to provide both indoor and outdoor facilities and

equipment for exercise. Residents have a right to be outdoors daily in the absence of contrary medical considerations.

(14) Residents have a right, under appropriate supervision, to suitable opportunities for the interaction with members of the opposite sex except when the individual treatment planning team or the qualified ~~mental retardation~~ *intellectual disability* professional responsible for the formulation of a particular resident's habilitation plan writes an order to the contrary and explains the reasons for the order. The order must be renewed monthly if the restriction is to be continued."

**Section 15.** Section 53-20-146, MCA, is amended to read:

**"53-20-146. Right not to be subjected to certain treatment procedures.** (1) Residents of a residential facility have a right not to be subjected to unusual or hazardous treatment procedures without the express and informed consent of the resident, if the resident is able to give consent, and of the resident's parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and legal counsel. Proposed procedures must first have been reviewed and approved by the mental disabilities board of visitors before consent is sought.

(2) Physical restraint may be employed only when absolutely necessary to protect the resident from injury or to prevent injury to others. Mechanical supports used to achieve proper body position and balance that are ordered by a physician are not considered a physical restraint. Restraint may not be employed as punishment, for the convenience of staff, or as a substitute for a habilitation program. Restraint may be applied only if alternative techniques have failed and only if the restraint imposes the least possible restriction consistent with its purpose. Use of restraints may be authorized by a physician, a developmental disabilities professional, or a qualified ~~mental retardation~~ *intellectual disability* professional. Orders for restraints must be in writing and may not be in force for longer than 12 hours. Whenever physical restraint is ordered, suitable provision must be made for the comfort and physical needs of the resident restrained.

(3) Seclusion, defined as the placement of a resident alone in a locked room for nontherapeutic purposes, may not be employed. Legitimate "time out" procedures may be used under close and direct professional supervision as a technique in behavior-shaping programs.

(4) Behavior modification programs involving the use of noxious or aversive stimuli must be reviewed and approved by the mental disabilities board of visitors and may be conducted only with the express and informed consent of the affected resident, if the resident is able to give consent, and of the resident's parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and with legal counsel. These behavior modification programs may be conducted only under the supervision of and in the presence of a qualified ~~mental retardation~~ *intellectual disability* professional who has had proper training.

(5) A resident may not be subjected to a behavior modification program that attempts to extinguish socially appropriate behavior or to develop new behavior patterns when the behavior modifications serve only institutional convenience.

(6) Electric shock devices are considered a research technique for the purpose of this part. Electric shock devices may be used only in extraordinary circumstances to prevent self-mutilation leading to repeated and possibly permanent physical damage to the resident and only after alternative techniques have failed. The use of electric shock devices is subject to the

conditions prescribed by this part for experimental research generally and may be used only under the direct and specific order of a physician and the superintendent of the residential facility."

**Section 16.** Section 53-20-148, MCA, is amended to read:

**"53-20-148. Right to habilitation.** (1) Persons admitted to residential facilities have a right to habilitation, including medical treatment, education, and care suited to their needs, regardless of age, degree of ~~retardation~~ *intellectual disability*, or disabling condition. Each resident has a right to a habilitation program that will maximize the resident's human abilities and enhance the resident's ability to cope with the environment. Every residential facility shall recognize that each resident, regardless of ability or status, is entitled to develop and realize the resident's fullest potential. The facility shall implement the principle of normalization so that each resident may live as normally as possible.

(2) Residents have a right to the least restrictive conditions necessary to achieve the purposes of habilitation. To this end, the facility shall make every attempt to move residents from:

(a) more to less structured living;

(b) larger to smaller facilities;

(c) larger to smaller living units;

(d) group to individual residences;

(e) segregated from the community to integrated into the community living;

(f) dependent to independent living.

(3) Within 30 days of admission to a residential facility, each resident must have an evaluation by appropriate specialists for programming purposes.

(4) Each resident must have an individualized habilitation plan formulated by an individual treatment planning team. This plan must be implemented as soon as possible, but no later than 30 days after the resident's admission to the facility. An interim program of habilitation, based on the preadmission evaluation conducted pursuant to this part, must commence promptly upon the resident's admission. Each individualized habilitation plan must contain:

(a) a statement of the nature of the specific limitations and the needs of the resident;

(b) a description of intermediate and long-range habilitation goals, with a projected timetable for their attainment;

(c) a statement of and an explanation for the plan of habilitation for achieving these intermediate and long-range goals;

(d) a statement of the least restrictive setting for habilitation necessary to achieve the habilitation goals of the resident;

(e) a specification of the professionals and other staff members who are responsible for the particular resident's attaining these habilitation goals;

(f) criteria for release to less restrictive settings for habilitation, based on the resident's needs, including criteria for discharge and a projected date for discharge.

(5) As part of the habilitation plan, each resident must have an individualized postinstitutionalization plan that includes an identification of services needed to make a satisfactory community placement possible. This plan must be developed by the individual treatment planning team that shall begin preparation of the plan upon the resident's admission to the facility and shall complete the plan as soon as practicable. The parents or guardian or next of kin

of the resident, the responsible person appointed by the court, if any, and the resident, if able to give informed consent, must be consulted in the development of the plan and must be informed of the content of the plan.

(6) In the interests of continuity of care, one qualified ~~mental retardation~~ *intellectual disability* professional shall whenever possible be responsible for supervising the implementation of the habilitation plan, integrating the various aspects of the habilitation program, and recording the resident's progress as measured by objective indicators. The qualified ~~mental retardation~~ *intellectual disability* professional is also responsible for ensuring that the resident is released when appropriate to a less restrictive habilitation setting.

(7) The habilitation plan must be reviewed monthly by the qualified ~~mental retardation~~ *intellectual disability* professional responsible for supervising the implementation of the plan and must be modified if necessary. In addition, 6 months after admission and at least annually thereafter, each resident must receive a comprehensive psychological, social, habilitative, and medical diagnosis and evaluation and the resident's habilitation plan must be reviewed and revised accordingly by the individual treatment planning team. A habilitation plan must be reviewed monthly.

(8) Each resident placed in the community must receive transitional habilitation assistance.

(9) The superintendent of the residential facility, or the superintendent's designee, shall report in writing to the parents or guardian of the resident or the responsible person at least every 6 months on the resident's habilitation and medical condition. The report must also state any appropriate habilitation program that has not been afforded to the resident because of inadequate habilitation resources.

(10) Each resident, the parents or guardian of each resident, and the responsible person appointed by the court must promptly upon the resident's admission receive a written copy of and be orally informed of all the above standards for adequate habilitation, the rights accorded by 53-20-142, and other information concerning the care and habilitation of the resident that may be available to assist them in understanding the situation of the resident and the rights of the resident in the facility."

**Section 17.** Section 53-20-161, MCA, is amended to read:

**"53-20-161. Maintenance of records.** (1) Complete records for each resident must be maintained and must be readily available to persons who are directly involved with the particular resident and to the mental disabilities board of visitors. All information contained in a resident's records must be considered privileged and confidential. The parents or guardian, the responsible person appointed by the court, and any person properly authorized in writing by the resident, if the resident is capable of giving informed consent, or by the resident's parents or guardian or the responsible person must be permitted access to the resident's records. Information may not be released from the records of a resident or former resident of the residential facility unless the release of the information has been properly authorized in writing by:

(a) the court;

(b) the resident or former resident if the resident or former resident is over the age of majority and is capable of giving informed consent;

(c) the parents or guardian in charge of a resident under the age of 12;

(d) the parents or guardian in charge of a resident over the age of 12 but under the age of majority and the resident if the resident is capable of giving informed consent;

(e) the guardian of a resident over the age of majority who is incapable of giving informed consent;

(f) the superintendent of the residential facility or the superintendent's designee as custodian of a resident over the age of majority who is incapable of giving informed consent and for whom no legal guardian has been appointed;

(g) the superintendent of the residential facility or the superintendent's designee as custodian of a resident under the age of majority for whom there is no parent or legal guardian; or

(h) the superintendent of the residential facility or the superintendent's designee as custodian of a resident of that facility whenever release is required by federal or state law or department of public health and human services rules.

(2) Information may not be released by a superintendent or the superintendent's designee as set forth in subsection (1)(f), (1)(g), or (1)(h) less than 15 days after sending notice of the proposed release of information to the resident, the resident's parents or guardian, the attorney who most recently represented the resident, if any, the responsible person appointed by the court, if any, the resident's advocate, if any, and the court that ordered the admission. If any of the parties so notified objects to the release of information, they may petition the court for a hearing to determine whether the release of information should be allowed. Information may not be released pursuant to subsection (1)(f), (1)(g), or (1)(h) unless it is released to further some legitimate need of the resident or to accomplish a legitimate purpose of the facility that is not inconsistent with the needs and rights of the resident. Information may not be released pursuant to subsection (1)(f), (1)(g), or (1)(h) except in accordance with written policies consistent with the requirements of this part adopted by the facility. Persons receiving notice of a proposed release of information must also receive a copy of the written policy of the facility governing release of information.

(3) These records must include:

(a) identification data, including the resident's legal status;

(b) the resident's history, including but not limited to:

(i) family data, educational background, and employment record;

(ii) prior medical history, both physical and mental, including prior institutionalization;

(c) the resident's grievances, if any;

(d) an inventory of the resident's life skills, including mode of communication;

(e) a record of each physical examination that describes the results of the examination;

(f) a copy of the individual habilitation plan and any modifications to the plan and an appropriate summary to guide and assist the resident care workers in implementing the resident's habilitation plan;

(g) the findings made in monthly reviews of the habilitation plan, including an analysis of the successes and failures of the habilitation program and whatever modifications are necessary;

(h) a copy of the postinstitutionalization plan that includes a statement of services needed in the community and any modifications to the

postinstitutionalization plan and a summary of the steps that have been taken to implement that plan;

(i) a medication history and status;

(j) a summary of each significant contact by a qualified ~~mental retardation~~ *intellectual disability* professional with a resident;

(k) a summary of the resident's response to the resident's habilitation plan, prepared by a qualified ~~mental retardation~~ *intellectual disability* professional involved in the resident's habilitation and recorded at least monthly. Wherever possible, the response must be scientifically documented.

(l) a monthly summary of the extent and nature of the resident's work activities and the effect of the activity upon the resident's progress in the habilitation plan;

(m) a signed order by a qualified ~~mental retardation~~ *intellectual disability* professional or physician for any physical restraints;

(n) a description of any extraordinary incident or accident in the facility involving the resident, to be entered by a staff member noting personal knowledge of the incident or accident or other source of information, including any reports of investigations of the resident's mistreatment;

(o) a summary of family visits and contacts;

(p) a summary of attendance and leaves from the facility;

(q) a record of any seizures; illnesses; injuries; treatments of seizures, illnesses, and injuries; and immunizations."

**Section 18.** Section 53-20-164, MCA, is amended to read:

**"53-20-164. Resident labor.** The following rules govern resident labor:

(1) A resident may not be required to perform labor that involves the operation and maintenance of the facility or for which the facility is under contract with an outside organization. Privileges or release from the facility may not be conditioned upon the performance of labor covered by this provision. Residents may voluntarily engage in the labor described in this subsection if the labor is compensated in accordance with the minimum wage laws of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, as amended.

(2) A resident may not be involved in the feeding, clothing, bathing, training, or supervision of other residents unless the resident:

(a) has volunteered;

(b) has been specifically trained in the necessary skills;

(c) has the humane judgment required for the activities;

(d) is adequately supervised; and

(e) is reimbursed in accordance with the minimum wage laws of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, as amended.

(3) Residents may be required to perform vocational training tasks that do not involve the operation and maintenance of the facility, subject to a presumption that an assignment of longer than 3 months to any task is not a training task, provided that the specific task or any change in task assignment is:

(a) an integrated part of the resident's habilitation plan and approved as a habilitation activity by the qualified ~~mental retardation~~ *intellectual disability* professional and the individual treatment planning team responsible for supervising the resident's habilitation; and

(b) supervised by a staff member to oversee the habilitation aspects of the activity.

(4) Residents may voluntarily engage in habilitative labor at nonprogram hours for which the facility would otherwise have to pay an employee if the specific labor or any change in labor is:

(a) an integrated part of the resident's habilitation plan and approved as a habilitation activity by the qualified ~~mental retardation~~ *intellectual disability* professional and the individual treatment planning team responsible for supervising the resident's habilitation;

(b) supervised by a staff member to oversee the habilitation aspects of the activity; and

(c) compensated in accordance with the minimum wage laws of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, as amended.

(5) If a resident performs habilitative labor that involves the operation and maintenance of a facility but due to physical or mental disability is unable to perform the labor as efficiently as a person not so physically or mentally disabled, then the resident may be compensated at a rate that bears the same approximate relation to the statutory minimum wage as the resident's ability to perform that particular job bears to the ability of a person not so afflicted.

(6) Residents may be required to perform tasks of a personal housekeeping nature, such as the making of one's own bed.

(7) Deductions or payments for care and other charges may not deprive a resident of a reasonable amount of the compensation received pursuant to this section for personal and incidental purchases and expenses.

(8) Staffing must be sufficient so that the facility is not dependent upon the use of residents or volunteers for the care, maintenance, or habilitation of other residents or for income-producing services. The facility shall formulate a written policy to protect the residents from exploitation when they are engaged in productive work."

**Section 19.** Section 53-20-202, MCA, is amended to read:

**"53-20-202. Definitions.** As used in this part, the following definitions apply:

(1) "Comprehensive developmental disability system" means a system of services, including but not limited to the following basic services, with the intention of providing alternatives to institutionalization:

(a) evaluation services;

(b) diagnostic services;

(c) treatment services;

(d) day-care services;

(e) training services;

(f) education services;

(g) employment services;

(h) recreation services;

(i) personal-care services;

(j) domiciliary-care services;

(k) special living arrangements services;

(l) counseling services;

(m) information and referral services;

(n) follow-along services;

(o) protective and other social and sociolegal services; and

(p) transportation services.

(2) "Department" means the department of public health and human services.

(3) "Developmental disabilities" means disabilities attributable to ~~mental retardation~~ *intellectual disability*, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to ~~mental retardation~~ *intellectual disability* and requiring treatment similar to that required by ~~mentally retarded~~ *intellectually disabled* individuals if the disability originated before the person attained age 18, has continued or can be expected to continue indefinitely, and results in the person having a substantial disability.

(4) "Developmental disabilities facility" means any service or group of services offering care to persons with developmental disabilities on an inpatient, outpatient, residential, clinical, or other programmatic basis."

**Section 20.** Section 53-21-102, MCA, is amended to read:

**"53-21-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Abuse" means any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment or maltreatment or misappropriation of personal property of any person receiving treatment in a mental health facility that insults the psychosocial, physical, or sexual integrity of any person receiving treatment in a mental health facility.

(2) "Behavioral health inpatient facility" means a facility or a distinct part of a facility of 16 beds or less licensed by the department that is capable of providing secure, inpatient psychiatric services, including services to persons with mental illness and co-occurring chemical dependency.

(3) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(4) "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.

(5) "Court" means any district court of the state of Montana.

(6) "Department" means the department of public health and human services provided for in 2-15-2201.

(7) "Emergency situation" means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment.

(8) "Friend of respondent" means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or a person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others.

(9) (a) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term does not include:

(i) addiction to drugs or alcohol;

(ii) drug or alcohol intoxication;

(iii) ~~mental retardation~~ *intellectual disability*; or

(iv) epilepsy.

(c) A mental disorder may co-occur with addiction or chemical dependency.

(10) "Mental health facility" or "facility" means the state hospital, the Montana mental health nursing care center, or a hospital, a behavioral health inpatient facility, a mental health center, a residential treatment facility, or a residential treatment center licensed or certified by the department that provides treatment to children or adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(11) "Mental health professional" means:

(a) a certified professional person;

(b) a physician licensed under Title 37, chapter 3;

(c) a professional counselor licensed under Title 37, chapter 23;

(d) a psychologist licensed under Title 37, chapter 17;

(e) a social worker licensed under Title 37, chapter 22; or

(f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

(12) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect.

(b) The term includes but is not limited to:

(i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;

(ii) failure to follow a prescribed plan of care and treatment; or

(iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.

(13) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(14) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(15) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

(16) "Professional person" means:

(a) a medical doctor;

(b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing;

(c) a licensed psychologist; or

(d) a person who has been certified, as provided for in 53-21-106, by the department.

(17) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(18) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

(19) "State hospital" means the Montana state hospital."

**Section 21. Nonapplicability.** [This act] does not apply to the coverage, eligibility, rights, responsibilities, or definitions provided for in the affected sections of Titles 50 and 53.

**Section 22. Contingent voidness.** [Section 1] terminates on occurrence of the contingency contained in section 17, Chapter 531, Laws of 2003.

Approved March 18, 2013

## CHAPTER NO. 69

[HB 142]

AN ACT RESTORING LANGUAGE ASSENTING TO THE DINGELL-JOHNSON ACT FOR THE MANAGEMENT AND RESTORATION OF FISH; AMENDING SECTION 87-1-701, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 87-1-701, MCA, is amended to read:

**"87-1-701. Assent to Dingell-Johnson ~~bill~~ *Act.*** *The congress of the United States passed an act that was approved on August 9, 1950, known as the Dingell-Johnson Act, Public Law 681, 81st congress, chapter 658, 2nd session, which provides, among other things, that "No money apportioned under this Act to any State, except as hereinafter provided, shall be expended therein until its legislature, or other State agency authorized by the State constitution to make laws governing the conservation of fish, shall have assented to the provisions of this Act and shall have passed laws for the conservation of fish, which shall include a prohibition against the diversion of license fees paid by fishermen for any other purpose than the administration of said State fish and game department, except that, until the final adjournment of the first regular session of the legislature held after passage of this Act, the assent of the governor of the State shall be sufficient." The money referred to in the Dingell-Johnson Act is collected in part from the anglers of the state of Montana and will not be returned to the state unless the state assents to the Dingell-Johnson Act.* ~~The~~ *Therefore, the* state of Montana assents to ~~the provisions of Public Law 681, 81st congress, chapter 658, 2nd session, which is commonly known as~~ the Dingell-Johnson ~~bill~~ *Act*, but the assent is with the express reservations enumerated in 87-1-701 through 87-1-703. The state of Montana does not, by the passage of 87-1-701 through 87-1-703 or by the consent given in this section, surrender to the congress of the United States or any department of the government of the United States any of those rights that are retained by the people of the state of Montana or the state of Montana and that are guaranteed to them by the 9th and 10th amendments to the constitution of the United States, and 87-1-701 through 87-1-703 may not in any manner or at all be construed or held to be the state of Montana's consent to amending the constitution of the United States in any manner or at all relative to its rights. The title to all lands acquired under the provisions of 87-1-701 through 87-1-703 for fish restoration and management projects and projects constructed on those lands is and remains in the state."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved March 18, 2013

# CHAPTER NO. 70

[HB 179]

AN ACT ALLOWING DISABLED MEMBERS OF THE ARMED FORCES TO QUALIFY FOR CERTAIN HUNTING LICENSES; AND AMENDING SECTION 87-2-803, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 87-2-803, MCA, is amended to read:

**"87-2-803. Persons with disabilities — service members — definitions.** (1) Persons with disabilities are entitled to fish and to hunt game birds, not including turkeys, with only a conservation license if they are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule. A person who has purchased a conservation license and a resident fishing license or game bird license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the fishing license or game bird license previously purchased for that license year. A person who is certified as disabled pursuant to subsection (3) and who was issued a permit to hunt from a vehicle for license year 2000 or a subsequent license year is automatically entitled to a permit to hunt from a vehicle for subsequent license years if the criteria for obtaining a permit does not change.

(2) A resident of Montana who is certified as disabled by the department and who is not residing in an institution may purchase a Class A-3 deer A tag for $6.50 and a Class A-5 elk tag for $8. A person who has purchased a conservation license and a resident deer license or resident elk license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the deer license or elk license previously purchased and reissuance of the license for that license year at the rate established in this subsection.

(3) A person may be certified as disabled by the department and issued a permit to hunt from a vehicle, on a form prescribed by the department, if the person establishes one or more of the disabilities pursuant to subsection (9).

(4) (a) A person with a disability carrying a permit to hunt from a vehicle, referred to in this subsection (4) as a permitholder, may hunt by shooting a firearm from:

(i) the shoulder, berm, or barrow pit right-of-way of a public highway, as defined in 61-1-101, except a state or federal highway;

(ii) within a self-propelled or drawn vehicle that is parked on a shoulder, berm, or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or that is parked in an area, not a public highway, where hunting is permitted; or

(iii) an off-highway vehicle or snowmobile, as defined in 61-1-101, in any area where hunting is permitted and that is open to motorized use, unless otherwise prohibited by law, as long as the off-highway vehicle or snowmobile is marked as described in subsection (4)(d) of this section.

(b) This subsection (4) does not allow a permitholder to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner.

(c) A permitholder must have a companion to assist in immediately dressing any killed game animal. The companion may also assist the permitholder by hunting a game animal that has been wounded by the permitholder when the permitholder is unable to pursue and kill the wounded game animal.

(d) Any vehicle from which a permitholder is hunting must be conspicuously marked with an orange-colored international symbol of persons with disabilities on the front, rear, and each side of the vehicle, or as prescribed by the department.

(5) A veteran *or a disabled member of the armed forces* who meets the qualifications in subsection (9) as a result of a combat-connected injury may apply at a fish, wildlife, and parks office for a regular Class A-3 deer A tag, a Class A-4 deer B tag, a Class B-7 deer A tag, a Class B-8 deer B tag, and a special antelope license at one-half the license fee. Fifty licenses of each license type must be made available annually. Licenses issued to veterans *or disabled members of the armed forces* under this part do not count against the number of special antelope licenses reserved for people with permanent disabilities, as provided in 87-2-706.

(6) (a) A resident of Montana who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued a lifetime fishing license for the blind upon payment of a one-time fee of $10. The license is valid for the lifetime of the blind individual and allows the licensee to fish as authorized by department rule. An applicant for a license under this subsection need not obtain a wildlife conservation license as a prerequisite to licensure.

(b) A person who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued regular resident deer and elk licenses, in the manner provided in subsection (2) of this section, and must be accompanied by a companion, as provided in subsection (4)(c) of this section.

(7) The department shall adopt rules to establish the qualifications that a person must meet to be a companion and may adopt rules to establish when a companion can be a designated shooter for a disabled person.

(8) As used in this section, "disabled person", "person with a disability", or "disabled" means or refers to a person experiencing a condition medically determined to be permanent and substantial and resulting in significant impairment of the person's functional ability.

(9) A person is entitled to a permit to hunt from a vehicle if the person:

(a) is certified by a licensed physician, a licensed chiropractor, an advanced practice registered nurse, or a licensed physician assistant to be dependent on an oxygen device or dependent on a wheelchair, crutch, or cane for mobility;

(b) is an amputee above the wrist or ankle; or

(c) is certified by a licensed physician, a licensed chiropractor, an advanced practice registered nurse, or a licensed physician assistant to be unable to walk, unassisted, 600 yards over rough and broken ground while carrying 15 pounds within 1 hour and to be unable to handle and maneuver up to 25 pounds.

(10) Certification by a licensed physician, a licensed chiropractor, an advanced practice registered nurse, or a licensed physician assistant under subsection (9) must be on a form provided by the department.

(11) The department or a person who disagrees with a determination of disability or eligibility for a permit to hunt from a vehicle may request a review by the board of medical examiners pursuant to 37-3-203.

(12) (a) A Montana resident who is a member of the Montana national guard or the federal reserve as provided in 10 U.S.C. 10101 or who was otherwise engaged in active duty and who participated in a contingency operation as provided in 10 U.S.C. 101(a)(13) that required the member to serve at least 2 months outside of the state, upon request and upon presentation of the documentation described in subsection (12)(b), must be issued a free resident

wildlife conservation license or a Class AAA resident combination sports license, which may not include a bear license, upon payment of the resident hunting access enhancement fee provided for in 87-2-202(3)(c), in the license year that the member returns from military service or in the year following the member's return, based on the member's election, and in any of the 4 years after the member's election. A member who participated in a contingency operation after September 11, 2001, that required the member to serve at least 2 months outside of the state may make an election in 2007 or in the year following the member's return, based on the member's election, and in any of the 4 years after the member's election and be entitled to a free resident wildlife conservation license or a free Class AAA resident combination sports license in the year of election and in any of the 4 years after the member's election.

(b) To be eligible for the free resident wildlife conservation license or free Class AAA resident combination sports license provided for in subsection (12)(a), an applicant shall, in addition to the written application and proof of residency required in 87-2-202(1), provide to any regional department office or to the department headquarters in Helena, by mail or in person, the member's DD form 214 verifying the member's release or discharge from active duty. The applicant is responsible for providing documentation showing that the applicant participated in a contingency operation as provided in 10 U.S.C. 101(a)(13).

(c) A Montana resident who meets the service qualifications of subsection (12)(a) and the documentation required in subsection (12)(b) is entitled to a free Class A resident fishing license in the license year that the member returns from military service or in the year following the member's return, based on the member's election, and in any of the 4 years after the member's election.

(d) The department's general license account must be reimbursed by a quarterly transfer of funds from the general fund to the general license account for costs associated with the free licenses granted pursuant to this subsection (12) during the preceding calendar quarter. Reimbursement costs must be designated as license revenue.

(13) A member of the armed forces who forfeited a license or permit issued through a drawing as a result of deployment outside of the continental United States in support of a contingency operation as provided in 10 U.S.C. 101(a)(13) is guaranteed the same license or permit, without additional fee, upon application in the year of the member's return from deployment or in the first year that the license or permit is made available after the member's return."

Approved March 18, 2013

# CHAPTER NO. 71

[HB 190]

AN ACT REVISING CERTAIN PROVISIONS OF THE UNIFORM COMMERCIAL CODE RELATING TO ELECTRONIC FUND TRANSFERS GOVERNED BY FEDERAL LAW; AMENDING SECTION 30-4A-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 30-4A-108, MCA, is amended to read:

**"30-4A-108. ~~Exclusion of consumer transactions governed by federal law~~ *Relationship to Electronic Fund Transfer Act.*** ~~This~~ *(1) Except as provided in subsection (2), this* chapter does not apply to a funds transfer any

part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. 1693, et seq.) ~~as amended from time to time~~.

*(2) This chapter applies to a funds transfer that is a remittance transfer as defined in the Electronic Fund Transfer Act (15 U.S.C. 1693o-1), unless the remittance transfer is an electronic fund transfer as defined in the Electronic Fund Transfer Act (15 U.S.C. 1693a).*

*(3) In a funds transfer to which this chapter applies, in the event of an inconsistency between an applicable provision of this chapter and an applicable provision of the Electronic Fund Transfer Act, the provision of the Electronic Fund Transfer Act governs to the extent of the inconsistency.*"

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved March 18, 2013

# CHAPTER NO. 72

[HB 243]

AN ACT REVISING ENGINEER AND SURVEYOR LICENSURE AND CERTIFICATION LAWS; MODIFYING THE REQUIREMENTS FOR LICENSURE OF A PROFESSIONAL ENGINEER OR PROFESSIONAL LAND SURVEYOR; MODIFYING THE REQUIREMENTS FOR CERTIFICATION AS AN ENGINEER INTERN OR LAND SURVEYOR INTERN; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 37-67-306, 37-67-307, AND 37-67-311, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 37-67-306, MCA, is amended to read:

**"37-67-306. Qualifications of applicant for licensure as professional engineer.** The following is considered minimum evidence satisfactory to the board that the applicant is qualified for licensure as a professional engineer:

(1) A graduate of an engineering or engineering technology curriculum of 4 years or more approved by the board as being of satisfactory standing, with a specific record of an additional 4 years or more of progressive experience on engineering projects under the direct supervision of a professional engineer, unless exempt under 37-67-320(2), and whose qualifications indicate to the board that the applicant may be competent to practice engineering, must be admitted to an ~~8-hour written~~ examination in the fundamentals of engineering and an ~~8-hour written~~ examination in the principles and practices of engineering. Upon passing the examinations, the applicant must be granted a license to practice engineering in this state if the applicant is otherwise qualified.

(2) A graduate of a related science curriculum of 4 years or more, other than engineering or engineering technology, with a specific record of 8 years or more of progressive experience on engineering projects of a grade and character that indicate to the board that the applicant may be competent to practice engineering, may be admitted to an ~~8-hour written~~ examination in the fundamentals of engineering and an ~~8-hour written~~ examination in the principles and practices of engineering. Upon passing the examinations, the applicant must be granted a license to practice engineering in this state if the applicant is otherwise qualified.

(3) A graduate of an engineering or related science curriculum of 4 years or more, with a specific record of 20 years or more of progressive experience on engineering projects, of which at least 10 of those years the applicant has been in charge of important engineering projects, of a grade and character that indicate to the board that the applicant may be competent to practice engineering, must be admitted to an ~~8-hour written~~ examination in the principles and practices of engineering. Upon passing the examination, the applicant must be granted a license to practice engineering in this state if the applicant is otherwise qualified.

(4) Teaching engineering in a college or university offering an approved engineering curriculum of 4 years or more may be considered as engineering experience in these requirements if research, product development, or consulting has been a concurrent activity.

(5) A person who holds a doctorate degree in engineering from an institution with an engineering program approved by the board and the engineering accreditation commission of the accreditation board for engineering and technology or the Canadian engineering accreditation board and who provides a specific record of at least 4 years of progressive experience on engineering projects of a grade and character that indicate to the board that the applicant may be competent to practice engineering must be admitted to an ~~8-hour written~~ examination in the principles and practices of engineering. Upon passing the examination, the applicant must be issued a license to practice engineering in this state if the applicant is otherwise qualified."

**Section 2.** Section 37-67-307, MCA, is amended to read:

**"37-67-307. Qualifications of applicant for registration as engineer intern.** The following must be considered as minimum evidence that the applicant is qualified for certification as an engineer intern:

(1) A graduate of an engineering or engineering technology curriculum of 4 years or more, approved by the board as being of satisfactory standing, must be admitted to an ~~8-hour written~~ examination in the fundamentals of engineering. Upon passing the examination, the applicant must be certified or enrolled as an engineer intern if the applicant is otherwise qualified.

(2) A graduate of a related science curriculum of 4 years or more, other than engineering or engineering technology, with a specific record of 4 or more years of progressive experience on engineering projects of a grade and character satisfactory to the board must be admitted to an ~~8-hour written~~ examination in the fundamentals of engineering. Upon passing the examination, the applicant must be certified or enrolled as an engineer intern if the applicant is otherwise qualified."

**Section 3.** Section 37-67-311, MCA, is amended to read:

**"37-67-311. Examinations — fees — third-party services.** Examination requirements are as follows:

(1) The examinations must be held at times and places that the board directs. ~~The board shall determine the acceptable grade on examinations.~~

(2) The board shall determine by rule the fees to be charged an applicant for each examination and reexamination. The fees must be commensurate with costs.

(3) The board may use a third party to provide examination and grading services.

(4) Examinations may be taken only after the applicant has met the other minimum requirements as provided in 37-67-305 through 37-67-310 and has

been approved by the board for admission to the *following* examinations as ~~follows~~ *prescribed by the board*:

(a) ~~The examination on engineering fundamentals consists of an 8-hour examination.~~ *the fundamentals of engineering examination*. Passing the examination qualifies the examinee for an engineer intern certificate if the examinee has met all other requirements for certification required by this chapter.

(b) ~~The~~ *the* ~~examination on~~ principles and practice of engineering ~~consists of an 8-hour~~ examination on applied engineering. Passing this examination qualifies the examinee for licensure as a professional engineer if the examinee has met the other requirements for licensure required by this chapter.

(c) ~~The~~ *the* examinations for land surveyor intern ~~consist of two 4-hour examinations, designated as parts I and II,~~ on the basic disciplines of land surveying. Passing these examinations qualifies the examinee for a land surveyor intern certificate if the examinee has met all other requirements for certification required by this chapter.

(d) ~~The requirements and~~ *the* examinations for professional land surveyor ~~consist of being a land surveyor intern, two examinations, designated as parts III and IV,~~ on the applied disciplines of land surveying~~,~~ and an examination specifically related to land surveying in Montana. Passing these examinations qualifies the examinee for licensure as a professional land surveyor if the examinee has met the other requirements for licensure required by this chapter."

Approved March 18, 2013

## CHAPTER NO. 73

[SB 164]

AN ACT EXEMPTING CERTAIN PUBLIC UTILITIES FROM THE MONTANA RENEWABLE POWER PRODUCTION AND RURAL ECONOMIC DEVELOPMENT ACT; AMENDING SECTION 69-3-2004, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 69-3-2004, MCA, is amended to read:

**"69-3-2004. Renewable resource standard — administrative penalty — waiver.** (1) Except as provided in 69-3-2007 and subsections (11) and (12) of this section, a graduated renewable energy standard is established for public utilities*, except as provided in subsection (13),* and competitive electricity suppliers as provided in subsections (2) through (4) of this section.

(2) In each compliance year beginning January 1, 2008, through December 31, 2009, each public utility and competitive electricity supplier shall procure a minimum of 5% of its retail sales of electrical energy in Montana from eligible renewable resources.

(3) (a) In each compliance year beginning January 1, 2010, through December 31, 2014, each public utility*, except as provided in subsection (13),* and competitive electricity supplier shall procure a minimum of 10% of its retail sales of electrical energy in Montana from eligible renewable resources.

(b) ~~Beginning~~ *Beginning* January 1, 2012, as part of their compliance with subsection (3)(a), public utilities shall purchase both the renewable energy

credits and the electricity output from community renewable energy projects that total at least 50 megawatts in nameplate capacity.

(c) Public utilities shall proportionately allocate the purchase required under subsection (3)(b) based on each public utility's retail sales of electrical energy in Montana in the calendar year 2011.

(4) (a) In the compliance year beginning January 1, 2015, and in each succeeding compliance year, each public utility*, except as provided in subsection (13),* and competitive electricity supplier shall procure a minimum of 15% of its retail sales of electrical energy in Montana from eligible renewable resources.

(b) (i) As part of their compliance with subsection (4)(a), public utilities shall purchase both the renewable energy credits and the electricity output from community renewable energy projects that total at least ~~75~~ *75* megawatts in nameplate capacity.

(ii) In meeting the standard in subsection (4)(b)(i), a public utility may include purchases made under ~~subsection~~ *subsection* (3)(b).

(c) Public utilities shall proportionately allocate the purchase required under subsection (4)(b) based on each public utility's *proportion of the total* retail sales of electrical energy *by public utilities* in Montana in the calendar year 2014.

(5) (a) In complying with the standards required under subsections (2) through (4), a public utility or competitive electricity supplier shall, for any given compliance year, calculate its procurement requirement based on the public utility's or competitive electricity supplier's previous year's sales of electrical energy to retail customers in Montana.

(b) The standards in subsections (2) through (4) must be calculated on a delivered-energy basis after accounting for any line losses.

(6) A public utility or competitive electricity supplier has until 3 months following the end of each compliance year to purchase renewable energy credits for that compliance year.

(7) (a) In order to meet the standards established in subsections (2) through (4), a public utility or competitive electricity supplier may only use:

(i) electricity from an eligible renewable resource in which the associated renewable energy credits have not been sold separately;

(ii) renewable energy credits created by an eligible renewable resource purchased separately from the associated electricity; or

(iii) any combination of subsections (7)(a)(i) and (7)(a)(ii).

(b) A public utility or competitive electricity supplier may not resell renewable energy credits and count those sold credits against the public utility's or the competitive electricity supplier's obligation to meet the standards established in subsections (2) through (4).

(c) Renewable energy credits sold through a voluntary service such as the one provided for in 69-8-210(2) may not be applied against a public utility's or competitive electricity supplier's obligation to meet the standards established in subsections (2) through (4).

(8) Nothing in this part limits a public utility or competitive electricity supplier from exceeding the standards established in subsections (2) through (4).

(9) If a public utility or competitive electricity supplier exceeds a standard established in subsections (2) through (4) in any compliance year, the public utility or competitive electricity supplier may carry forward the amount by

which the standard was exceeded to comply with the standard in either or both of the 2 subsequent compliance years. The carryforward may not be double-counted.

(10) Except as provided in subsections (11) and (12), if a public utility or competitive electricity supplier is unable to meet the standards established in subsections (2) through (4) in any compliance year, that public utility or competitive electricity supplier shall pay an administrative penalty, assessed by the commission, of $10 for each megawatt hour of renewable energy credits that the public utility or competitive electricity supplier failed to procure. A public utility may not recover this penalty in electricity rates. Money generated from these penalties must be deposited in the universal low-income energy assistance fund established in 69-8-412(1)(b).

(11) A public utility or competitive electricity supplier may petition the commission for a short-term waiver from full compliance with the standards in subsections (2) through (4) and the penalties levied under subsection (10). The petition must demonstrate that the:

(a) public utility or competitive electricity supplier has undertaken all reasonable steps to procure renewable energy credits under long-term contract, but full compliance cannot be achieved either because renewable energy credits cannot be procured or for other legitimate reasons that are outside the control of the public utility or competitive electricity supplier; or

(b) integration of additional eligible renewable resources into the electrical grid will clearly and demonstrably jeopardize the reliability of the electrical system and that the public utility or competitive electricity supplier has undertaken all reasonable steps to mitigate the reliability concerns.

(12) (a) Retail sales made by a competitive electricity supplier according to prices, terms, and conditions of a written contract executed prior to April 25, 2007, are exempt from the standards in subsections (2) through (4).

(b) The exemption provided for in subsection (12)(a) is terminated upon modification after April 25, 2007, of the prices, terms, or conditions in a written contract.

*(13) A public utility that served 50 or fewer retail customers in Montana on December 31, 2012, is exempt from the requirements of subsections (2) through (4).*"

**Section 2. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 3. Effective date.** [This act] is effective on passage and approval.

**Section 4. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to the compliance year beginning January 1, 2013.

Approved March 18, 2013

## CHAPTER NO. 74

[HB 82]

AN ACT CLARIFYING WORKERS' COMPENSATION EXTRATERRITORIAL APPLICABILITY AND RECIPROCITY; REQUIRING SPECIFIC REFERENCE FOR EXTRATERRITORIAL COVERAGE TO APPLY TO THE CONSTRUCTION INDUSTRY; EXTENDING RULEMAKING AUTHORITY;

AMENDING SECTION 39-71-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 39-71-402, MCA, is amended to read:

**"39-71-402. Extraterritorial ~~application~~ *applicability* and reciprocity *of coverage* — ~~exception~~ *agreements with other states* — *rulemaking*.** (1) *(a)* ~~If~~ *In the absence of an agreement under subsection (2), if* a worker employed in this state who is subject to the provisions of this chapter temporarily leaves ~~the~~ *this* state incidental to that employment and receives an injury arising out of and in the course of employment, the provisions of this chapter apply to the worker as though the worker were injured within this state.

~~(2)~~*(b)* Except as provided in subsection ~~(5)~~ *(1)(c) and in the absence of an agreement under subsection (2)*, if a worker from another state and the worker's employer from another state are temporarily engaged in work within this state, this chapter does not apply to them:

~~(a)~~*(i)* if the employer and employee are bound by the provisions of the workers' compensation law or similar law of the other state that applies to them while they are *temporarily engaged in work* in the state of Montana; and

~~(b)~~*(ii)* if the Workers' Compensation Act of this state is recognized and given effect as the exclusive remedy for workers employed in this state who are injured while temporarily ~~employed~~ *engaged in work* in the other state.

*(c) Unless specifically addressed in an agreement as provided in subsection (2)(d), employers from another state that are engaged in the construction industry, as defined in 39-71-116, and that employ workers from another state shall obtain coverage for those workers under the provisions of this chapter.*

*(2) (a) The department, with the approval of the governor, may enter into a reciprocal agreement with an authorized officer of the workers' compensation department or similar agency of another state to allow an employer from one state and its employees from that state to work in the other state without obtaining workers' compensation coverage from both states.*

*(b) The reciprocal agreement must contain, at a minimum, the following provisions:*

*(i) the employer and employee must be bound by the provisions of the workers' compensation law or similar law of the other state that applies to them while they are engaged in work in the state of Montana; and*

*(ii) the Workers' Compensation Act of this state must be recognized and given effect as the exclusive remedy for workers employed in this state who are injured while engaged in work in the other state.*

*(c) The agreement may contain other provisions, including but not limited to provisions regarding how long the work may continue and whether limitations or exclusions apply to the types of work covered by the agreement.*

*(d) Unless the agreement specifically provides that the agreement is applicable to employers engaged in the construction industry, as defined in 39-71-116, an employer from another state engaged in the construction industry in Montana does not qualify for extraterritorial coverage that might otherwise be provided by this section.*

*(e) The agreement may be canceled, renewed, or modified from time to time as provided in the agreement.*

~~(3)~~*(f)* ~~A~~ *After an agreement has been entered into pursuant to this subsection (2), a* certificate from an authorized officer of the workers' compensation

department or similar agency of another state certifying that an employer of the other state is bound by the Workers' Compensation Act of the state and that its act will be applied to employees of the employer while *engaged in work* in the state of Montana is prima facie evidence *that:* ~~of the application of~~

*(i)* the workers' compensation law of the certifying state *applies to the employer and its employees while engaged in work in Montana; and*

*(ii) the employer is properly insured for workers' compensation purposes in the certifying state as of the date of the certification*.

~~(4)~~*(3)* The department may *adopt rules to implement this section.*~~, with the approval of the governor, enter into agreements with workers' compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this chapter to carry out the extraterritorial application of the workers' compensation laws of the agreeing states.~~

~~(5) Employers from another state that are engaged in the construction industry, as defined in 39-71-116, and that employ workers from another state shall obtain coverage for those workers under the provisions of this chapter.~~"

**Section 2. Effective date — applicability.** [This act] is effective on passage and approval and applies to agreements entered into on or after [the effective date of this act].

Approved March 20, 2013

## CHAPTER NO. 75

[HB 212]

AN ACT GENERALLY REVISING THE UNIFORM COMMERCIAL CODE; REVISING AND ADDING CERTAIN DEFINITIONS; CLARIFYING CONTROL OF ELECTRONIC CHATTEL PAPER; CLARIFYING THE LOCATION OF A DEBTOR; SPECIFYING THE EFFECT ON COLLATERAL OF A SECURITY INTEREST ATTACHING IF THE DEBTOR CHANGES ITS LOCATION; SPECIFYING THE EFFECT OF A FINANCING STATEMENT IF THERE IS AN ORIGINAL AND A NEW DEBTOR IN SEPARATE JURISDICTIONS; CLARIFYING CERTAIN INTERESTS THAT TAKE FREE OF A SECURITY INTEREST; REVISING THE PRIORITY OF SECURITY INTERESTS CREATED BY A NEW DEBTOR; CLARIFYING THE EFFECT OF TERMS IN AN AGREEMENT OR PROMISSORY NOTE; CLARIFYING WHETHER A MORTGAGE RECORD IS EFFECTIVE AS A FINANCING STATEMENT; CLARIFYING WHETHER A FINANCING STATEMENT SUFFICIENTLY PROVIDES THE NAME OF A DEBTOR; CLARIFYING THE SUFFICIENCY OF A DECEDENT'S NAME; CLARIFYING THE EFFECT OF CERTAIN EVENTS ON THE EFFECTIVENESS OF A FINANCING STATEMENT; CLARIFYING THE OCCURRENCE OF A FILING WITH RESPECT TO CERTAIN RECORDS; ALLOWING A SECURITY PARTY OF RECORD TO FILE AN INFORMATION STATEMENT; CLARIFYING THE UNIFORM FORM OF A WRITTEN FINANCING STATEMENT; CLARIFYING CERTAIN SECURED PARTY ENFORCEMENT RIGHTS; PROVIDING FOR THE DISPOSITION OF UNPERFECTED AND PERFECTED SECURITY INTERESTS; PROVIDING FOR THE EFFECTIVENESS OF CERTAIN ACTIONS; PROVIDING FOR THE EFFECTIVENESS OF AN INITIAL FINANCING STATEMENT; PROVIDING FOR THE EFFECT OF AMENDMENTS TO A PRE-EFFECTIVE-DATE FINANCING STATEMENT; ALLOWING CERTAIN PARTIES TO FILE AN

INITIAL FINANCING STATEMENT OR CONTINUATION STATEMENT; DETERMINING THE PRIORITY OF CONFLICTING COLLATERAL CLAIMS; AMENDING SECTIONS 30-2A-103, 30-9A-102, 30-9A-105, 30-9A-307, 30-9A-311, 30-9A-316, 30-9A-317, 30-9A-326, 30-9A-406, 30-9A-408, 30-9A-502, 30-9A-503, 30-9A-507, 30-9A-515, 30-9A-516, 30-9A-518, 30-9A-521, AND 30-9A-607, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 30-2A-103, MCA, is amended to read:

**"30-2A-103. Definitions and index of definitions.** (1) In this chapter, unless the context otherwise requires, the following definitions apply:

(a) "Buyer in ordinary course of business" means a person, who in good faith and without knowledge that the sale to the buyer is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but the term does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine; a set of articles, as a suite of furniture or a line of machinery; a quantity, as a gross or carload; or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that is in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed $25,000.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

(i) the lessor does not select, manufacture, or supply the goods;

(ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) one of the following occurs:

(A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or

liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing:

(I) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person;

(II) that the lessee is entitled under this chapter to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; and

(III) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (30-2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance as provided in this chapter. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this chapter and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(o) "Lessee in ordinary course of business" means a person, who in good faith and without knowledge that the lease to the person is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind, but the term does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a

preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this chapter and the sections in which they appear are:

(a) "Accessions". 30-2A-310(1).

(b) "Construction mortgage". 30-2A-309(1)(d).

(c) "Encumbrance". 30-2A-309(1)(e).

(d) "Fixtures". 30-2A-309(1)(a).

(e) "Fixture filing". 30-2A-309(1)(b).

(f) "Purchase money lease". 30-2A-309(1)(c).

(3) The following definitions in other chapters apply to this chapter:

(a) "Account". 30-9A-102(1)(b).

(b) "Between merchants". 30-2-104(3).

(c) "Buyer". 30-2-103(1)(a).

(d) "Chattel paper". 30-9A-102(1)(k).

(e) "Consumer goods". 30-9A-102(1)(w).

(f) "Document". 30-9A-102(1)(dd).

(g) "Entrusting". 30-2-403(3).

(h) "General intangible". 30-9A-102(1)(pp).

(i) "Good faith". 30-2-103(1)(b).

(j) "Instrument". 30-9A-102(1)(uu).

(k) "Merchant". 30-2-104(1).

(l) "Mortgage". 30-9A-102(1)(ccc).

(m) "Pursuant to commitment". ~~30-9A-102(1)(ppp)~~ *30-9A-102(1)(qqq).*

(n) "Receipt". 30-2-103(1)(c).

(o) "Sale". 30-2-106(1).

(p) "Sale on approval". 30-2-326.

(q) "Sale or return". 30-2-326.

(r) "Seller". 30-2-103(1)(d).

(4) In addition, Title 30, chapter 1, contains general definitions and principles of construction and interpretation applicable throughout this chapter."

**Section 2.** Section 30-9A-102, MCA, is amended to read:

**"30-9A-102. Definitions and index of definitions.** (1) As used in this chapter, the following definitions apply:

(a) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(b) (i) "Account", except as used in "account for", means a right to payment of a monetary obligation, whether or not earned by performance:

(A) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of;

(B) for services rendered or to be rendered;

(C) for a policy of insurance issued or to be issued;

(D) for a secondary obligation incurred or to be incurred;

(E) for energy provided or to be provided;

(F) for the use or hire of a vessel under a charter or other contract;

(G) arising out of the use of a credit or charge card or information contained on or for use with the card; or

(H) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state.

(ii) The term includes a health-care-insurance receivable.

(iii) The term does not include:

(A) a right to payment evidenced by chattel paper or an instrument;

(B) a commercial tort claim;

(C) a deposit account;

(D) investment property;

(E) a letter-of-credit right; or

(F) a right to payment for money or funds advanced or sold, other than a right arising out of the use of a credit or charge card or information contained on or for use with the card.

(c) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include a person obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(d) "Accounting", except as used in "accounting for", means a record:

(i) authenticated by a secured party;

(ii) indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(iii) identifying the components of the obligations in reasonable detail.

(e) "Agricultural lien" means an interest, other than a security interest, in farm products:

(i) that secures payment or performance of an obligation for:

(A) goods or services furnished in connection with a debtor's farming operation; or

(B) rent on real property leased by a debtor in connection with its farming operation;

(ii) that is created by statute in favor of a person that:

(A) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(B) leased real property to a debtor in connection with the debtor's farming operation; and

(iii) whose effectiveness does not depend on the person's possession of the personal property.

(f) "As-extracted collateral" means:

(i) oil, gas, or other minerals that are subject to a security interest that:

(A) is created by a debtor having an interest in the minerals before extraction; and

(B) attaches to the minerals as extracted; or

(ii) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(g) "Authenticate" means ~~to~~:

(i) *to* sign; or

(ii) ~~execute or adopt a symbol, or encrypt a record in whole or in part, with present intent to:~~

~~(A) identify the authenticating party; and~~

~~(B) adopt, accept, or establish the authenticity of a record or term.~~ *with present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.*

(h) "Bank" means an organization that is engaged in the business of banking. The term includes a savings bank, savings and loan association, credit union, and trust company.

(i) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(j) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. *The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.*

(k) (i) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subsection (1)(k)(i), "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods.

(ii) (A) The term does not include:

(I) charters or other contracts involving the use or hire of a vessel; or

(II) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(B) If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(l) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(i) proceeds to which a security interest attaches under 30-9A-315;

(ii) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(iii) goods that are the subject of a consignment.

(m) "Commercial tort claim" means a claim arising in tort if:

(i) the claimant is an organization; or

(ii) the claimant is an individual and the claim:

(A) arose in the course of the claimant's business or profession; and

(B) does not include damages arising out of personal injury to or the death of an individual.

(n) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(o) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(i) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(ii) traded on a foreign commodity board of trade, exchange, or market and is carried on the books of a commodity intermediary for a commodity customer.

(p) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(q) "Commodity intermediary" means a person that:

(i) is registered as a futures commission merchant under federal commodities law; or

(ii) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(r) "Communicate" means:

(i) to send a written or other tangible record;

(ii) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

(iii) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(s) "Consignee" means a merchant to which goods are delivered in a consignment.

(t) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(i) the merchant:

(A) deals in goods of that kind under a name other than the name of the person making delivery;

(B) is not an auctioneer; and

(C) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(ii) with respect to each delivery, the aggregate value of the goods is $1,000 or more at the time of delivery;

(iii) the goods are not consumer goods immediately before delivery; and

(iv) the transaction does not create a security interest that secures an obligation.

(u) "Consignor" means a person that delivers goods to a consignee in a consignment.

(v) "Consumer debtor" means a debtor in a consumer transaction.

(w) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(x) "Consumer-goods transaction" means a transaction to the extent that:

(i) an individual incurs an obligation primarily for personal, family, or household purposes; and

(ii) a security interest in consumer goods or in consumer goods and software that is used, licensed, or bought for use primarily for personal, family, or household purposes secures the obligation.

(y) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(z) "Consumer transaction" means a transaction to the extent that:

(i) an individual incurs an obligation primarily for personal, family, or household purposes;

(ii) a security interest secures the obligation; and

(iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes a consumer-goods transaction.

(aa) "Continuation statement" means an amendment of a financing statement that:

(i) identifies, by its file number, the initial financing statement to which it relates; and

(ii) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(bb) "Debtor" means:

(i) a person having a property interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(ii) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(iii) a consignee.

(cc) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or an account evidenced by an instrument.

(dd) "Document" means a document of title or a receipt of the type described in 30-7-201(2).

(ee) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(ff) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes a mortgage and other lien on real property.

(gg) "Equipment" means goods other than inventory, farm products, or consumer goods.

(hh) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and that are:

(i) crops grown, growing, or to be grown, including:

(A) crops produced on trees, vines, and bushes; and

(B) aquatic goods produced in aquacultural operations;

(ii) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(iii) supplies used or produced in a farming operation; or

(iv) products of crops or livestock in their unmanufactured states.

(ii) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(jj) "File number" means the number assigned to an initial financing statement pursuant to 30-9A-519(1).

(kk) "Filing office" means an office designated in 30-9A-501 as the place to file a financing statement.

(ll) "Filing-office rule" means a rule adopted pursuant to 30-9A-526.

(mm) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(nn) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying the requirements of 30-9A-502(1) and (2). The term includes the filing of a financing statement covering goods of a transmitting utility that are or are to become fixtures.

(oo) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(pp) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes a payment intangible and software.

(qq) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(rr) (i) "Goods" means all things that are movable when a security interest attaches. The term includes:

(A) fixtures;

(B) standing timber that is to be cut and removed under a conveyance or contract for sale;

(C) the unborn young of animals;

(D) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes; and

(E) manufactured homes.

(ii) The term also includes a computer program structurally integrated with goods, any informational content included in the program, and any supporting information provided in connection with a transaction relating to the program or informational content if:

(A) the program is associated with the goods in such a manner that it customarily is considered part of the goods; or

(B) by becoming the owner of the goods, a person would acquire a right to use the program in connection with the goods.

(iii) The term does not include a program integrated with goods that consist solely of the medium with which the program is integrated. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(ss) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization with a separate corporate existence only if the organization is eligible to issue debt obligations on which interest is exempt from income taxation under the laws of the United States.

(tt) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance that is a right to payment of a monetary obligation for health care goods or services provided.

(uu) (i) "Instrument" means:

(A) a negotiable instrument; or

(B) any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment.

(ii) The term does not include:

(A) investment property;

(B) a letter of credit; or

(C) a writing that evidences a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(vv) "Inventory" means goods, other than farm products, that:

(i) are leased by a person as lessor;

(ii) are held by a person for sale or lease or to be furnished under contracts of service;

(iii) are furnished by a person under a contract of service; or

(iv) consist of raw materials, work in process, or materials used or consumed in a business.

(ww) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(xx) "Jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is *formed or* organized.

(yy) (i) "Letter-of-credit right" means a right to payment and performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance.

(ii) The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(zz) "Lien creditor" means:

(i) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(ii) an assignee for benefit of creditors from the time of assignment;

(iii) a trustee in bankruptcy from the date of the filing of the petition; and

(iv) a receiver in equity from the time of appointment.

(aaa) "Manufactured home" means a structure, transportable in one or more sections, that in the traveling mode is 8 body feet or more in width or 40 body feet or more in length or that when erected on site is 320 or more square feet and that is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under Title 42 of the United States Code.

(bbb) "Manufactured-home transaction" means a secured transaction:

(i) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(ii) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(ccc) "Mortgage" means a consensual interest in real property, including fixtures, that is created by a mortgage, trust deed, or similar transaction.

(ddd) "New debtor" means a person that becomes bound as debtor under 30-9A-203(4) by a security agreement previously entered into by another person.

(eee) (i) "New value" means:

(A) money;

(B) money's worth in property, services, or new credit; or

(C) release by a transferee of an interest in property previously transferred to the transferee.

(ii) The term does not include an obligation substituted for another obligation.

(fff) "Noncash proceeds" means proceeds other than cash proceeds.

(ggg) (i) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral:

(A) owes payment or other performance of the obligation;

(B) has provided property other than the collateral to secure payment or other performance of the obligation; or

(C) is otherwise accountable in whole or in part for payment or other performance of the obligation.

(ii) The term does not include an issuer or a nominated person under a letter of credit.

(hhh) "Original debtor", except as used in 30-9A-310(3), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under 30-9A-203(4).

(iii) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(jjj) "Person related to", with respect to an individual, means:

(i) the spouse of the individual;

(ii) a brother, brother-in-law, sister, or sister-in-law of the individual;

(iii) an ancestor or lineal descendant of the individual or the individual's spouse; and

(iv) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(kkk) "Person related to", with respect to an organization, means:

(i) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(ii) an officer or director of, or a person performing similar functions with respect to, the organization;

(iii) an officer or director of, or a person performing similar functions with respect to, a person described in subsection (1)(kkk)(i);

(iv) the spouse of an individual described in subsection (1)(kkk)(i), (1)(kkk)(ii), or (1)(kkk)(iii); or

(v) an individual who is related by blood or marriage to an individual described in subsections (1)(kkk)(i), (1)(kkk)(ii), (1)(kkk)(iii), or (1)(kkk)(iv) and shares the same home with the individual.

(lll) "Proceeds", except as used in 30-9A-609(2), means the following property:

(i) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(ii) whatever is collected on, or distributed on account of, collateral;

(iii) rights arising out of collateral;

(iv) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to the collateral; and

(v) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects in, or damage to the collateral.

(mmm) "Promissory note" means an instrument that:

(i) evidences a promise to pay a monetary obligation;

(ii) does not evidence an order to pay; and

(iii) does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(nnn) "Proposal" means a record authenticated by a secured party and including the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to 30-9A-620 through 30-9A-622.

(ooo) "Public-finance transaction" means a secured transaction in connection with which:

(i) bonds, debentures, certificates of participation, or similar debt securities are issued;

(ii) all or a portion of the securities issued have an initial stated maturity of at least 20 years; and

(iii) the debtor, the obligor, the secured party, the account debtor or other person obligated on collateral, the assignor or assignee of a secured obligation, or the assignor or assignee of a security interest is a state or a governmental unit of a state.

(ppp) *"Public organic record" means a record that is available to the public for inspection and is:*

*(i) a record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the initial record;*

*(ii) an organic record of a business trust consisting of the record initially filed with a state and any record filed with the state which amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or*

*(iii) a record consisting of legislation enacted by the legislature of a state or the congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the United States which amends or restates the name of the organization.*

*(qqq)* "Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

~~(qqq)~~*(rrr)* "Record", except as used in "for record", "of record", "record or legal title", and "record owner", means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~(rrr)~~*(sss)* "Registered organization" means an organization *formed or* organized solely under the law of one state or the United States ~~and as to which the state or the United States is required to maintain a public record showing the organization to have been organized.~~ *by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or the United States. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust's organic record be filed with the state.*

~~(sss)~~*(ttt)* "Secondary obligor" means an obligor to the extent that:

(i) the obligor's obligation is secondary; or

(ii) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

~~(ttt)~~*(uuu)* "Secured party" means:

(i) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(ii) a person that holds an agricultural lien;

(iii) a consignor;

(iv) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(v) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(vi) a person that holds a security interest arising under 30-2-401, 30-2-505, 30-2-711(3), 30-2A-508(5), 30-4-208, or 30-5-118.

~~(uuu)~~*(vvv)* "Security agreement" means an agreement that creates or provides for a security interest.

~~(vvv)~~*(www)* "Send", in connection with a record or notification, means to:

(i) deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(ii) cause the record or notification to be received within the time that it would have been received if properly sent under subsection (1)(vvv)(i).

~~(www)~~*(xxx)* (i) "Software" means a computer program, any informational content included in the program, and any supporting information provided in connection with a transaction relating to the computer program or informational content.

(ii) The term does not include a computer program that is contained in goods unless the goods are a computer or computer peripheral.

~~(xxx)~~*(yyy)* "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

~~(yyy)~~*(zzz)* "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, document, general intangible, instrument, or investment property.

~~(zzz)~~*(aaaa)* "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

~~(aaaa)~~*(bbbb)* "Termination statement" means an amendment of a financing statement that:

(i) identifies, by its file number, the initial financing statement to which it relates; and

(ii) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

~~(bbbb)~~*(cccc)* "Transmitting utility" means a person primarily engaged in the business of:

(i) operating a railroad, subway, street railway, or trolley bus;

(ii) transmitting electric or electronic communications;

(iii) transmitting goods by pipeline or sewer; or

(iv) transmitting or producing and transmitting electricity, steam, gas, or water.

(2) The following definitions in other chapters apply to this chapter:

"Applicant" 30-5-122.

"Beneficiary" 30-5-122.

"Broker" 30-8-112.

"Certificated security" 30-8-112.

"Check" 30-3-104.

"Clearing corporation" 30-8-112.

"Contract for sale" 30-2-106.

"Control" (with respect to a document of title) 30-7-107.

"Customer" 30-4-104.

"Entitlement holder" 30-8-112.

"Financial asset" 30-8-112.

"Holder in due course" 30-3-302.

"Issuer" (with respect to a letter of credit or letter-of-credit right) 30-5-122.

"Issuer" (with respect to a security) 30-8-211.

"Lease" 30-2A-103.

"Lease agreement" 30-2A-103.

"Lease contract" 30-2A-103.

"Leasehold interest" 30-2A-103.

"Lessee" 30-2A-103.

"Lessee in ordinary course of business" 30-2A-103.

"Lessor" 30-2A-103.

"Lessor's residual interest" 30-2A-103.

"Letter of credit" 30-5-122.

"Merchant" 30-2-104.

"Negotiable instrument" 30-3-104.

"Nominated person" 30-5-122.

"Note" 30-3-104.

"Proceeds of a letter of credit" 30-5-134.

"Prove" 30-3-102.

"Sale" 30-2-106.

"Securities account" 30-8-501.

"Securities intermediary" 30-8-112.

"Security" 30-8-112.

"Security certificate" 30-8-112.

"Security entitlement" 30-8-112.

"Uncertificated security" 30-8-112.

(3) Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter."

**Section 3.** Section 30-9A-105, MCA, is amended to read:

**"30-9A-105. Control of electronic chattel paper.** *(1)* A secured party has control of electronic chattel paper if *a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.*

*(2) A system satisfies subsection (1) if* the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

~~(1)~~*(a)* a single authoritative copy of the record or records exists that is unique, identifiable, and except as otherwise provided in subsections ~~(4)~~ *(2)(d)*, ~~(5)~~ *(2)(e)*, and ~~(6)~~ *(2)(f)*, unalterable;

~~(2)~~*(b)* the authoritative copy identifies the secured party as the assignee of the record or records;

~~(3)~~*(c)* the authoritative copy is communicated to and maintained by the secured party or its designated custodian;

~~(4)~~*(d)* copies or ~~revisions~~ *amendments* that add or change an identified assignee of the authoritative copy can be made only with the consent of the secured party;

~~(5)~~*(e)* each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

~~(6)~~*(f)* any ~~revision~~ *amendment* of the authoritative copy is readily identifiable as ~~an~~ authorized or unauthorized ~~revision~~."

**Section 4.** Section 30-9A-307, MCA, is amended to read:

**"30-9A-307. Location of debtor.** (1) In this section, "place of business" means a place where a debtor conducts its affairs.

(2) Except as otherwise provided in this section, the following rules determine a debtor's location:

(a) A debtor who is an individual is located at the individual's residence.

(b) A debtor that is an organization and has only one place of business is located at its place of business.

(c) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(3) ~~(a)~~ Subsection (2) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (2) does not apply, the debtor is located in the District of Columbia.

(4) A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (2) and (3).

(5) A registered organization that is organized under the law of a state is located in that state.

(6) Except as otherwise provided in subsection (9), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is a registered organization and is not organized under the law of the United States or a state are located:

(a) in the state that the law of the United States designates, if the law designates a state of location;

(b) in the state that the registered organization*, branch, or agency* designates, if the law of the United States authorizes the registered organization*, branch, or agency* to designate its state of location*, including by designating its main office, home office, or other comparable office*; or

(c) in the District of Columbia, if subsection (6)(a) or (6)(b) does not apply.

(7) A registered organization continues to be located in the jurisdiction specified by subsection (5) or (6) notwithstanding:

(a) the suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(b) the dissolution, winding up, or cancellation of the existence of the registered organization.

(8) The United States is located in the District of Columbia.

(9) A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

(10) A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(11) This section applies only for purposes of this part."

**Section 5.** Section 30-9A-311, MCA, is amended to read:

**"30-9A-311. Perfection of security interests in property subject to certain statutes, regulations, and treaties.** (1) Except as otherwise provided in subsection (4), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(a) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt 30-9A-310(1);

(b) the certificate of title provisions of Title 23 or 61; or

(c) a ~~certificate of title~~ statute of another jurisdiction that provides for a security interest to be indicated on ~~the~~ *a* certificate of title as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(2) Compliance with the requirements of a statute, regulation, or treaty described in subsection (1) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this chapter. Except as otherwise provided in 30-9A-313 and 30-9A-316(4) and (5) and subsection (4) of this section for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (1) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(3) Except as otherwise provided in 30-9A-316(4) and (5) and subsection (4) of this section, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (1) are governed by the statute, regulation, or treaty. In other respects the security interest is subject to this chapter.

(4) During any period in which collateral subject to a statute specified in subsection (1)(b) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person."

**Section 6.** Section 30-9A-316, MCA, is amended to read:

**"30-9A-316. ~~Continued perfection of security interest following~~ *Effect of* change in applicable law.** (1) A security interest perfected pursuant

to the law of the jurisdiction designated in 30-9A-301(1) or 30-9A-305(3) remains perfected until the earliest of:

(a) the time perfection would have ceased under the law of that jurisdiction;

(b) the expiration of 4 months after a change of the debtor's location to another jurisdiction;

(c) the expiration of 1 year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction; or

(d) the expiration of 1 year after a new debtor located in another jurisdiction becomes bound under 30-9A-203(4).

(2) If a security interest described in subsection (1) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(3) A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

(a) the collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(b) thereafter the collateral is brought into another jurisdiction; and

(c) upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(4) Except as otherwise provided in subsection (5), a security interest in goods covered by a certificate of title that is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(5) A security interest described in subsection (4) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under 30-9A-311(2) or 30-9A-313 are not satisfied before the earlier of:

(a) the time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or

(b) the expiration of 4 months after the goods had become so covered.

(6) A security interest in a deposit account, letter-of-credit right, or investment property that is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(a) the time ~~perfection~~ *the security interest* would have ~~ceased~~ *become unperfected* under the law of ~~the first~~ *that* jurisdiction; or

(b) the expiration of 4 months after a change of the applicable jurisdiction *to another jurisdiction*.

(7) If a security interest described in subsection (6) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the

security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

*(8) The following rules apply to collateral to which a security interest attaches within 4 months after the debtor changes its location to another jurisdiction:*

*(a) A financing statement filed before the change pursuant to the law of the jurisdiction designated in 30-9A-301(1) or 30-9A-305(3) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral had the debtor not changed its location.*

*(b) If a security interest perfected by a financing statement that is effective under subsection (8)(a) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in 30-9A-301(1) or 30-9A-305(3) or the expiration of the 4-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.*

*(9) If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in 30-9A-301(1) or 30-9A-305(3) and the new debtor is located in another jurisdiction, the following rules apply:*

*(a) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within 4 months after, the new debtor becomes bound under 30-9A-203(4), if the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor.*

*(b) A security interest perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in 30-9A-301(1) or 30-9A-305(3) or the expiration of the 4-month period remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.*"

**Section 7.** Section 30-9A-317, MCA, is amended to read:

**"30-9A-317. Interests that take priority over or take free of security interest or agricultural lien.** (1) A security interest or agricultural lien is subordinate to the rights of:

(a) a person entitled to priority under 30-9A-322; and

(b) except as otherwise provided in subsection (5), a person that becomes a lien creditor before the earlier of the time:

(i) the security interest or agricultural lien is perfected; or

(ii) one of the conditions specified in 30-9A-203(2)(c) is met and a financing statement covering the collateral is filed.

(2) Except as otherwise provided in subsection (5), a buyer, other than a secured party, of chattel paper, tangible documents, goods, instruments, or a ~~security certificate~~ *certificated security* takes free of a security interest or

agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(3) Except as otherwise provided in subsection (5), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(4) A licensee of a general intangible or a buyer, other than a secured party, of ~~accounts, electronic documents, general intangibles, or investment property~~ *collateral* other than *tangible chattel paper, tangible documents, goods, instruments, or* a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(5) Except as otherwise provided in 30-9A-320 and 30-9A-321, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor that arise between the time the security interest attaches and the time of filing."

**Section 8.** Section 30-9A-326, MCA, is amended to read:

**"30-9A-326. Priority of security interests created by new debtor.** (1) Subject to subsection (2), a security interest *that is* created by a new debtor ~~that is~~ *in collateral in which the new debtor has or acquires rights and is* perfected *solely* by a filed financing statement that ~~is effective solely under 30-9A-508 in collateral in which a new debtor has or acquires rights~~ *would be ineffective to perfect the security interest but for the application of 30-9A-316(9)(a) or 30-9A-508* is subordinate to a security interest in the same collateral that is perfected *other than* by ~~another method~~ *such a filed financing statement*.

(2) ~~If more than one security interest in the same collateral is subordinate under subsection (1), the other provisions of this part, as applicable, determine the priority among the subordinated security interests.~~ *The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements described in subsection (1). However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.*"

**Section 9.** Section 30-9A-406, MCA, is amended to read:

**"30-9A-406. Discharge of account debtor — notification of assignment — identification and proof of assignment — restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.** (1) Subject to subsections (2) through (9), an account debtor on an account, chattel paper, or payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(2) Subject to subsection (8), notification is ineffective under subsection (1):

(a) if it does not reasonably identify the rights assigned;

(b) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this chapter; or

(c) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(i) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(ii) a portion has been assigned to another assignee; or

(iii) the account debtor knows that the assignment to that assignee is limited.

(3) Subject to subsection (8), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (1).

(4) Except as otherwise provided in 30-2A-303, 30-9A-407, and subsection (5) of this section, and subject to subsection (8) of this section, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(a) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(b) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(5) Subsection (4) does not apply to~~:~~

~~(a) the assignment or transfer or the creation, attachment, perfection, or enforcement of a security interest in:~~

~~(i) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. 104(a)(2); or~~

~~(ii) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. 1396p(d)(4); or~~

~~(b)~~ the sale of a payment intangible or promissory note~~.~~*, other than a sale pursuant to a disposition under 30-9A-610 or an acceptance of collateral under 30-9A-620.*

(6) Except as otherwise provided in 30-2A-303 and 30-9A-407 and subject to subsections (8) and (9), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(a) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(b) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(7) Subject to subsection (8), an account debtor may not waive or vary its option under subsection (2)(c).

(8) This section is subject to law other than this chapter that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(9) This section does not apply to an assignment of a health-care-insurance receivable."

**Section 10.** Section 30-9A-408, MCA, is amended to read:

**"30-9A-408. Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.** (1) Except as otherwise provided in subsection (2), a term in a promissory note or in an agreement between an account debtor and a debtor that relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and that prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or the creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible is ineffective to the extent that the term:

(a) would impair the creation, attachment, or perfection of a security interest; or

(b) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(2) Subsection (1) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note~~.~~*, other than a sale pursuant to a disposition under 30-9A-610 or an acceptance of collateral under 30-9A-620.*

(3) A rule of law, including a provision in a statute or governmental rule or regulation, that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(a) would impair the creation, attachment, or perfection of a security interest; or

(b) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(4) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor that relates to a health-care-insurance receivable or general intangible or a rule of law described in subsection (3) would be effective under law other than this chapter but is ineffective under subsection

(1) or (3), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(a) is not enforceable against the person obligated on the promissory note or the account debtor;

(b) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(c) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(d) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(e) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(f) does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(5) Subsections (1) and (3) do not apply to the assignment or transfer or the creation, attachment, or perfection of a security interest in:

(a) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. 104(a)(2);

(b) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. 1396p(d)(4).

(6) This section prevails over any inconsistent provisions of other statutes or rules."

**Section 11.** Section 30-9A-502, MCA, is amended to read:

**"30-9A-502. Contents of financing statement — mortgage as financing statement — time of filing financing statement.** (1) Subject to subsection (2), a financing statement is sufficient only if it:

(a) provides the name of the debtor;

(b) provides the name of the secured party or a representative of the secured party; and

(c) indicates the collateral covered by the financing statement.

(2) Except as otherwise provided in 30-9A-501(2), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut or that is filed as a fixture filing and covers goods that are or are to become fixtures must comply with the requirements of subsection (1) and also:

(a) indicate that it covers this type of collateral;

(b) indicate that it is to be filed for record in the real property records;

(c) provide a description of the real property to which the collateral is related sufficient to give constructive notice of the mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and

(d) if the debtor does not have an interest of record in the real property, provide the name of a record owner.

(3) A record of mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(a) the record indicates the goods or accounts that it covers;

(b) the goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(c) the record complies with the requirements for a financing statement in this section*, but:*

*(i)* ~~other than an indication~~ *the record need not indicate* that it is to be filed in the real property records; and

*(ii) the record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom 30-9A-503(1)(d) applies; and*

(d) the record is recorded.

(4) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches."

**Section 12.** Section 30-9A-503, MCA, is amended to read:

**"30-9A-503. Name of debtor and secured party.** (1) A financing statement sufficiently provides the name of the debtor:

(a) *except as otherwise provided in subsection (1)(c),* if the debtor is a registered organization~~,~~ *or the collateral is held in a trust that is a registered organization,* only if the financing statement provides the name ~~of the debtor indicated~~ *that is stated to be the registered organization's name* on the public *organic* record ~~of~~ *most recently filed with or issued or enacted by* the ~~debtor's~~ *registered organization's* jurisdiction of organization that ~~shows the debtor to have been organized;~~ *purports to state, amend, or restate the registered organization's name;*

(b) *subject to subsection (6),* if the ~~debtor is a decedent's estate,~~ *collateral is being administered by the personal representative of a decedent,* only if the financing statement provides*, as the name of the debtor,* the name of the decedent and*, in a separate part of the financing statement,* indicates that the ~~debtor is an estate;~~ *collateral is being administered by a personal representative;*

(c) if the ~~debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:~~

~~(i) provides the name, if any, specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and~~

~~(ii) indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and~~ *collateral is held in a trust that is not a registered organization, only if the financing statement:*

*(i) provides, as the name of the debtor:*

*(A) if the organic record of the trust specifies a name for the trust, the name specified; or*

*(B) if the organic record of the trust does not specify a name for the trust, the name of the settlor or testator; and*

*(ii) in a separate part of the financing statement:*

*(A) if the name is provided in accordance with subsection (1)(c)(i)(A), indicates that the collateral is held in a trust; or*

*(B) if the name is provided in accordance with subsection (1)(c)(i)(B), provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;*

*(d) subject to subsection (7), if the debtor is an individual to whom this state has issued a driver's license or state identification card that has not expired or to whom a tribe has issued a tribal identification card that has not expired, only if the financing statement provides the name of the individual which is indicated on the driver's license, state identification card, or tribal identification card;*

*(e) if the debtor is an individual to whom subsection (1)(d) does not apply, only if the financing statement provides the individual name of the debtor or the surname and first personal name of the debtor; and*

~~(d)~~*(f)* in other cases:

(i) if the debtor has a name, only if ~~it~~ *the financing statement* provides the ~~individual or~~ organizational name of the debtor; and

(ii) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor~~.~~*, in a manner that each name provided would be sufficient if the person named were the debtor.*

(2) A financing statement that provides the name of the debtor in accordance with subsection (1) is not rendered ineffective by the absence of:

(a) a trade name or other name of the debtor; or

(b) unless required under subsection ~~(1)(d)(ii),~~ *(1)(f)(ii),* names of partners, members, associates, or other persons comprising the debtor.

(3) A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(4) Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(5) A financing statement may provide the name of more than one debtor and the name of more than one secured party.

*(6) The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the "name of the decedent" under subsection (1)(b).*

*(7) If this state has issued to an individual more than one driver's license or state identification card of a kind described in subsection (1)(d), or if a tribe has issued more than one tribal identification card of a kind described in subsection (1)(d), the one that was issued most recently is the one to which subsection (1)(d) refers.*

*(8) In this section, the "name of the settlor or testator" means:*

*(a) if the settlor is a registered organization, the name that is stated to be the settlor's name on the public organic record most recently filed with or issued or enacted by the settlor's jurisdiction of organization which purports to state, amend, or restate the settlor's name; or*

*(b) in other cases, the name of the settlor or testator indicated in the trust's organic record.*"

**Section 13.** Section 30-9A-507, MCA, is amended to read:

**"30-9A-507. Effect of certain events on effectiveness of financing statement.** (1) A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(2) Except as otherwise provided in 30-9A-508 and subsection (3) of this section, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under the standard set forth in 30-9A-506.

(3) If ~~a debtor so changes its~~ *the* name that a filed financing statement *provides for a debtor* becomes *insufficient as the name of the debtor under 30-9A-503(1) so that the financing statement becomes* seriously misleading under the standard set forth in 30-9A-506:

(a) the financing statement is effective to perfect a security interest in collateral acquired by the debtor before or within 4 months after the ~~change~~ *filed financing statement becomes seriously misleading*; and

(b) the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than 4 months after the ~~change~~ *filed financing statement becomes seriously misleading*, unless an amendment to the financing statement that renders the financing statement not seriously misleading is filed within 4 months after ~~the change.~~ *the financing statement became seriously misleading.*"

**Section 14.** Section 30-9A-515, MCA, is amended to read:

**"30-9A-515. Duration and effectiveness of financing statement — effect of lapsed financing statement.** (1) Except as otherwise provided in subsections (2), (5), (6), and (7), a filed financing statement is effective for a period of 5 years after the date of filing.

(2) Except as otherwise provided in subsections (5), (6), and (7), an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of 30 years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

(3) The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (4). Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected without filing. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(4) A continuation statement may be filed only within 6 months before the expiration of the 5-year period specified in subsection (1) or the 30-year period specified in subsection (2), whichever is applicable.

(5) Except as otherwise provided in 30-9A-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of 5 years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the 5-year period, the financing statement lapses in the same manner as provided in subsection (3), unless, before the lapse, another continuation statement is filed pursuant to subsection (4). Succeeding

continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(6) If a debtor is a transmitting utility and a filed *initial* financing statement so indicates, the financing statement is effective until a termination statement is filed.

(7) A record of mortgage that is effective as a fixture filing under 30-9A-502(3) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property."

**Section 15.** Section 30-9A-516, MCA, is amended to read:

**"30-9A-516. What constitutes filing — effectiveness of filing.** (1) Except as otherwise provided in subsection (2), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(2) Filing does not occur with respect to a record that a filing office refuses to accept because:

(a) the record is not communicated by a method or medium of communication authorized by the filing office;

(b) an amount equal to or greater than the applicable filing fee is not tendered;

(c) the filing office is unable to index the record because:

(i) in the case of an initial financing statement, the record does not provide a name for the debtor;

(ii) in the case of an amendment or ~~correction~~ *information* statement, the record:

(A) does not identify the initial financing statement as required by 30-9A-512 or 30-9A-518, as applicable; or

(B) identifies an initial financing statement whose effectiveness has lapsed under 30-9A-515;

(iii) in the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual that was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's ~~last name~~ *surname*; or

(iv) in the case of a record filed or recorded in the filing office described in 30-9A-501(1)(a), the record does not provide a sufficient description of the real property to which it relates;

(d) in the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(e) in the case of an initial financing statement or an amendment that provides a name of a debtor that was not previously provided in the financing statement to which the amendment relates, the record does not:

(i) provide a mailing address for the debtor; *or*

(ii) indicate whether the *name provided as the name of the* debtor is *the name of* an individual or an organization; ~~or~~

~~(iii) if the financing statement indicates that the debtor is an organization, provide:~~

~~(A) a type of organization for the debtor;~~

~~(B) a jurisdiction of organization for the debtor; or~~

~~(C) an organizational identification number for the debtor or indicate that the debtor has none;~~

(f) in the case of an assignment reflected in an initial financing statement under 30-9A-514(1) or an amendment filed under 30-9A-514(2), the record does not provide a name and mailing address for the assignee; or

(g) in the case of a continuation statement, the record is not filed within the 6-month period prescribed by 30-9A-515(4).

(3) For purposes of subsection (2):

(a) a record does not provide information if the filing office is unable to read or decipher the information; and

(b) a record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by 30-9A-512, 30-9A-514, or 30-9A-518, is an initial financing statement.

(4) A record that is communicated to the filing office with tender of the filing fee, but that the filing office refuses to accept for a reason other than one set forth in subsection (2), is effective as a filed record except as against a purchaser of the collateral that gives value in reasonable reliance upon the absence of the record from the files."

**Section 16.** Section 30-9A-518, MCA, is amended to read:

**"30-9A-518. Claim concerning inaccurate or wrongfully filed record.** (1) A person may file in the filing office ~~a correction~~ *an information* statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(2) ~~A correction~~ *An information* statement *under subsection (1)* must:

(a) identify the record to which it relates by:

(i) the file number assigned to the initial financing statement to which the record relates; and

(ii) if the ~~correction~~ *information* statement relates to a record filed in a filing office described in 30-9A-501(1)(a), the date that the initial financing statement was filed or recorded and the information specified in 30-9A-502(2);

(b) indicate that it is ~~a correction~~ *an information* statement; and

(c) provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

*(3) A person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under 30-9A-509(4).*

*(4) An information statement under subsection (3) must:*

*(a) identify the record to which it relates by:*

*(i) the file number assigned to the initial financing statement to which the record relates; and*

*(ii) if the information statement relates to a record filed in a filing office described in 30-9A-501(1)(a), the date that the initial financing statement was filed and the information specified in 30-9A-502(2);*

*(b) indicate that it is an information statement; and*

*(c) provide the basis for the person's belief that the person that filed the record was not entitled to do so under 30-9A-509(4).*

~~(3)~~*(5)* The filing of ~~a correction~~ *an information* statement does not affect the effectiveness of an initial financing statement or other filed record."

**Section 17.** Section 30-9A-521, MCA, is amended to read:

**"30-9A-521. Uniform form of written financing statement and amendment.** (1) A filing office that accepts written records may not refuse to accept a written initial financing statement in the ~~model~~ form *and format* ~~adopted by the secretary of state~~ *set forth in the official text of the 2010 amendments to Article 9 of the Uniform Commercial Code promulgated by The American Law Institute and the National Conference of Commissioners on Uniform State Laws,* except for a reason set forth in ~~30-9A-502 and~~ 30-9A-516(2).

(2) A filing office that accepts written records may not refuse to accept a written record in the ~~model~~ form *and format* ~~adopted by the secretary of state~~ *set forth as Form UCC3 and Form UCC3Ad in the final official text of the 2010 amendments to Article 9 of the Uniform Commercial Code promulgated by The American Law Institute and the National Conference of Commissioners on Uniform State Laws,* except for a reason set forth in ~~30-9A-502 and~~ 30-9A-516(2)."

**Section 18.** Section 30-9A-607, MCA, is amended to read:

**"30-9A-607. Collection and enforcement by secured party.** (1) If so agreed, and in any event on default, a secured party:

(a) may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(b) may take any proceeds to which the secured party is entitled under 30-9A-315;

(c) may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights and remedies of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(d) if it holds a security interest in a deposit account perfected by control under 30-9A-104(1)(a), may apply the balance of the deposit account to the obligation secured by the deposit account; and

(e) if it holds a security interest in a deposit account perfected by control under 30-9A-104(1)(b) or (1)(c), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(2) If necessary to enable a secured party to exercise under subsection (1)(c) the right of a debtor to enforce nonjudicially any mortgage, the secured party may record in the office in which the mortgage is recorded:

(a) a copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(b) the secured party's sworn affidavit in recordable form stating that:

(i) a default has occurred *with respect to the obligation secured by the mortgage*; and

(ii) the secured party is entitled to enforce the mortgage nonjudicially.

(3) A secured party shall proceed in a commercially reasonable manner if the secured party:

(a) undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(b) is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(4) A secured party may deduct from the collections made pursuant to subsection (3) reasonable expenses of collection and enforcement, including reasonable attorneys fees and legal expenses incurred by the secured party.

(5) This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party."

**Section 19. Security interest perfected before effective date.** (1) A security interest that is a perfected security interest immediately before [the effective date of this act] is a perfected security interest under this chapter if, on [the effective date of this act], the applicable requirements for attachment and perfection under this chapter are satisfied without further action.

(2) Except as otherwise provided in [section 20], if, immediately before [the effective date of this act], a security interest is a perfected security interest, but the applicable requirements for perfection under this chapter are not satisfied on [the effective date of this act], the security interest remains perfected thereafter only if the applicable requirements for perfection under this chapter are satisfied within 1 year after [the effective date of this act].

**Section 20. Security interest unperfected before effective date.** A security interest that is an unperfected security interest immediately before [the effective date of this act] becomes a perfected security interest:

(1) without further action on [the effective date of this act] if the applicable requirements for perfection under this chapter are satisfied before or at that time; or

(2) when the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

**Section 21. Effectiveness of action taken before effective date.** (1) The filing of a financing statement before [the effective date of this act] is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this chapter.

(2) This chapter does not render ineffective an effective financing statement that, before [the effective date of this act], is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former chapter 9A. However, except as otherwise provided in [section 22] and subsections (3) and (4) of this section, the financing statement ceases to be effective:

(a) if the financing statement is filed in this state, at the time the financing statement would have ceased to be effective had [this act] not taken effect; or

(b) if the financing statement is filed in another jurisdiction, at the earlier of:

(i) the time the financing statement would have ceased to be effective under the law of that jurisdiction; or

(ii) June 30, 2018.

(3) The filing of a continuation statement after [the effective date of this act] does not continue the effectiveness of a financing statement filed before [the effective date of this act]. However, upon the timely filing of a continuation statement after [the effective date of this act] and in accordance with the law of

the jurisdiction governing perfection as provided in this chapter, the effectiveness of a financing statement filed in the same office in that jurisdiction before [the effective date of this act] continues for the period provided by the law of that jurisdiction.

(4) Subsection (2)(b)(ii) applies to a financing statement that, before [the effective date of this act], is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former chapter 9A, only to the extent that this chapter provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(5) A financing statement that includes a financing statement filed before [the effective date of this act] and a continuation statement filed after [the effective date of this act] is effective only to the extent that it satisfies the requirements of Title 30, chapter 9A, part 5, for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative within the meaning of 30-9A-503(1)(b). A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to property held in trust indicates that the collateral is held in a trust within the meaning of 30-9A-503(1)(c).

**Section 22. When initial financing statement suffices to continue effectiveness of financing statement.** (1) The filing of an initial financing statement in the office specified in 30-9A-501 continues the effectiveness of a financing statement filed before [the effective date of this act] if:

(a) the filing of an initial financing statement in that office would be effective to perfect a security interest under this chapter.

(b) the pre-effective-date financing statement was filed in an office in another state; and

(c) the initial financing statement satisfies subsection (3).

(2) The filing of an initial financing statement under subsection (1) continues the effectiveness of the pre-effective-date financing statement:

(a) if the initial financing statement is filed before [the effective date of this act], for the period provided in former 30-9A-515 with respect to an initial financing statement; and

(b) if the initial financing statement is filed after [the effective date of this act], for the period provided in 30-9A-515 with respect to an initial financing statement.

(3) To be effective for purposes of subsection (1), an initial financing statement must:

(a) satisfy the requirements of Title 30, chapter 9A, part 5, for an initial financing statement;

(b) identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(c) indicate that the pre-effective-date financing statement remains effective.

**Section 23. Amendment of pre-effective-date financing statement.** (1) In this section, "pre-effective-date financing statement" means a financing statement filed before [the effective date of this act].

(2) After [the effective date of this act], a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Title 30, chapter 9A. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(3) Except as otherwise provided in subsection (4), if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after [the effective date of this act] only if:

(a) the pre-effective-date financing statement and an amendment are filed in the office specified in section 30-9A-501;

(b) an amendment is filed in the office specified in section 30-9A-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies [section 22(3)]; or

(c) an initial financing statement that provides the information as amended and satisfies [section 22(3)] is filed in the office specified in 30-9A-501.

(4) If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under [section 21(3)] and [section 21(5)] or [section 22].

(5) Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this state may be terminated after [the effective date of this act] by filing a termination statement in the office in which the pre-effective-date financing statement is filed unless an initial financing statement that satisfies [section 22(3)] has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Title 30, chapter 9A, as the office in which to file a financing statement.

**Section 24. Person entitled to file initial financing statement or continuation statement.** A person may file an initial financing statement or a continuation statement under [sections 19 through 25] if:

(1) the secured party of record authorizes the filing; and

(2) the filing is necessary under this part:

(a) to continue the effectiveness of a financing statement filed before [the effective date of this act]; or

(b) to perfect or continue the perfection of a security interest.

**Section 25. Priority.** This chapter determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before [the effective date of this act], Title 30, former chapter 9A, determines priority.

**Section 26. Savings provisions.** (1) Except as otherwise provided in [sections 19 through 25], this chapter applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before [the effective date of this act].

(2) This chapter does not affect an action, case, or proceeding commenced before [the effective date of this act].

**Section 27. Codification instruction.** [Sections 19 through 25] are intended to be codified as an integral part of Title 30, chapter 9A, and the provisions of Title 30, chapter 9A, apply to [sections 19 through 25].

**Section 28. Effective date.** [This act] is effective July 1, 2013.

Approved March 20, 2013

## CHAPTER NO. 76

[HB 252]

AN ACT CHANGING THE STORAGE LOCATION OF NOTARY PUBLIC JOURNALS FROM COUNTY CLERK AND RECORDERS' OFFICES TO THE SECRETARY OF STATE'S OFFICE UPON A NOTARY PUBLIC'S RESIGNATION, REMOVAL, OR DEATH OR UPON EXPIRATION OF THE NOTARY PUBLIC'S TERM OF OFFICE; AND AMENDING SECTIONS 1-5-419 AND 1-5-420, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 1-5-419, MCA, is amended to read:

**"1-5-419. Transfer of records upon termination of office.** (1) A notary public, upon resignation or removal from office or at the expiration of the notary public's term if the notary public is not reappointed, or, in case of the notary public's death, the notary public's legal representative shall:

(a) transfer in a timely manner all the journals kept by the notary public to the office of the ~~county clerk and recorder of the county in which the notary public was a resident~~ *secretary of state*; and

(b) destroy the notary's official stamp and seal.

(2) A knowing failure to take the actions prescribed in subsection (1) makes the offending person liable for damages to any person injured by the failure."

**Section 2.** Section 1-5-420, MCA, is amended to read:

**"1-5-420. Powers and duties of ~~county clerk and recorder~~ *secretary of state* ~~with whom~~ *when* records deposited.** It is the duty of ~~each county clerk and recorder~~ *the secretary of state* to receive and safely keep all records and papers of the notary in the case described in 1-5-419 and to give attested copies of them under a seal. ~~The county clerk and recorder may charge the fees allowed by law to the notaries, and the copies have the same effect as if certified by the notary.~~"

**Section 3. Transition.** Within 60 days of [the effective date of this act], every county clerk and recorder shall transfer any notary journals received in accordance with 1-5-419 to the office of the secretary of state.

Approved March 20, 2013

## CHAPTER NO. 77

[HB 317]

AN ACT ALLOWING THE COMMISSIONER OF HIGHER EDUCATION TO DEVELOP CRITERIA FOR AWARDING CREDIT FOR LEARNING THROUGH MILITARY SERVICE AND TO SUBMIT THE CRITERIA TO THE BOARD OF REGENTS FOR APPROVAL; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Awarding credit for military service — policy.** (1) The commissioner may develop criteria for awarding academic credit at a postsecondary institution for a student's prior learning through military service and submit a proposed policy that incorporates those criteria to the board of regents for approval.

(2) For the purposes of this section, "postsecondary institution" has the meaning provided in 20-26-603.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 20, chapter 25, part 5, and the provisions of Title 20, chapter 25, part 5, apply to [section 1].

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved March 20, 2013

# CHAPTER NO. 78

[HB 318]

AN ACT ELIMINATING LOCAL EXECUTIVE BOARDS SERVING THE BOARD OF REGENTS IN COUNTIES IN WHICH A UNIVERSITY SYSTEM CAMPUS IS LOCATED; AMENDING SECTIONS 20-25-301 AND 20-25-424, MCA; AND REPEALING SECTIONS 20-25-303 AND 20-25-304, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-25-301, MCA, is amended to read:

**"20-25-301. Regents' powers and duties.** The board of regents of higher education shall serve as regents of the Montana university system, shall use and adopt this style in all its dealings with the university system, and:

(1) must have general control and supervision of the units of the Montana university system, which is considered for all purposes one university;

(2) shall adopt rules for its own government that are consistent with the constitution and the laws of the state and that are proper and necessary for the execution of the powers and duties conferred upon it by law;

(3) shall provide, subject to the laws of the state, rules for the government of the system;

(4) shall grant diplomas and degrees to the graduates of the system upon the recommendation of the faculties and have discretion to confer honorary degrees upon persons other than graduates upon the recommendation of the faculty of the institutions;

(5) shall keep a record of its proceedings;

(6) must have, when not otherwise provided by law, control of all books, records, buildings, grounds, and other property of the system;

(7) must receive from the board of land commissioners, from other boards or persons, or from the government of the United States all funds, income, and other property that the system may be entitled to and use and appropriate the property for the specific purpose of the grant or donation;

(8) must have general control of all receipts and disbursements of the system;

(9) shall appoint a president or chancellor and faculty for each of the institutions of the system, appoint any other necessary officers, agents, and employees, and fix their compensation;

~~(10) shall confer upon the executive board of each of the units of the system authority that may be considered expedient relating to immediate control and management, other than authority relating to financial matters or the selection of the teachers, employees, and faculty;~~

~~(11)~~*(10)* shall confer, at the regents' discretion, upon the president and faculty of each of the units of the system for the best interest of the unit authority relating to the immediate control and management, other than financial, and the selection of teachers and employees;

~~(12)~~*(11)* shall prevent unnecessary duplication of courses at the units of the system;

~~(13)~~*(12)* shall appoint a certified professional geologist or registered mining engineer as the director of the Montana state bureau of mines and geology, who is the state geologist, and appoint any other necessary assistants and employees and fix their compensation;

~~(14)~~*(13)* shall supervise and control the agricultural experiment station, along with any executive or subordinate board or authority that may be appointed by the governor with the advice and consent of the regents;

~~(15)~~*(14)* shall adopt a seal bearing on its face the words "Montana university system", which must be affixed to all diplomas and all other papers, instruments, or documents that may require it;

~~(16)~~*(15)* shall ensure an adequate level of security for data, as defined in 2-15-102, within the state university system. In carrying out this responsibility, the board of regents shall, at a minimum, address the responsibilities prescribed in 2-15-114.

~~(17)~~*(16)* shall offer courses in vocational-technical education of a type and in a manner considered necessary or practical by the regents."

**Section 2.** Section 20-25-424, MCA, is amended to read:

**"20-25-424. Receipt of funds.** (1) The treasurer of Montana state university-Bozeman may receive the cash appropriation received from the United States by authority of the act of congress of August 30, 1890, known as the second Morrill Act and the act of congress of March 4, 1907, known as the Nelson Amendment, to be expended ~~by the executive board~~ under the general supervision of the regents only for the purpose for which it was appropriated by congress.

(2) On or before December 1 of each year, the state university shall make detailed reports of the amounts received and disbursed under the provisions of the acts of congress of August 30, 1890, March 16, 1906, and March 4, 1907, to the secretaries of agriculture and interior of the United States, as required by the acts of congress."

**Section 3. Repealer.** The following sections of the Montana Code Annotated are repealed:

20-25-303. Local executive boards — terms and compensation.

20-25-304. Powers of local executive boards.

Approved March 20, 2013

# CHAPTER NO. 79

[HB 389]

AN ACT INCREASING THE CONTRACT AMOUNT NECESSARY TO REQUIRE BIDS FOR DRAINAGE DISTRICT PROJECTS; AND AMENDING SECTION 85-8-361, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 85-8-361, MCA, is amended to read:

**"85-8-361. Contracts.** In all cases when the work to be done at any one time under the direction of the commissioners *will*, in their opinion, ~~will~~ cost more than ~~$10,000~~ *$15,000*, the work must be awarded to the lowest responsible bidder. The commissioners shall advertise for sealed bids, by notice published in a newspaper published in the county in which the petition is filed, and may advertise in one or more newspapers published elsewhere. If there is no newspaper published in the county in which the petition is filed, the commissioners shall advertise in a newspaper published in an adjoining county. The notice must specify the time and place when and where the bids advertised will be opened, the kind of work to be contracted for, and the terms of payment. The commissioners may ~~continue the awarding of~~ *award* contracts ~~from time to time,~~ if in their judgment the contracts are necessary~~,~~ and shall reserve the right to reject any and all bids."

Approved March 20, 2013

# CHAPTER NO. 80

[HB 199]

AN ACT INCREASING THE MAXIMUM WAGER AND PAYOUT IN A SPORTS TAB GAME AND A SPORTS POOL; AND AMENDING SECTION 23-5-503, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 23-5-503, MCA, is amended to read:

**"23-5-503. Rules.** (1) The card or other device used for recording the sports pool or sports tab game must clearly indicate in advance of the sale of any chances the number of chances to be sold in that specific pool, the name of the event or series of events, the consideration to be paid for each chance, and the total amount or percentage to be paid to the winners. The sports tabs must be purchased from a sports tab game seller licensed under 23-5-513.

(2) Each sports tab or chance to participate in a sports pool must be sold for the same amount, which may not exceed ~~$5~~ *$25*, and the total amount paid to all winners of any individual sports pool or sports tab game may not exceed the value of ~~$500~~ *$2,500*. Chances for a series of events may be purchased all at once prior to the occurrence of the first event.

(3) (a) Except as provided in subsection (3)(b), the winners of any sports pool must receive a 100% payout of the value of the sports pool. The winner of a sports tab game must receive at least 90% of the total cost of the 100 sports tabs. The operator of the sports tab game may retain the remaining money for administration and other expenses.

(b) A nonprofit organization that maintains records and opens the records to inspection upon reasonable demand to verify that the retained portion is used to support charitable activities, scholarships or educational grants, or community

service projects may retain up to 50% of the value of a sports pool or sports tab game.

(4) A person or nonprofit organization conducting a sports pool or sports tab game may purchase chances or sports tabs to participate in the sports pool or sports tab game but may not:

(a) retain any portion of the amount wagered in the sports pool or sports tab game, except as provided in subsection (3)(b);

(b) charge a fee for participating in the sports pool or sports tab game; or

(c) use the sports pool or sports tab game in any manner to establish odds or handicaps or to allow betting or booking against the person or nonprofit organization conducting the pool or game."

**Section 2. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Approved March 22, 2013

## CHAPTER NO. 81

[HB 261]

AN ACT PROVIDING THAT A CHARGE FOR UNEMPLOYMENT INSURANCE MAY NOT BE MADE AGAINST A BUSINESS IMPACTED BY A PRESIDENTIALLY DECLARED NATURAL DISASTER IF EMPLOYEE LAYOFFS ARE DIRECTLY RELATED TO THE DISASTER; REQUIRING VERIFICATION OF EMPLOYER LOCATION IN DISASTER AREA; AMENDING SECTIONS 39-51-301, 39-51-1213, AND 39-51-1214, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 39-51-301, MCA, is amended to read:

**"39-51-301. Administration — duties and powers of department — duties and powers of board — emergency provisions.** (1) It is the duty of the department to administer this chapter. The department may adopt, amend, or rescind rules to employ persons, make expenditures, require reports, make investigations, and take action that the department considers necessary or suitable in administering this chapter.

(2) The department shall determine its own organization and methods of procedure in accordance with the provisions of this chapter and must have an official seal, which is judicially noticed.

(3) Whenever the department believes that a change in contribution or benefit rates is necessary to protect the solvency of the fund, the department shall promptly inform the governor and the legislature and make recommendations with respect to the change.

(4) (a) The department and the board may jointly or individually issue subpoenas and compel testimony and the production of evidence, including books, records, papers, documents, and other objects that may be necessary and proper in regard to any investigation or proceeding under this chapter.

(b) If a subpoena issued and served under this section is disobeyed or if a witness refuses to testify to any matter for which the witness may be interrogated in a proceeding before the department, the department may apply to a district court for an order to compel compliance with the subpoena or testimony. Disobedience of the court's order constitutes contempt of court.

(5) (a) In the aftermath of a disaster, as defined in 10-3-103, the department may waive, suspend, or modify its rules concerning the filing of a claim for benefits, filing continued claims, registration for work, or work search if all of the following conditions are met:

(i) the president of the United States declares a disaster pursuant to 42 U.S.C. 5170, et seq.; and

(ii) the governor issues an executive order directing the department to waive, suspend, or modify rules relating to claims.

(b) In a disaster declared under subsection (5)(a), the department may waive, suspend, or modify its rules relating to claims in portions of the state named by the department as appropriate to address the nature of the disaster and the purposes of unemployment insurance laws.

*(c) The department shall verify that an employer who has laid off employees because of a disaster declared under subsection (5)(a) is in the portion of the state covered by the disaster order. If the employer is eligible, the department shall implement the provisions of 39-51-1214(2)(h).*"

**Section 2.** Section 39-51-1213, MCA, is amended to read:

**"39-51-1213. Classification of employers for experience rating purposes.** (1) The department shall for each calendar year classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with contribution rates reflecting benefit experience. Each employer's rate for a calendar year must be determined on the basis of the employer's record as of October 1 of the preceding calendar year.

(2) In making the classification, each eligible and deficit employer's contribution rate is determined in the manner set forth below:

(a) Each employer is given an "experience factor", which is contributions paid since October 1, 1981, minus benefits charged on each employer's account since October 1, 1981, divided by the employer's average annual taxable payroll rounded to the next lower dollar amount for the 3 federal fiscal years immediately preceding the computation date. The computation of the "experience factor" must be to six decimal places.

(b) Schedules must be prepared listing all eligible and deficit employers in inverse numerical order of their experience factors. There must be listed on the schedules for each employer in addition to the experience factor:

(i) the amount of the employer's taxable payroll for the federal fiscal year ending on the computation date; and

(ii) the cumulative total consisting of the sum of the employer's taxable payroll for the federal fiscal year ending on the computation date and the corresponding taxable payrolls for all other employers preceding that employer on the schedules.

(3) The cumulative taxable payroll amounts listed on the schedules provided for in 39-51-1218 must be segregated into groups that will yield approximately the average tax rate according to the tax schedule assigned for that particular taxable year. Each group must be identified by the rate class number listed in the table that represents the percentage limits of each group. Each employer on the schedules is assigned that contribution rate opposite that employer's rate class for the tax schedule in effect for the taxable year.

(4) (a) If the grouping of rate classes requires the inclusion of exactly one-half of an employer's taxable payroll, the employer is assigned the lower of

the two rates designated for the two classes in which the halves of that employer's taxable payroll are required.

(b) If the group of rate classes requires the inclusion of a portion other than exactly one-half of an employer's taxable payroll, the employer is assigned the rate designated for the class in which the greater part of that employer's taxable payroll is required.

(c) If one or more employers on the schedules have experience factors identical to that of the last employer included in a particular rate class, those employers are included in and assigned the contribution rate specified for the class~~, notwithstanding the provisions of 39-51-1214~~.

(5) If the taxable payroll amount, the experience factor, or both of any eligible or deficit employer listed on the schedules is changed, the employer is placed in that position on the schedules that the employer would have occupied had that employer's taxable payroll amount or experience factor as changed been used in determining that employer's position in the first instance. However, the change does not affect the position or rate classification of any other employer listed on the schedules and does not affect the rate determination for previous years.

(6) An employer who has not filed all required payroll reports or paid all taxes, penalties, and interest due by the cutoff date must be assigned a contribution rate in effect for the taxable year for the employer's classification as an eligible, deficit, or new employer, plus an additional assessment of 50% of the employer's assigned contribution rate, rounded to the nearest 1/100 of 1%."

**Section 3.** Section 39-51-1214, MCA, is amended to read:

**"39-51-1214. Benefit payments chargeable to employer experience rating accounts.** (1) Except for cost reimbursement, benefits paid must be charged to the account of each of the claimant's base period employers. The benefit charged must be based on the percentage of wages paid by the employer as compared to the total wages paid by all employers in the claimant's base period.

(2) The account of an employer with an experience rating as provided in 39-51-1213 may not be charged with respect to benefits paid under the following situations:

(a) if paid to a worker who terminated services voluntarily without good cause attributable to a covered employer or who had been discharged for misconduct in connection with services;

(b) if paid in accordance with the extended benefit program triggered by either national or state indicators;

(c) if the base period employer continues to provide employment with no reduction in hours or wages;

(d) if benefits are paid to claimants who are in training approved under 39-51-2307;

(e) if the base period employer is ordered to military service, as defined in 10-1-1003;

(f) if benefits are paid to an employee laid off as the result of the return to work of a permanent employee who:

(i) was called to military service, as defined in 10-1-1003; and

(ii) had completed 4 or more weeks of military service and exercised reemployment rights under Title 10, chapter 1, part 10; ~~or~~

(g) if the worker separates from employment as a result of domestic violence, a sexual assault, or stalking pursuant to 39-51-2111*;*

*(h) if benefits are paid to a claimant laid off as a direct result of a major natural disaster declared by the president pursuant to 42 U.S.C. 5170, et seq., if the recipient of the benefits would have been eligible for federal disaster unemployment assistance with respect to that unemployment except for their receipt of state unemployment insurance benefits*."

**Section 4. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to any claims filed on or after January 1, 2011, that were charged to the account of an employer with an experience rating if that employer was in an area covered by a disaster declaration under 42 U.S.C. 5170, et seq.

Approved March 22, 2013

# CHAPTER NO. 82

[HB 264]

AN ACT EXEMPTING SENIOR CITIZEN CENTERS FROM OPERATOR'S LICENSE REQUIREMENTS FOR BINGO AND LIVE CARD GAMES; AMENDING SECTIONS 23-5-177, 23-5-310, AND 23-5-410, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 23-5-177, MCA, is amended to read:

**"23-5-177. Operator of gambling establishment — license — fee.** (1) ~~It~~ *Except as provided in 23-5-310 and 23-5-410, it* is a misdemeanor for a person who is not licensed by the department as an operator to make available to the public for play a gambling device or gambling enterprise for which a permit must be obtained from the department.

(2) To obtain an operator's license, a person shall submit to the department:

(a) a completed operator's license application on a form prescribed and furnished by the department;

(b) the person's fingerprints and, if the applicant is a corporation, the fingerprints of each person holding 10% or more of the outstanding stock of the corporation and of each officer and director of the corporation, to be used for a fingerprint and background check that must be used by the department in determining eligibility for a license;

(c) any other relevant information requested by the department; and

(d) a license application processing fee, as required in subsection (8).

(3) Before issuing an operator's license, the department shall approve, in accordance with 23-5-117, the premises in which the gambling activity is to be conducted.

(4) Except as provided in 23-5-117, regardless of the number of on-premises alcoholic beverage licenses issued for a premises, the department may issue only one operator's license for the premises.

(5) An operator's license must include the following information:

(a) a description of the premises upon which the gambling will take place;

(b) the operator's name;

(c) a description of each gambling device or card game table for which a permit has been issued to the operator by the department for play upon the premises, including the type of game and permit number for each game; and

(d) any other relevant information determined necessary by the department.

(6) The operator's license must be issued annually along with all other permits for gambling devices or games issued to the operator.

(7) The operator's license must be updated each time a video gambling machine, bingo, keno, or card game table permit is newly issued or the machine or game is removed from the premises.

(8) The department shall charge an applicant who has submitted an operator's license application on or after July 1, 1991, a one-time license application processing fee to cover the actual cost incurred by the department in determining whether the applicant qualifies for licensure under 23-5-176. After making its determination, the department shall refund any overpayment or charge and collect amounts sufficient to reimburse the department for any underpayment of actual costs.

(9) The operator's license must be prominently displayed upon the premises for which it is issued."

**Section 2.** Section 23-5-310, MCA, is amended to read:

**"23-5-310. Exemption from certain sections.** A senior citizen center is exempt from *23-5-117, 23-5-177,* 23-5-306, 23-5-308, and 23-5-309 if the center:

(1) limits participation in live card games to its members and members' guests;

(2) limits live card game activities to its main premises or place of operation; and

(3) does not operate live card games in a predominantly commercial manner."

**Section 3.** Section 23-5-410, MCA, is amended to read:

**"23-5-410. Exemption from certain sections.** A senior citizen center is exempt from *23-5-117, 23-5-177,* 23-5-407*,* and 23-5-409 with respect to live bingo games if the center:

(1) limits participation in live bingo games to its members and members' guests;

(2) limits live bingo games to its main premises or place of operation; and

(3) does not operate live bingo games in a predominantly commercial manner."

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved March 22, 2013

## CHAPTER NO. 83

[SB 123]

AN ACT ESTABLISHING THE HUNTERS AGAINST HUNGER PROGRAM; PROVIDING FOR AN OPTIONAL DONATION ON CERTAIN HUNTING LICENCES; ESTABLISHING THE HUNTERS AGAINST HUNGER ACCOUNT; PROVIDING FOR DONATIONS TO BE DEPOSITED INTO THE ACCOUNT; GRANTING RULEMAKING AUTHORITY; AMENDING

SECTIONS 87-1-601 AND 87-2-903, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Hunters against hunger — findings — optional donation — rulemaking.** (1) The legislature finds that:

(a) hunters play a vital role in achieving population management objectives for game animals;

(b) the donation of game animals to charitable or nonprofit organizations for free distribution to people can help stop hunger; and

(c) hunters should have the option of donating $1 or more above the purchase price for certain licenses toward a program that would process donated wild game and distribute the meat to those in need.

(2) A person who applies for or purchases a deer, antelope, elk, or wild buffalo license may donate $1 or more in addition to the price of each license to the hunters against hunger program.

(3) The department shall deposit donations received pursuant to this section into the hunters against hunger account established in [section 2].

(4) The department shall adopt rules to implement the provisions of this section, including:

(a) providing the forms necessary for the hunters against hunger donation option;

(b) regulating the payment of funds from the hunters against hunger account to a nonprofit organization exempt from taxation under 26 U.S.C. 501(c)(3) for the processing of donated or seized game animals; and

(c) establishing guidelines for the donation of game animals to a nonprofit organization exempt from taxation under 26 U.S.C. 501(c)(3) who are paid from the hunters against hunger account and for the donation of processed game meat to those in need.

**Section 2. Hunters against hunger account.** (1) There is a hunters against hunger account in the state special revenue fund established by 17-2-102. Funds deposited into this account must be used by the department for the purposes of [section 1].

(2) The following money must be deposited into the account:

(a) donations received pursuant to [section 1];

(b) interest earned on the account; and

(c) money received by the department in the form of gifts or grants or from any source intended to be used for the purposes of [section 1].

(3) Any money in the account that is unspent or unencumbered at the end of a fiscal year must remain in the account.

**Section 3.** Section 87-1-601, MCA, is amended to read:

**"87-1-601. Use of fish and game money.** (1) (a) Except as provided in *[section 1],* 87-1-290, 87-1-623, and subsections (8) and (10) of this section, all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and game laws of this state, or from appropriations or received by the department from any other state source must be turned over to the department of revenue and placed in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-411, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) Except as provided in 87-2-411, the money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. The money described in subsection (1) must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in Title 87 means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsections (8) and (9), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, that relates to violations of state fish and game laws under Title 87 must be deposited by the department of revenue and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) (a) Except as provided in 87-1-621, section 2(3), Chapter 560, Laws of 2005, and subsection (6) of this section, money must be deposited in an account in the permanent fund if it is received by the department from:

(i) the sale of surplus real property;

(ii) exploration or development of oil, gas, or mineral deposits from lands acquired by the department, except royalties or other compensation based on production; and

(iii) leases of interests in department real property not contemplated at the time of acquisition.

(b) The interest derived from the account, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the sale or lease of lands acquired and managed for the purposes of Title 23, chapter 1, must be deposited in the state special revenue fund in the account established for miscellaneous funds received for state parks and may be used only for the purposes of Title 23, chapter 1.

(7) Money received from the collection of license drawing applications is subject to the deposit requirements of 17-6-105(6) unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).

(8) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited in the state general fund.

(9) The department of revenue shall deposit in the state general fund one-half of the money received from the fines imposed pursuant to Title 87, chapter 6.

(10) (a) The department shall deposit all money received from the search and rescue surcharge in 87-2-202 in a state special revenue account to the credit of the department for search and rescue purposes as provided for in 10-3-801.

(b) Upon certification by the department of reimbursement requests submitted by the department of military affairs for search and rescue missions involving persons engaged in hunting, fishing, or trapping, the department may transfer funds from the special revenue account to the search and rescue account provided for in 10-3-801 to reimburse counties for the costs of those missions as provided in 10-3-801.

(c) Using funds in the department's search and rescue account that are not already committed to reimbursement for search and rescue missions, the department may provide matching funds to the department of military affairs to reimburse counties for search and rescue training and equipment costs up to the proportion that the number of search and rescue missions involving persons engaged in hunting, fishing, or trapping bears to the statewide total of search and rescue missions.

(d) Any money deposited in the special revenue account is available for reimbursement of search and rescue missions and to provide matching funds to reimburse counties for search and rescue training and equipment costs."

**Section 4.** Section 87-2-903, MCA, is amended to read:

**"87-2-903. Compensation, fees, and duties of agents — penalty for late submission of license money.** (1) License agents, except salaried employees of the department, must receive for all services rendered a commission of 50 cents for each transaction, plus any additional amount as determined under subsection (9) and by rules adopted pursuant to subsection (10).

(2) A license agent may charge a convenience fee of up to 3% of the total amount of a transaction if a purchase is made with a credit card or a debit card. A financial institution or credit card company may not prohibit collection of the convenience fee provided for in this subsection.

(3) Each license agent shall submit to the department the money received from the sale of licenses *and donations received pursuant to [section 1]*, less the appropriate commission and convenience fee.

(4) Each license agent shall submit to the department copies of each paper license sold.

(5) The department may charge license agents appointed after March 1, 1998, an electronic license system fee not to exceed actual costs.

(6) The department may designate classes of license agents and may establish a protocol for each class of agent. Each license agent shall keep the license account open at all reasonable hours to inspection by the department, the director, the wardens, or the legislative auditor.

(7) For purposes of this section, the term "transaction" includes the sale of any license or permit, collection of any data or fee, or issuance of any certificate prescribed by the department. *The term does not include donations collected pursuant to [section 1].*

(8) If a license agent fails to submit to the department all money received from the declared sale of licenses *and from donations received pursuant to [section 1]*, less the appropriate commission and convenience fee, by the deadline established by the department, an interest charge equal to the rate charged under 15-1-216 may be assessed. Acceptance of late payments with interest does not preclude the department from summarily revoking the appointment of a license agent under 87-2-904.

(9) A license agent, except for an electronic service provider, must receive a commission of 50 cents for each ticket the agent processes for a hunting license lottery held pursuant to 87-1-271.

(10) The department may adopt rules necessary to implement this section."

**Section 5. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87, chapter 1, part 2, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 87, chapter 1, part 6, and the provisions of Title 87, chapter 1, part 6, apply to [section 2].

**Section 6. Effective date.** [This act] is effective July 1, 2013.

**Section 7. Termination.** [This act] terminates June 30, 2019.

Approved March 22, 2013

# CHAPTER NO. 84

[HB 59]

AN ACT REVISING THE TITLE AND DUTIES OF THE DROUGHT ADVISORY COMMITTEE TO INCLUDE ANALYSIS OF WATER SUPPLIES AND FLOODING; AMENDING SECTION 2-15-3308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-15-3308, MCA, is amended to read:

**"2-15-3308. Drought *and water supply* advisory committee.** (1) There is a drought *and water supply* advisory committee in the department of natural resources and conservation.

(2) The drought *and water supply* advisory committee is chaired by a representative of the governor and consists of representatives of the departments of natural resources and conservation; agriculture; commerce; fish, wildlife, and parks; military affairs; environmental quality; and livestock. The governor's representative must be appointed by the governor, and the representative of each department must be appointed by the head of that department. Additional, nonvoting members who represent ~~drought-affected~~ federal and local government agencies and public and private interests *affected by drought or flooding* may also be appointed by the governor.

(3) The drought *and water supply* advisory committee shall:

(a) with the approval of the governor, develop and implement a state ~~drought~~ plan *that considers drought and flooding*;

(b) review and report drought *and water supply* monitoring information to the public;

(c) coordinate timely drought *and flooding* impact assessments;

(d) identify areas of the state with a high probability of drought *or flooding* and target reporting and assistance efforts to those areas;

(e) upon request, assist in organizing local ~~drought~~ advisory committees for the areas identified under subsection (3)(d);

(f) request state agency staff to provide technical assistance to local ~~drought~~ advisory committees; and

(g) promote ideas and activities for groups and individuals to consider that may reduce drought *or flooding* vulnerability.

(4) The drought *and water supply* advisory committee shall meet, at a minimum, on or around October 15 and March 15 of each year to assess moisture conditions *and forecasts* and, as appropriate, begin preparations for drought *or flood* mitigation.

(5) By April 15 of each year, the drought *and water supply* advisory committee shall submit a report to the governor describing the potential for drought *or flooding* in the coming year. If the potential for drought *or flooding* merits additional activity by the drought *and water supply* advisory committee, the report must also describe:

(a) activities to be taken by the drought *and water supply* advisory committee for informing the public about the potential ~~for~~ *impacts of* drought *or flooding*;

(b) a schedule for completing activities;

(c) geographic areas for which the creation of local drought *and water supply* advisory committees will be suggested to local governments and citizens; and

(d) requests for the use of any available state resources that may be necessary to prevent or minimize drought *or flood* impacts.

(6) Nothing in this section is intended to remove or interfere with the duties and responsibilities of the governor or the division of disaster and emergency services for disaster coordination and emergency response, as provided in Title 10, chapter 3, part 1. The duties and responsibilities of the drought *and water supply* advisory committee supplement and are consistent with those of the division of disaster and emergency services for drought *or flood* planning, preparation, coordination, and mitigation."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved March 27, 2013

# CHAPTER NO. 85

[HB 89]

AN ACT ALLOWING FOR A DE MINIMUS REFUND OF UNCLAIMED PROPERTY REGARDLESS OF THE VALUE OF THE ESTATE; AND AMENDING SECTION 72-3-1101, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 72-3-1101, MCA, is amended to read:

**"72-3-1101. Collection of personal property by affidavit.** (1) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action to a person

claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

(a) the value of the entire estate, wherever located, less liens and encumbrances, does not exceed $50,000*, except as provided in subsection (2)*;

(b) 30 days have elapsed since the death of the decedent;

(c) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(d) the claiming successor is entitled to payment or delivery of the property.

*(2) The department of revenue may refund unclaimed property to a successor of the decedent, pursuant to the provisions of Title 70, chapter 9, part 8, if the value of the unclaimed property is $5,000 or less regardless of the value of the estate.*

~~(2)~~*(3)* A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (1)."

Approved March 27, 2013

# CHAPTER NO. 86

[HB 305]

AN ACT ALLOWING DEMONSTRATOR PLATES TO BE USED ON A VEHICLE THAT IS BEING LOANED TO A CUSTOMER FOR NOT MORE THAN 72 HOURS; AND AMENDING SECTION 61-4-129, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-4-129, MCA, is amended to read:

**"61-4-129. Assignment of demonstrator plates.** (1) (a) A dealer or wholesaler may purchase demonstrator plates at a fee of $5 a plate.

(b) Demonstrator plates may not be issued to a new or used dealer whose business is restricted to the sale of power sports vehicles.

(2) (a) Except as provided in subsection (2)(c), demonstrator plates may be used on a motor vehicle displaying a Monroney label or a buyer's guide label, as required by 61-4-123(2), or on a truck, truck tractor, truck tractor pulling a laden or unladen semitrailer, or travel trailer that is:

(i) being demonstrated and offered for sale *or loaned to a dealership customer*~~,~~ for not more than 72 hours when operated by an individual holding a valid operator's license;

(ii) owned by the dealership when operated by an officer or bona fide full-time employee of the dealer or wholesaler and used to transport the dealer's or wholesaler's own tools, parts, and equipment;

(iii) being tested for repair;

(iv) being moved to or from a dealer's place of business for sale;

(v) being moved to or from service and repair facilities before sale; and

(vi) being moved to or from exhibitions within the state, provided the exhibition does not exceed a period of 20 days.

(b) Demonstrator plates may be used:

(i) on trailers being hauled to or from the place of business of the manufacturer and the place of business of the dealer or to and from places of business of the dealer;

(ii) on travel trailers held for sale to demonstrate the towing capability of the motor vehicle, for not more than 72 hours;

(iii) on any motor vehicle owned by the dealer that is used only to move a travel trailer that is in the dealer's inventory; and

(iv) on trailers being moved to or from exhibitions within the state if the exhibition does not exceed a period of 20 days.

(c) Extra demonstrator plates may be made available to dealers eligible for demonstrator plates under subsection (2)(a) to provide to one or more service repair facilities to be used when moving a motor vehicle in the dealer's inventory to and from the dealer's place of business and the service and repair facility prior to sale. A motor vehicle displaying demonstrator plates under this subsection is not required to have a Monroney label or a buyer's guide label as required by 61-4-123(2).

(d) A motor vehicle being operated in accordance with this subsection (2) need only display one demonstrator plate conspicuously on the rear of the motor vehicle."

Approved March 27, 2013

# CHAPTER NO. 87

[HB 308]

AN ACT REVISING THE REQUIREMENTS FOR REAL ESTATE APPRAISERS SERVING ON THE BOARD OF REAL ESTATE APPRAISERS; AMENDING SECTION 2-15-1758, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-15-1758, MCA, is amended to read:

**"2-15-1758. Board of real estate appraisers.** (1) There is a board of real estate appraisers.

(2) The board consists of seven members appointed by the governor with the consent of the senate.

(3) Five members must be ~~licensed or~~ *licensed or* certified real estate appraisers *for a minimum of 3 years*, and two members must be representatives of the public who are not engaged in the occupation of real estate appraisal.

(4) A screening panel of the board, established pursuant to 37-1-307, must be composed of at least three members and shall include one member of the board who represents the public and is not engaged in the occupation of real estate appraisal. Any determination that a licensee has violated a statute or rule in a manner that justifies disciplinary proceedings must be concurred in by a majority of the members of the screening panel.

(5) Members shall serve staggered 3-year terms. A member may not serve for more than two consecutive terms.

(6) The board is allocated to the department for administrative purposes only, as prescribed in 2-15-121.

(7) A board member may be removed from the board by the governor for neglect or cause.

(8) The board shall meet at least once each calendar quarter to transact its business.

(9) The board shall elect a presiding officer from among its members.

(10) A board member must receive compensation and travel expenses, as provided in 37-1-133."

**Section 2. Effective date.** [This act] is effective on passage and approval.

**Section 3. Applicability.** [This act] applies to real estate appraisers appointed to the board of real estate appraisers on or after [the effective date of this act].

Approved March 27, 2013

# CHAPTER NO. 88

[HB 330]

AN ACT REVISING LAWS RELATED TO DISSOLUTION PROCEEDINGS; REQUIRING THAT CERTAIN SENSITIVE DATA PRODUCED IN A DISSOLUTION PROCEEDING BE SEALED FROM PUBLIC ACCESS; REVISING CERTAIN DEADLINES; AMENDING SECTIONS 40-4-105, 40-4-121, 40-4-201, 40-4-202, 40-4-203, 40-4-204, 40-4-205, 40-4-215, 40-4-219, AND 40-4-220, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 40-4-105, MCA, is amended to read:

**"40-4-105. Procedure — commencement — pleadings — abolition of existing defenses.** (1) The verified petition in a proceeding for dissolution of marriage or legal separation must allege that the marriage is irretrievably broken and must set forth:

(a) the age, occupation, and residence of each party and the party's length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably broken in that either:

(i) the parties have lived separate and apart for a period of more than 180 days preceding the commencement of this proceeding; or

(ii) there is serious marital discord that adversely affects the attitude of one or both of the parties towards the marriage, and there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage and whether the wife is pregnant;

(e) any arrangements as to support of the children and maintenance of a spouse;

(f) a proposed parenting plan, if applicable; and

(g) the relief sought.

(2) Either or both parties to the marriage may initiate the proceeding.

(3) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana Rules of Civil Procedure and may within ~~20~~ *21* days after the date of service file a verified response. A decree may not be entered until ~~20~~ *21* days after the date of service.

(4) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

(5) The court may join additional parties proper for the exercise of its authority to implement this chapter.

~~[(6) The social security number, if known, of a person subject to a decree of dissolution or a support order must be recorded in the records relating to the matter. At the request of a person subject to a decree of dissolution or a support order, the recordkeeper shall keep the social security number from this source confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]~~

*[(6) The social security number, if known, of a person subject to a decree of dissolution or a support order must be recorded in the records relating to the matter. The social security number may be included in the state case registry and vital statistics reporting form filed pursuant to 40-5-908(1). The recordkeeper shall keep the social security number from this source confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]*

*(7) Documents filed before the court containing financial account information must comply with the privacy protection requirements of Rule 5.2 of the Montana Rules of Civil Procedure. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)* ~~(Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)~~"

**Section 2.** Section 40-4-121, MCA, is amended to read:

**"40-4-121. Temporary order for maintenance or support, temporary injunction, or temporary restraining order.** (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court that lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance, temporary support of a child of the marriage entitled to support, or a temporary family support order. When a party is receiving public assistance, as defined in 40-5-201, for the minor children at issue or when a party receives public assistance during the life of a temporary family support order, the temporary family support order must designate separately the amounts of temporary child support and temporary maintenance, if any. The temporary child support order or the designated child support portion of the family support order must be determined as required in 40-4-204. The motion must be accompanied by an affidavit setting forth the factual basis for the motion, the amounts requested, a list of marital estate liabilities, a statement of sources of income of the parties and of a child of the marriage entitled to support, and, in the case of a motion for a temporary family support order, a proposal designating the party responsible for paying each liability. If ordered by a court, a temporary family support order must, without prejudice, direct one or both parties to pay, out of certain income sources, liabilities of the marital estate during the pendency of the action, including maintenance liabilities for a party or support of a child of the marriage entitled to support. If income sources are insufficient to meet the marital estate periodic liabilities, the temporary family support order may direct that certain liabilities be paid from assets of the marital estate. At any time during the proceedings, the court may order any temporary family support payments to be designated as temporary maintenance, temporary child support, or partial property distribution, retroactive to the date of the motion for a temporary family support order. When a party obtains public assistance, as defined in 40-5-201, or applies for services under Title IV-D of the Social Security Act, after the court has issued

a temporary family support order, the petitioner shall promptly move the court for designation of the parts, if any, of the temporary family support order that are maintenance and child support and the court shall promptly so designate, determining the child support obligation as required in 40-4-204.

(2) As a part of a motion for temporary maintenance, temporary support of a child, or a temporary family support order or by independent motion accompanied by affidavit, either party may request that the court issue a temporary injunction for any of the following relief:

(a) restraining a person from transferring, encumbering, concealing, or otherwise disposing of any property, except in the usual course of business or for the necessities of life, and if so restrained, requiring the person to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability coverage held for the benefit of a party or a child of a party for whom support may be ordered;

(c) enjoining a party from molesting or disturbing the peace of the other party or of any family member or from stalking, as defined in 45-5-220;

(d) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(e) enjoining a party from removing a child from the jurisdiction of the court;

(f) ordering a party to complete counseling, including alcohol or chemical dependency counseling or treatment;

(g) providing other injunctive relief proper in the circumstances; and

(h) providing additional relief available under Title 40, chapter 15.

(3) When the clerk of the district court issues a summons pursuant to this chapter, the clerk shall issue and include with the summons a temporary restraining order:

(a) restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether jointly or separately held, without either the consent of the other party or an order of the court, except in the usual course of business or for the necessities of life. The restraining order must require each party to notify the other party of any proposed extraordinary expenditures at least 5 business days before incurring the expenditures and to account to the court for all extraordinary expenditures made after service of the summons. However, the restraining order may not preclude either party from using any property to pay reasonable attorney fees in order to retain counsel in the proceeding.

(b) restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability coverage held for the benefit of a party or a child of a party for whom support may be ordered. However, nothing in this subsection (3) adversely affects the rights, title, or interest of a purchaser, encumbrancer, or lessee for value if the purchaser, encumbrancer, or lessee does not have actual knowledge of the restraining order.

(4) A person may seek the relief provided for in subsection (2) without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition requesting relief under Title 27, chapter 19, part 3. Any temporary injunction entered under this subsection must be for a fixed period of

time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208, as appropriate.

(5) The court may issue a temporary restraining order for a period not to exceed ~~20~~ *21* days without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if an order is not issued until the time for responding has elapsed.

(6) The party against whom a temporary injunction is sought must be served with notice and a copy of the motion and is entitled to a hearing on the motion. A response may be filed within ~~20~~ *21* days after service of notice of motion or at the time specified in the temporary restraining order.

(7) At the time of the hearing, the court shall:

(a) inform both parties that the temporary injunction may contain a provision or provisions that limit the rights of one or both parties relating to firearms under state law or a provision or provisions that may subject one or both parties to state or federal laws that limit their rights relating to firearms; and

(b) determine whether good cause exists for the injunction to continue for 1 year.

(8) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance, temporary child support, or temporary family support in amounts and on terms just and proper in the circumstance.

(9) A temporary order or injunction, entered pursuant to Title 40, chapter 15, or this section:

(a) may be revoked or modified on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208;

(b) terminates upon order of the court or when the petition is voluntarily dismissed and, in the case of a temporary family support order, upon entry of the decree of dissolution; and

(c) when issued under this section, must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-220 or 45-5-626."

(10) When the petitioner has fled the parties' residence, notice of the petitioner's new residence must be withheld except by order of the court for good cause shown.

*(11) The court shall seal any qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p), that is issued under this part except for access by the pension plan administrator of the plan for which benefits are being distributed by the order, the child support enforcement division, the parties, and each party's counsel of record.*"

**Section 3.** Section 40-4-201, MCA, is amended to read:

**"40-4-201. Separation agreement.** (1) To promote amicable settlement of disputes between parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, and support, parenting, and parental contact with their children. In cases in which children are involved, the separation agreement may contain a parenting plan as required in 40-4-234.

(2) Subject to subsection (7), in a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing

for the support, parenting, and parental contact with children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unconscionable.

(3) If the court finds the separation agreement unconscionable, it may request that the parties submit a revised separation agreement or it may make orders for the disposition of property, maintenance, and support.

(4) If the court finds that the separation agreement is not unconscionable as to disposition of property or maintenance and not unsatisfactory as to support:

(a) unless the separation agreement provides to the contrary, its terms must be set forth in the decree of dissolution or legal separation and the parties ordered to perform them; or

(b) if the separation agreement provides that its terms may not be set forth in the decree, the decree must identify the separation agreement and state that the court has found the terms not unconscionable.

(5) Terms of the agreement set forth in the decree are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

(6) Except as provided in subsection (7) and except for terms concerning the support, parenting, or parental contact with the children, the decree may expressly preclude or limit modification of terms set forth in the decree if provided for in the separation agreement. Otherwise, terms of a separation agreement set forth in the decree are automatically modified by modification of the decree.

(7) The decree may be modified, as provided in 40-4-251 through 40-4-258, for failure to disclose assets and liabilities.

*(8) The court shall seal any qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p), that is issued under this part except for access by the pension plan administrator of the plan for which benefits are being distributed by the order, the child support enforcement division, the parties, and each party's counsel of record.*"

**Section 4.** Section 40-4-202, MCA, is amended to read:

**"40-4-202. Division of property.** (1) In a proceeding for dissolution of a marriage, legal separation, or division of property following a decree of dissolution of marriage or legal separation by a court ~~which~~ *that* lacked personal jurisdiction over the absent spouse or lacked jurisdiction to divide the property, the court, without regard to marital misconduct, shall, and in a proceeding for legal separation may, finally equitably apportion between the parties the property and assets belonging to either or both, however and whenever acquired and whether the title ~~thereto~~ *to the property and assets* is in the name of the husband or wife or both. In making apportionment, the court shall consider the duration of the marriage and prior marriage of either party~~;~~*,* the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties~~;~~*,* custodial provisions~~;~~*,* whether the apportionment is in lieu of or in addition to maintenance~~;~~*,* and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution or dissipation of value of the respective estates and the contribution of a spouse as a homemaker or to the family unit. In dividing property acquired prior to the marriage~~;~~*,* property acquired by gift, bequest, devise, or descent~~;~~*,* property

acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, bequest, devise, or descent~~;~~*,* the increased value of property acquired prior to marriage~~;~~*,* and property acquired by a spouse after a decree of legal separation, the court shall consider those contributions of the other spouse to the marriage, including:

(a) the nonmonetary contribution of a homemaker;

(b) the extent to which ~~such~~ *the* contributions have facilitated the maintenance of ~~this~~ *the* property; and

(c) whether or not the property division serves as an alternative to maintenance arrangements.

(2) In a proceeding, the court may protect and promote the best interests of the children by setting aside a portion of the jointly and separately held estates of the parties in a separate fund or trust for the support, maintenance, education, and general welfare of any minor, dependent, or incompetent children of the parties.

(3) Each spouse is considered to have a common ownership in marital property that vests immediately preceding the entry of the decree of dissolution or declaration of invalidity. The extent of the vested interest must be determined and made final by the court pursuant to this section.

(4) The division and apportionment of marital property caused by or incident to a decree of dissolution, a decree of legal separation, or a declaration of invalidity is not a sale, exchange, transfer, or disposition of or dealing in property but is a division of the common ownership of the parties for purposes of:

(a) the property laws of this state;

(b) the income tax laws of this state; and

(c) the federal income tax laws.

(5) Premarital agreements must be enforced as provided in Title 40, chapter 2, part 6.

*(6) The court shall seal any qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p), that is issued under this part except for access by the pension plan administrator of the plan for which benefits are being distributed by the order, the child support enforcement division, the parties, and each party's counsel of record.*"

**Section 5.** Section 40-4-203, MCA, is amended to read:

**"40-4-203. Maintenance.** (1) In a proceeding for dissolution of marriage or legal separation or a proceeding for maintenance following dissolution of the marriage by a court that lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

(a) lacks sufficient property to provide for the spouse's reasonable needs; and

(b) is unable to be self-supporting through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

(2) The maintenance order must be in amounts and for periods of time that the court considers just, without regard to marital misconduct, and after considering all relevant facts, including:

(a) the financial resources of the party seeking maintenance, including marital property apportioned to that party, and the party's ability to meet the party's needs independently, including the extent to which a provision for

support of a child living with the party includes a sum for that party as custodian;

(b) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

(c) the standard of living established during the marriage;

(d) the duration of the marriage;

(e) the age and the physical and emotional condition of the spouse seeking maintenance; and

(f) the ability of the spouse from whom maintenance is sought to meet the spouse's own needs while meeting those of the spouse seeking maintenance.

*(3) The court shall seal any qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p), that is issued under this part except for access by the pension plan administrator of the plan for which benefits are being distributed by the order, the child support enforcement division, the parties, and each party's counsel of record.*"

**Section 6.** Section 40-4-204, MCA, is amended to read:

**"40-4-204. Child support — orders to address health insurance — withholding of child support.** (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for the child's support, without regard to marital misconduct.

(2) The court shall consider all relevant factors, including:

(a) the financial resources of the child;

(b) the financial resources of the parents;

(c) the standard of living that the child would have enjoyed had the marriage not been dissolved;

(d) the physical and emotional condition of the child and the child's educational and medical needs;

(e) the age of the child;

(f) the cost of day care for the child;

(g) any parenting plan that is ordered or decided upon; and

(h) the needs of any person, other than the child, whom either parent is legally obligated to support.

(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of the defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or that it is inappropriate in that particular case.

(b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its reasons for that finding. Similar reasons must

also be stated in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(d) Child support obligations established under this section are subject to the registration and processing provisions of Title 40, chapter 5, part 9.

(4) Each temporary or final district court judgment, decree, or order establishing a child support obligation under this title and each modification of a final order for child support must include a medical support order as provided for in Title 40, chapter 5, part 8.

(5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation under 40-4-208 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) If an obligor is exempt from immediate income withholding, the district court judgment or order must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may be subject to income-withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning statement in a judgment or order does not preclude the use of withholding procedures.

(c) If a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period. When an order is annualized and withheld on a weekly or biweekly basis under this section, the support withheld from the obligor may be retained by the obligee when it exceeds the obligor's monthly support obligation if the excess support is a result of annualized withholding.

(d) If an obligor is exempted from paying support through income withholding, the support order must include a requirement that whenever the case is receiving services under Title IV-D of the Social Security Act, support payments must be paid through the department of public health and human services as provided in 40-5-909.

(6) (a) Each district court judgment, decree, or order that establishes paternity or establishes or modifies a child support obligation must include a provision requiring the parties to promptly file with the court and to update, as necessary, information on:

(i) the party's identity, residential and mailing addresses, telephone number, [social security number,] and driver's license number;

(ii) the name, address, and telephone number of the party's employer; and

(iii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the names of the persons covered, and any other pertinent information

regarding coverage or, if the child is not covered, information as to the availability of coverage for the child through the party's employer.

(b) The court shall keep the information provided under subsection (6)(a) confidential except that the information may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act*, to the parties, and to each party's counsel of record. The information provided under subsection (6)(a) may be included on the case registry and vital statistics reporting form filed with the court pursuant to 40-5-908(1).*

(c) The order must also require that in any subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the party, the district court or the department of public health and human services, if the department is providing services under Title IV-D of the Social Security Act, may consider due process requirements for notice and service of process met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the court.

(7) A judgment, decree, or order establishing a child support obligation under this part may be modified or adjusted as provided in 40-4-208 or, if the department of public health and human services is providing services under Title IV-D of the Social Security Act, may be modified or adjusted by the department as provided for in 40-5-271 through 40-5-273, 40-5-277, and 40-5-278.

(8) (a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support obligation to be paid, without need for further court order:

(i) to the person with whom the child resides by legal order;

(ii) if the person with whom the child legally resides voluntarily or involuntarily relinquishes physical care and control of the child to another person, organization, or agency, to the person, organization, or agency to whom physical custody has been relinquished;

(iii) if any other person, organization, or agency is entitled by law, assignment, or similar reason to receive or collect the child support obligation, to the person, organization, or agency having the right to receive or collect the payment; or

(iv) to the court for the benefit of the minor child.

(b) When the department of public health and human services is providing services under Title IV-D of the Social Security Act, payment of support must be made through the department for distribution to the person, organization, or agency entitled to the payment.

(c) A judgment, decree, or order that omits the provision required by subsection (8)(a) is subject to the requirements of subsection (8)(a) without need for an amendment to the judgment, decree, or order or for any further action by the court.

(9) A judgment, decree, or order that establishes or modifies a child support obligation must include a provision that if a parent or guardian is the obligee under a child support order and is obligated to pay a contribution for the same child under 41-3-438, 41-5-1304, or 41-5-1512, the parent or guardian assigns and transfers to the department of public health and human services all rights that the parent or guardian may have to child support that are not otherwise assigned under 53-2-613.

*(10) The court shall seal any qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p), that is issued under this part except for access by the pension plan administrator of the plan for which benefits are being distributed by the order, the child support enforcement division, the parties, and each party's counsel of record.* (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)"

**Section 7.** Section 40-4-205, MCA, is amended to read:

**"40-4-205. Guardian ad litem.** (1) The court may appoint a guardian ad litem to represent the interests of a minor dependent child with respect to the child's support, parenting, and parental contact. The guardian ad litem may be an attorney. The county attorney, a deputy county attorney, if any, or the department of public health and human services or any of its staff may not be appointed for this purpose.

(2) The guardian ad litem has the following general duties:

(a) to conduct investigations that the guardian ad litem considers necessary to ascertain the facts related to the child's support, parenting, and parental contact;

(b) to interview or observe the child who is the subject of the proceeding;

(c) to make written reports to the court concerning the child's support, parenting, and parental contact;

(d) to appear and participate in all proceedings to the degree necessary to adequately represent the child and make recommendations to the court concerning the child's support, parenting, and parental contact; and

(e) to perform other duties as directed by the court.

(3) The guardian ad litem has access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child and the child's siblings and parents or caretakers.

(4) The court shall enter an order for costs and fees in favor of the child's guardian ad litem. The order must be made against either or both parents, except that if the responsible party is indigent, the costs must be waived.

*(5) The guardian ad litem shall mail the report to counsel and to any party not represented by counsel at least 10 days prior to the hearing.*"

**Section 8.** Section 40-4-215, MCA, is amended to read:

**"40-4-215. Investigations and reports.** (1) If a parent or a court-appointed third party requests, or if the court finds that a parenting proceeding is contested, the court may order an investigation and report concerning parenting arrangements for the child. The investigator may be the child's guardian ad litem or other professional considered appropriate by the court. The department of public health and human services may not be ordered to conduct the investigation or draft a report unless the person requesting the investigation is a recipient of financial assistance, as defined in 53-4-201, or a participant in the food stamp program, as defined in 53-2-902, and all reasonable options for payment of the investigation, if conducted by a person not employed by the department, are exhausted. The department may consult with any investigator and share information relevant to the child's best interests. The cost of the investigation and report must be paid according to the final order. The cost of the educational evaluation under subsection (2)(a) must be paid by the state as provided in 3-5-901.

(2) The court shall determine, if appropriate, the level of evaluation necessary for adequate investigation and preparation of the report, which may include one or more of the following:

(a) parenting education;

(b) mediation pursuant to 40-4-301;

(c) factfinding by the investigator; and

(d) psychological evaluation of the parties.

(3) In preparing a report concerning a child, the investigator may consult any person who has information about the child and the child's potential parenting arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. Except as required for children 16 years of age or older, the investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the persons or entities authorized by law to grant or withhold access to the records. The child's consent must be obtained if the child is 16 years of age or older unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (4) are fulfilled, the investigator's report may be received in evidence at the hearing.

(4) The ~~court~~ *investigator* shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. When consistent with state and federal law, the investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (3), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person the investigator has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing. The results of the investigation must be included in the court record and may, without objection, be sealed."

**Section 9.** Section 40-4-219, MCA, is amended to read:

**"40-4-219. Amendment of parenting plan — mediation.** (1) The court may in its discretion amend a prior parenting plan if it finds, upon the basis of facts that have arisen since the prior plan or that were unknown to the court at the time of entry of the prior plan, that a change has occurred in the circumstances of the child and that the amendment is necessary to serve the best interest of the child. In determining the child's best interest under this section, the court may, in addition to the criteria in 40-4-212, also consider whether:

(a) the parents agree to the amendment;

(b) the child has been integrated into the family of the petitioner with consent of the parents;

(c) the child is 14 years of age or older and desires the amendment;

(d) one parent has willfully and consistently:

(i) refused to allow the child to have any contact with the other parent; or

(ii) attempted to frustrate or deny contact with the child by the other parent; or

(e) one parent has changed or intends to change the child's residence in a manner that significantly affects the child's contact with the other parent.

(2) A court may modify a de facto parenting arrangement in accordance with the factors set forth in 40-4-212.

(3) The court shall presume a parent is not acting in the child's best interest if the parent does any of the acts specified in subsection (1)(d) or (8).

(4) The court may amend the prior parenting plan based on subsection (1)(e) to provide a new residential schedule for parental contact with the child and to apportion transportation costs between the parents.

(5) Attorney fees and costs must be assessed against a party seeking frivolous or repeated amendment if the court finds that the amendment action is vexatious and constitutes harassment.

(6) A parenting plan may be amended upon the death of one parent pursuant to 40-4-221.

(7) As used in this section, "prior parenting plan" means a parenting determination contained in a judicial decree or order made in a parenting proceeding. In proceedings for amendment under this section, a proposed amended parenting plan must be filed and served with the motion for amendment and with the response to the motion for amendment. Preference must be given to carrying out the parenting plan.

(8) (a) If a parent or other person residing in that parent's household has been convicted of any of the crimes listed in subsection (8)(b), the other parent or any other person who has been granted rights to the child pursuant to court order may file an objection to the current parenting order with the court. The parent or other person having rights to the child pursuant to court order shall give notice to the other parent of the objection as provided by the Montana Rules of Civil Procedure, and the other parent has ~~20~~ *21* days from the notice to respond. If the parent who receives notice of objection fails to respond within ~~20~~ *21* days, the parenting rights of that parent are suspended until further order of the court. If that parent responds and objects, a hearing must be held within 30 days of the response.

(b) This subsection (8) applies to the following crimes:

(i) deliberate homicide, as described in 45-5-102;

(ii) mitigated deliberate homicide, as described in 45-5-103;

(iii) sexual assault, as described in 45-5-502;

(iv) sexual intercourse without consent, as described in 45-5-503;

(v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under 45-5-505;

(vi) incest, as described in 45-5-507;

(vii) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

(viii) endangering the welfare of children, as described in 45-5-622;

(ix) partner or family member assault of the type described in 45-5-206(1)(a);

(x) sexual abuse of children, as described in 45-5-625.

(9) Except in cases of physical abuse or threat of physical abuse by one parent against the other parent or the child, or when a parent has been convicted of a crime enumerated in subsection (8)(b), the court may, in its discretion, order the parties to participate in a dispute resolution process to assist in resolving any conflicts between the parties regarding amendment of the parenting plan. The dispute resolution process may include counseling or mediation by a specified person or agency, and court action.

(10) (a) Except as provided in subsection (10)(b), a court-ordered or de facto modification of a parenting plan based in whole or in part on military service orders of a parent is temporary and reverts to the previous parenting plan at the

end of the military service. If a motion for an amendment of a parenting plan is filed after a parent returns from military service, the court may not consider a parent's absence due to that military service in its determination of the best interest of the child.

(b) A parent who has performed or is performing military service, as defined in 10-1-1003, may consent to a temporary or permanent modification of a parenting plan:

(i) for the duration of the military service; or

(ii) that continues past the end of the military service."

**Section 10.** Section 40-4-220, MCA, is amended to read:

**"40-4-220. Affidavit practice.** (1) Unless the parties agree to an interim parenting plan or an amended parenting plan, the moving party seeking an interim parenting plan or amendment of a final parenting plan shall submit, together with the moving papers, an affidavit setting forth facts supporting the requested plan or amendment and shall give notice, together with a copy of the affidavit, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, based on the best interests of the child, in which case it shall set a date for hearing on an order to show cause why the requested plan or amendment should not be granted.

(2) (a) A party seeking an interim parenting plan may request that the court grant a temporary order providing for living arrangements for the child ex parte. The party shall make the request in the moving papers and shall submit an affidavit showing that:

(i) no previous parenting plan has been ordered by a court and it would be in the child's best interest under the standards of 40-4-212 if temporary living arrangements for the child were as proposed by the moving party; or

(ii) although a previous parenting plan has been ordered, an emergency situation has arisen in the child's present environment that endangers the child's physical, mental, or emotional health and an immediate change in the parenting plan is necessary to protect the child.

(b) If the court finds from the affidavits submitted by the moving party that the interim parenting plan proposed by the moving party would be in the child's best interest under the standards of 40-4-212 and that the child's present environment endangers the child's physical, mental, or emotional health and the child would be protected by the interim parenting plan, the court shall make an order implementing the interim parenting plan proposed by the moving party. The court shall require all parties to appear and show cause within ~~20~~ *21* days from the execution of the interim parenting plan why the interim parenting plan should not remain in effect until further order of court."

**Section 11. Applicability.** [This act] applies to proceedings filed after [the effective date of this act].

**Section 12. Contingent termination.** The amendments to 40-4-105(6) terminate on the occurrence of the contingency contained in section 1, Ch. 27, L. 1999.

Approved March 27, 2013

# CHAPTER NO. 89

[HB 333]

AN ACT EXEMPTING THE SALE OF HOT BEVERAGES AT FARMERS' MARKETS FROM FOOD LICENSING REQUIREMENTS; AMENDING SECTION 50-50-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 50-50-202, MCA, is amended to read:

**"50-50-202. Establishments exempt from license requirement — farmer's market records.** (1) Establishments owned or operated by the state or a political subdivision of the state that employ a full-time sanitarian are exempt from licensure but shall comply with the requirements of this chapter and rules adopted by the department under this chapter.

(2) (a) A license is not required to operate an establishment if it is operated by a nonprofit organization for a period of less than 14 days in 1 calendar year. An establishment exempt from licensure under this subsection:

(i) must be operated in compliance with the remaining provisions of this chapter and rules adopted by the department under this chapter; and

(ii) prior to each operation, shall register with the local health officer or sanitarian on forms provided by the department.

(b) Nonprofit organizations or persons selling baked goods or preserves exclusively for a charitable community purpose are exempt from registration if they notify the local health officer or sanitarian, by phone or in person, before the event. The notification required is limited to the date and time of the event, items planned to be sold, and an estimate of the number of people expected to be served at the event.

(3) (a) A license is not required of a gardener, farm owner, or farm operator who sells raw and unprocessed farm products at a farmer's market.

(b) A license is not required of a person ~~selling~~*:*

*(i) selling or offering hot coffee or hot tea at a farmer's market; or*

*(ii) selling* baked goods or preserves at a farmer's market or exclusively for a charitable community purpose.

*(c) Coffee or tea exempted under this subsection (3) may not be prepared or served with fresh milk or cream.*

(4) (a) A farmer's market that is an organized market authorized by a municipal or county authority shall keep registration records of all individuals and organizations that sell baked goods or preserves at the market.

(b) The registration records must include but are not limited to the name of the seller, the seller's address and telephone number, the products sold by the seller, and the date the products were sold.

(c) The registration records must be made available to the local health officer or the officer's agent."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved March 27, 2013

# CHAPTER NO. 90

[HB 337]

AN ACT REVISING ADMINISTRATIVE RULEMAKING BY THE DEPARTMENT OF LIVESTOCK; REQUIRING THE DEPARTMENT OF LIVESTOCK TO PROVIDE NOTICE OF ADOPTED ADMINISTRATIVE RULES AND ORDERS; AMENDING SECTION 81-1-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 81-1-102, MCA, is amended to read:

**"81-1-102. Duties and powers of department — fees based on costs — *notice of rules and orders.*** (1) The department shall exercise general supervision over and, so far as possible, protect the livestock interests of the state from theft and disease and recommend legislation that~~,~~ in the judgment of the department~~,~~ fosters the livestock industry. The department may compel the attendance of witnesses, employ counsel to assist in the prosecution of violations of laws made for the protection of livestock interests, and assist in the prosecution of persons charged with illegal branding or theft of livestock or any other crime under the laws of this state for the protection of stock owners. It may adopt rules governing the recording and use of livestock brands.

(2) Except as provided in 81-8-901, the department shall by rule establish all fees that it is authorized to charge, commensurate with costs as provided in 37-1-134.

*(3) (a) In addition to the requirements of Title 2, chapter 4, the department shall provide notice of adopted, amended, and repealed administrative rules and orders as provided in subsection (3)(b).*

*(b) Within 10 working days of the effective date of a rule or order, notice of the rule or order must be published on the department's website and provided to each livestock market and brand office. The department shall provide the notification by electronic means to each conservation district, veterinarian's office, and county extension office in the state and to any person or to the office of any professional or trade organization or member of those entities who has made a request to the department to be informed of the adoption, amendment, or repeal of a rule or order by the department.*

*(c) The notice provided pursuant to this subsection (3) must include a brief summary of the contents of the rule or order and instructions for accessing a complete copy of the rule or order electronically or by mail.*

~~(3)~~*(4)* The department shall perform the duties assigned to the department relating to the administration and regulation of alternative livestock ranches."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved March 27, 2013

# CHAPTER NO. 91

[HB 351]

AN ACT OFFICIALLY DESIGNATING THE GRATEFUL NATION MONTANA MEMORIAL IN MISSOULA, MONTANA, AS A STATE IRAQ AND AFGHANISTAN VETERANS' MEMORIAL; AND DIRECTING THAT THE MEMORIAL BE IDENTIFIED ON OFFICIAL STATE MAPS.

WHEREAS, Grateful Nation Montana was established in 2007 by David A. Bell, John F. McCarrick, and Gale R. Gustafson to provide an opportunity for tutoring, mentoring, and acquiring a full college scholarship for children of Montana soldiers who have paid the ultimate price for our country in Iraq and Afghanistan; and

WHEREAS, Grateful Nation Montana is a program sanctioned by the Montana University System Board of Regents; and

WHEREAS, the Grateful Nation Montana Memorial at the University of Montana was officially established on November 4, 2011, in Missoula, Montana, on the main campus of the University of Montana, and on that date, nearly 800 people from around Montana gathered at the University of Montana for the Grateful Nation Montana Memorial dedication; and

WHEREAS, the Grateful Nation Montana Memorial at the University of Montana incorporates five larger-than-life-size bronze statues, including the traditional "fallen soldier" battle cross, a young boy representing the child of the fallen soldier, a teacher representing the Grateful Nation Montana mission of educating the children of our Montana fallen soldiers, a grandmother, and a grandfather; and

WHEREAS, the Grateful Nation Montana Memorial contains 12-inch by 24-inch granite tablets recessed in the ground surrounding the Memorial, and each tablet contains the name, branch, rank, years lived, and Montana home town of one of the 42 Montana soldiers who have died in Iraq and Afghanistan, and there are 50 tablets in total so that, if required, additional names can be added; and

WHEREAS, the Grateful Nation Montana Memorial at the University of Montana has become a living tribute to the veterans and casualties of America's conflicts.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. State Iraq and Afghanistan veterans' memorial.** (1) The grateful nation Montana memorial at the university of Montana, located in Missoula, Montana, dedicated to the men and women who served the United States in Iraq and Afghanistan, is an official state Iraq and Afghanistan veterans' memorial.

(2) The department of commerce and the department of transportation are directed to reference the location of the grateful nation Montana memorial at the university of Montana on official state maps as a state veterans' memorial for Iraq and Afghanistan.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 1, chapter 1, part 5, and the provisions of Title 1, chapter 1, part 5, apply to [section 1].

Approved March 27, 2013

## CHAPTER NO. 92

[HB 356]

AN ACT UPDATING THE REFERENCE TO FEDERAL LAWS FOR MEAT AND POULTRY INSPECTION; AMENDING SECTION 81-9-219, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 81-9-219, MCA, is amended to read:

**"81-9-219. Application.** The provisions of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 apply to persons, establishments, animals, and articles regulated under the Federal Meat Inspection Act, 21 U.S.C. 601 through 695, the federal Poultry Products Inspection Act, 21 U.S.C. 451 through 470, as those acts read on ~~October 1, 1987~~ *[the effective date of this act]*, or the federal Humane Methods of Slaughter Act of 1978, 7 U.S.C. 1901, 1902, 1904, 1906, and 1907, as that act read on March 27, 2007, only to the extent provided for in the federal acts."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved March 27, 2013

# CHAPTER NO. 93

[HB 368]

AN ACT REVISING LAWS PERTAINING TO THE DISPOSITION OF PERSONAL PROPERTY ABANDONED BY A TENANT AFTER TERMINATION OF A RENTAL AGREEMENT; CLARIFYING THE RESPONSIBILITIES OF A LANDLORD WITH RESPECT TO A TENANT'S ABANDONED PROPERTY; AND AMENDING SECTION 70-24-430, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 70-24-430, MCA, is amended to read:

**"70-24-430. Disposition of personal property abandoned by tenant after termination.** (1) *(a)* If a tenancy terminates in any manner except by court order and the landlord ~~reasonably believes~~ *has clear and convincing evidence* that the tenant has abandoned all personal property that the tenant has left on the premises and a period of time of at least ~~5 days~~ *48 hours* has elapsed since ~~the occurrence of events upon which~~ the landlord ~~formed that belief~~ *obtained that evidence*, the landlord may ~~remove the property from the premises~~ *immediately remove the abandoned property from the premises and immediately dispose of any trash or personal property that is hazardous, perishable, or valueless*.

*(b) An item that is clearly labeled "rent to own" or "leased" or likewise identified may be discarded only with confirmation from the lessor that the item does not have a lien, provided that the lessor can be easily identified from the label and the landlord makes a reasonable effort to contact the lessor.*

*(c) For the purposes of this subsection (1), the following definitions apply:*

*(i) "Hazardous" means any item that is potentially or actually flammable, a biohazard, or an item otherwise capable of inflicting personal harm or injury.*

*(ii) "Perishable" means any item requiring refrigeration or any food item with a marked expiration date.*

*(iii) "Valueless" means any item that has an insubstantial resale value but does not include personal photos, jewelry, or other small items that are irreplaceable.*

(2) The landlord shall inventory and store all ~~goods, chattels, and~~ *abandoned* personal property of the tenant *that the landlord reasonably believes is valuable* in a place of safekeeping and shall exercise reasonable care for the property. The landlord may charge a reasonable storage and labor charge if the property is stored by the landlord, plus the cost of removal of the property to the place of storage. The landlord may store the property in a commercial storage

company, in which case the storage cost includes the actual storage charge plus the cost of removal of the property to the place of storage.

(3) After complying with ~~subsections (1) and~~ *subsection* (2), the landlord shall~~:~~

~~(a)~~ make a reasonable attempt to notify the tenant in writing that the property must be removed from the place of safekeeping~~;~~

~~(b) notify the local law enforcement office of the property held by the landlord;~~

~~(c) make a reasonable effort to determine if the property is secured or otherwise encumbered; and~~

~~(d) send~~ *by sending* a notice *with a certificate of mailing or* by certified mail to the last-known address of the tenant, stating that at a specified time, not less than ~~15~~ *10* days after mailing the notice, the property will be disposed of if not removed.

(4) The landlord may dispose of the property after complying with subsection (3) by:

(a) selling all or part of the property at a public or private sale; or

(b) destroying or otherwise disposing of all or part of the property if the landlord reasonably believes that the value of the property is so low that the cost of storage or sale exceeds the reasonable value of the property.

(5) If the tenant, upon receipt of the notice provided in subsection (3), responds in writing to the landlord on or before the day specified in the notice that the tenant intends to remove the property and does not do so within 7 days after delivery of the tenant's response, the tenant's property *whether of value or not* is conclusively presumed to be abandoned. If the tenant removes the property, the landlord is entitled to storage costs for the period that the property remains in safekeeping, plus the cost of removal of the property to the place of storage. Reasonable storage costs are allowed a landlord who stores the property, and actual storage costs are allowed a landlord who stores the property in a commercial storage company. A landlord is entitled to payment of the storage costs allowed under this subsection before the tenant may remove the property.

(6) The landlord is not responsible for any loss to the tenant resulting from storage unless the loss is caused by the landlord's purposeful or negligent act. On the event of purposeful violation, the landlord is liable for actual damages.

(7) A public or private sale authorized by this section must be conducted under the provisions of 30-9A-601 or the sheriff's sale provisions of Title 25, chapter 13, part 7.

(8) The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage, labor, and sale and any delinquent rent or damages owing on the premises and shall remit to the tenant the remaining proceeds, if any, together with an itemized accounting. If the tenant cannot after due diligence be found, the remaining proceeds must be deposited with the county treasurer of the county in which the sale occurred and, if not claimed within 3 years, must revert to the general fund of the county available for general purposes.

*(9) The landlord shall ensure that the terms of this section are included in plain and understandable language as a notification in any lease or rental agreement at the time of the agreement or when the tenant occupies the property.*

*The landlord shall provide the same notification upon termination of the lease or rental agreement.*"

Approved March 27, 2013

# CHAPTER NO. 94

[HB 399]

AN ACT EXEMPTING THE SALE OF EGGS AT A FARMER'S MARKET FROM LICENSURE AND GRADING REQUIREMENTS; AMENDING SECTIONS 50-50-202 AND 81-20-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 50-50-202, MCA, is amended to read:

**"50-50-202. Establishments exempt from license requirement — farmer's market records.** (1) Establishments owned or operated by the state or a political subdivision of the state that employ a full-time sanitarian are exempt from licensure but shall comply with the requirements of this chapter and rules adopted by the department under this chapter.

(2) (a) A license is not required to operate an establishment if it is operated by a nonprofit organization for a period of less than 14 days in 1 calendar year. An establishment exempt from licensure under this subsection:

(i) must be operated in compliance with the remaining provisions of this chapter and rules adopted by the department under this chapter; and

(ii) prior to each operation, shall register with the local health officer or sanitarian on forms provided by the department.

(b) Nonprofit organizations or persons selling baked goods or preserves exclusively for a charitable community purpose are exempt from registration if they notify the local health officer or sanitarian, by phone or in person, before the event. The notification required is limited to the date and time of the event, items planned to be sold, and an estimate of the number of people expected to be served at the event.

(3) (a) *(i)* A license is not required of a gardener, farm owner, or farm operator who sells raw and unprocessed farm products *or whole shell eggs* at a farmer's market.

*(ii) Whole shell eggs sold at a farmer's market by a farm owner or operator must:*

*(A) be clean, free of cracks, and stored in clean cartons;*

*(B) be kept at a temperature established by the department; and*

*(C) carry a label indicating the name and address of the farm owner or operator selling the eggs.*

(b) A license is not required of a person selling baked goods or preserves at a farmer's market or exclusively for a charitable community purpose.

(4) (a) A farmer's market that is an organized market authorized by a municipal or county authority shall keep registration records of all individuals and organizations that sell baked goods or preserves at the market.

(b) The registration records must include but are not limited to the name of the seller, the seller's address and telephone number, the products sold by the seller, and the date the products were sold.

(c) The registration records must be made available to the local health officer or the officer's agent."

**Section 2.** Section 81-20-206, MCA, is amended to read:

**"81-20-206. Notice to purchaser of grade of eggs.** It is unlawful for a person to sell, offer, or expose for sale at wholesale or retail any eggs for human consumption without notifying the person purchasing or intending to purchase the eggs of the exact grade or quality and size or weight of the eggs, according to the standards prescribed by the department of livestock, by stamping or printing on the container of the eggs the grade or quality and size or weight ~~and, if~~. *If* the eggs are offered for sale in bulk, ~~without also displaying in a conspicuous place at the point where the eggs are offered or exposed for sale~~ a placard or sign printed in letters 2 inches high *must be displayed in a conspicuous place at the point where the eggs are offered or exposed for sale* giving the grade, quality, size, weight, and date of grading. This part does not affect the sale of eggs by ~~the producers~~ *a producer* when the consumer purchases the eggs at the place of production *or at a farmer's market as defined in 50-50-102*."

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved March 27, 2013

## CHAPTER NO. 95

[SB 21]

AN ACT CLARIFYING THE STANDARD FOR ILLEGAL INFLUENCE OF VOTERS; AND AMENDING SECTION 13-35-214, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 13-35-214, MCA, is amended to read:

**"13-35-214. Illegal influence of voters.** A person may not *knowingly or purposely*, directly or indirectly, individually or through any other person, for any election, in order to induce any elector to vote or refrain from voting or to vote for or against any particular candidate, political party ticket, or ballot issue:

(1) give, lend, agree to give or lend, offer, or promise any money, liquor, or valuable consideration or promise or endeavor to procure any money, liquor, or valuable consideration; *or*

(2) promise to appoint another person or promise to secure or aid in securing the appointment, nomination, or election of another person to a public or private position or employment or to a position of honor, trust, or emolument in order to aid or promote the candidate's nomination or election, except that the candidate *for governor* may publicly announce or define the candidate's choice ~~or purpose in relation to an election in which the candidate may be called to take part if elected~~ *for lieutenant governor*."

Approved March 27, 2013

## CHAPTER NO. 96

[SB 35]

AN ACT REVISING OR ELIMINATING CERTAIN PROVISIONS THAT UNNECESSARILY REQUIRE AN OATH, NOTARIZATION, OR OTHER

AFFIRMATION OF CERTAIN DOCUMENTS, ACTIONS, FACTS, SPECIFICATIONS, OR ASSURANCES; AND AMENDING SECTIONS 19-17-112, 31-1-705, 31-1-707, 31-1-714, 32-5-308, 32-5-310, 32-7-109, 77-3-205, 77-3-317, 82-4-222, AND 87-2-106, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 19-17-112, MCA, is amended to read:

**"19-17-112. Filing required reports — limitations.** (1) The chief or designated official of each fire company that claims eligibility under this chapter shall, on or before September 1 of each year, file with the board an annual certificate, the current year's roster, and a membership card for each new member.

(2) (a) The annual certificate is a form reporting a fire company's membership eligibility for the previous fiscal year.

(b) The annual certificate must be completed on a form prescribed by the board and contain the date of organization of the fire company and the full name, social security number, and date of birth of each member of the fire company who was a member for the entire fiscal year and who successfully completed 30 hours of training during the preceding fiscal year, as required by 19-17-108.

(c) The chief or designated official shall subscribe and verify ~~under oath, before a notary,~~ that the fire company and members qualified under 19-17-108 and 19-17-109.

(d) The board shall maintain the certificate for the purpose of establishing service for members and eligibility for benefits.

(3) The roster must be signed by the fire chief or designated official, filed with the board, and contain information in writing that provides the names of the fire company, its date of organization, officers, and roll of active and inactive members for the current fiscal year. A roster may be updated to report new members but may not be retroactive.

(4) A membership card must be completed and filed with the board for each member who was a member on or before July 1, 2011, and for each new member who joins after July 1, 2011.

(5) The current fire chief shall file any late or amended annual certificates and the associated certified training records within 3 years of the original annual certificate due date. An annual certificate may be amended only once. The board shall consider and may approve late filings. Information provided to the board by the fire chief must be in accordance with the board's rules.

(6) The current fire chief may request to appear before the board for consideration of the request to file a late or amended annual certificate."

**Section 2.** Section 31-1-705, MCA, is amended to read:

**"31-1-705. License — application requirements — business locations.** (1) A person may not engage in or offer to engage in the business of making deferred deposit loans unless licensed by the department. A license may be granted to a person located within the state or to a person located outside of the state who uses the internet, facsimiles, or third persons to conduct transactions with consumers in this state.

(2) An applicant for a license to engage in the business of making deferred deposit loans shall pay to the department a license application fee of $500.

(3) The application for licensure must be in writing~~, under oath,~~ and in the form prescribed by the department. The application must contain:

(a) the name of the applicant;

(b) the date of formation if a business entity;

(c) the physical address of each deferred deposit loan office to be operated by the applicant;

(d) the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees, and principal officers; and

(e) any other pertinent information that the department may require.

(4) A license may not be issued for longer than 1 year. The license year must coincide with the calendar year, and the license fee for any period less than 6 months is $250.

(5) Each licensee shall post a bond in the amount of $10,000 for each location. The bond must continue in effect for 2 years after the licensee ceases operation in the state. The bond must be available to pay damages and penalties to consumers harmed by any violation of this part.

(6) More than one place of business may not be maintained under the same license, but the department may issue more than one license to the same licensee upon compliance with the provisions of this section governing issuance of a single license."

**Section 3.** Section 31-1-707, MCA, is amended to read:

**"31-1-707. Denial of license and license renewal.** (1) (a) Except as provided in subsection (1)(b), the department shall deny any new license or refuse to renew any license if:

(i) the applicant does not meet the qualifications stated in this part or in rules adopted pursuant to this part;

(ii) the department finds that the criminal history of any employee of the applicant at the time of application or renewal demonstrates any conviction involving fraud or financial dishonesty or if the department's findings show civil judgments involving fraudulent or dishonest financial dealings;

(iii) the financial responsibility, experience, character, and general fitness of the applicant do not warrant the belief that the business will be operated lawfully and fairly and within the provisions of this part;

(iv) the applicant does not have unencumbered assets of at least $25,000 for each location to be operated by the applicant;

~~(v) the applicant has not provided a sworn statement that the applicant will not in the future, directly or indirectly, use a criminal process to collect the payment of deferred deposit loans or any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default;~~

~~(vi)~~*(v)* other information that the department considers necessary has not been provided; or

~~(vii)~~*(vi)* the applicant makes any material misstatement of fact or any material omission of fact in the application.

(b) A denial is not required pursuant to subsection (1)(a)(ii) if the department finds that the applicant dismissed the employee promptly upon learning of the employee's conviction involving fraud or financial dishonesty or of civil judgments involving fraudulent or dishonest financial dealings by the employee.

(2) The department shall provide written notice to the applicant of the denial or refusal, setting forth in the notice the grounds upon which the denial or refusal is based.

(3) The applicant has the right to a hearing under the Montana Administrative Procedure Act on any denial or refusal to issue a license. The request for a hearing must be made within 10 days of the date of receipt of the written notice of denial or refusal.

(4) An applicant whose application for licensure or renewal has been denied or refused may not reapply for 1 year following the denial or refusal."

**Section 4.** Section 31-1-714, MCA, is amended to read:

**"31-1-714. Information and annual reports.** (1) Each licensee shall keep and use books, accounts, and records that will enable the department to determine if the licensee is complying with the provisions of this part and maintain any other records required by the department. The department is authorized to examine the records at any reasonable time. The records must be kept for 2 years following the last entry on a loan and must be kept according to generally accepted accounting procedures that include an examiner being able to review the recordkeeping and reconcile each deferred deposit loan with documentation maintained in the consumer's loan file records.

(2) Each licensee shall file, on forms prescribed by the department, an annual report with the department on or before March 31 for the 12-month period in the preceding year ending as of December 31. The report must disclose in detail and under appropriate headings:

(a) the resources, assets, and liabilities of the licensee at the beginning and the end of the period;

(b) the income, expense, gain, loss, and balance sheets;

(c) the total number of deferred deposit loans made in the year ending as of December 31 of the previous year, including:

(i) the number of individual consumers with 12 or fewer new deferred deposit loans; and

(ii) the number of individual consumers with 13 or more new deferred deposit loans;

(d) the average deferred deposit loan amount, average annual interest percentage rate, and average deferred deposit loan term;

(e) the number of deferred deposit loans rescinded;

(f) the total number of deferred deposit loans outstanding as of December 31 of the previous year;

(g) the minimum and maximum amount of checks for which deposits were deferred in the year ending as of December 31 of the previous year;

(h) the total number and dollar amount of returned checks, the total number and dollar amount of checks recovered, and the total number and dollar amount of checks charged off during the year ending as of December 31 of the previous year;

(i) the total number and dollar amount of agreements involving electronic transactions or deductions, the total number and dollar amount of electronic deductions made by the licensee, and the total number and dollar amount of electronic deductions for insufficient funds charged off during the year ending as of December 31 of the previous year; and

(j) verification that the licensee has not used a criminal process or caused a criminal process to be used in the collection of any deferred deposit loans or used any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default during the year ending as of December 31 of the previous year.

~~(3) A report must be verified by the oath or affirmation of the owner, manager, or president of the deferred deposit lender.~~

~~(4)~~*(3)* (a) If a licensee conducts another business or is affiliated with other licensees under this part or if any other situation exists under which allocations of expense are necessary, the licensee shall make the allocation according to appropriate and reasonable accounting principles as approved by the department.

(b) Information about any other business conducted on the same premises where deferred deposit loans are made must be provided as required by the department.

~~(5)~~*(4)* Each licensee shall file a copy of the disclosure documents described in 31-1-721 with the department prior to the date of commencement of business at each location, at the time any changes are made to the documents, and annually upon renewal of the license. These documents must be available to interested parties and to the general public through the department."

**Section 5.** Section 32-5-308, MCA, is amended to read:

**"32-5-308. Annual report.** (1) A licensee shall file an annual report before April 15 for the preceding calendar year with the department.

(2) The report must be ~~made under oath and be~~ in a form and contain the information prescribed by the department. The department shall publish annually an analysis and summary of the reports."

**Section 6.** Section 32-5-310, MCA, is amended to read:

**"32-5-310. Wage assignments — limitations.** (1) Subject to the limitations in subsection (2), wage assignments, which include salary, wages, commissions, and other compensation for services, are permitted and any loan made subject to a wage assignment must be considered a loan secured by the wage assignment. The amount by which the assignment exceeds the amount of the consideration actually paid, for the purposes of regulation under this chapter, may not be considered interest on the loan and must be credited to the borrower. Transactions subject to the provisions of this section are governed by and are subject to the provisions of this chapter.

(2) Any assignment to a licensee or for the benefit of a licensee of salary, wages, commissions, or other compensation for services may not exceed 10% of the salary, wages, commissions, or other compensation owing at the time of the notice to the debtor's employer or that is subsequently owed. An assignment is not valid unless it is in writing and is signed in person by the borrower or if the borrower is married is signed in person by both husband and wife, provided that written assent of a spouse is not required when husband and wife have been and are living separate and apart when the assignment is made. Notice of the assignment must be given to the debtor's employer only if the debtor defaults in payment of the whole or some part of the loan for which the assignment is security. The notice must be served on the employer or a managing agent of the employer, must be verified by ~~the oath of~~ the licensee or the licensee's agent, and must include:

(a) a correct copy of the assignment;

(b) a statement of the amount of the loan and the amount due and unpaid; and

(c) a copy of this section.

(3) The acceptance and honoring of any assignment must be at the option of the employer."

**Section 7.** Section 32-7-109, MCA, is amended to read:

**"32-7-109. Application for license — bond — issuance.** (1) A person must be licensed pursuant to this part before engaging in an escrow business.

(2) To obtain a license, an applicant shall file with the director an application for an escrow business license. The application must be in writing, ~~verified by oath,~~ and in the form prescribed by the director. The application must set forth:

(a) the location of the applicant's principal office and all branch offices in this state;

(b) the name and form under which the applicant plans to conduct business;

(c) the general plan and character of the business;

(d) the names, residences, and business addresses of any principals, partners, officers, trustees, and directors, specifying as to each the respective capacity and title;

(e) the experience and qualifications of the persons proposed to act as officers and managers;

(f) the length of time the applicant has been engaged in the escrow business; and

(g) any other relevant information the director requires.

(3) An applicant shall file with the license application a bond in an amount to be set by the department by rule. The bond must be conditioned on the applicant conducting the escrow business in accordance with the requirements of law. All bonds must be filed with the department, approved by the department, and renewed annually.

(4) The director shall grant and issue an escrow business license if:

(a) the director has received the bond and application specified in this section; and

(b) the applicant has complied with all the requirements of this part and any rules promulgated under it.

(5) An escrow business shall immediately notify the department of any material change in the information contained in the application."

**Section 8.** Section 77-3-205, MCA, is amended to read:

**"77-3-205. Report of lessee and payment of royalty.** (1) On or before the last day of each month, every holder of a producing lease under this part shall make a report to the department on a form the department prescribes showing:

(a) the amount of substances mined or extracted from the lands in the preceding month;

(b) the price obtained;

(c) the total amount of sales; and

(d) any additional information required.

(2) The report ~~shall~~ *must* be verified by ~~affidavit of~~ the lessee or some responsible person having knowledge of the facts and ~~shall~~ *must* be accompanied by payment of the amount to the state as royalty for the month covered by the report."

**Section 9.** Section 77-3-317, MCA, is amended to read:

**"77-3-317. Report and payment of royalty.** (1) On or before the last day of each month every holder of a producing coal mining lease shall make a report to the department on a form the department prescribes showing:

(a) the number of tons mined during the preceding calendar month;

(b) the price obtained ~~therefor~~ *for the number of tons mined during the preceding calendar month* at the mine;

(c) the total amount of all sales; and

(d) any additional information required by the department.

(2) The report ~~shall~~ *must* be verified by ~~the oath of~~ the lessee and be accompanied by payment of the royalty due the state for the preceding month as shown by the report."

**Section 10.** Section 82-4-222, MCA, is amended to read:

**"82-4-222. Permit application — application revisions.** (1) An operator desiring a permit shall file an application that must contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land and water to be affected by the operation. The plan must reflect thorough advance investigation and study by the operator, include all known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of use, and provide:

(a) the location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the area of land to be affected by the permit and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the affected area;

(c) the names and addresses of the present owners of record and any purchasers under contracts for deed of all subsurface minerals in the land to be affected;

(d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

(e) the permanent and temporary post-office addresses of the applicant;

(f) whether the applicant or any person associated with the applicant holds or has held any other permits under this part and an identification of those permits;

(g) (i) whether the applicant is in compliance with 82-4-251 and, if known, whether each officer, partner, director, or any individual, owning of record or beneficially, alone or with associates, 10% or more of any class of stock of the applicant, is subject to any of the provisions of 82-4-251. If so, the applicant shall certify the fact.

(ii) whether any of the parties or persons specified in subsection (1)(g)(i) have ever had a strip-mining or underground-mining license or permit issued by any other state or federal agency revoked or have ever forfeited a strip-mining or underground-mining bond or a security deposited in lieu of a bond. If so, a detailed explanation of the facts involved in each case must be attached.

(h) whether the applicant has a record of outstanding reclamation fees with the federal coal regulatory authority;

(i) the names and addresses of any persons who are engaged in strip-mining or underground-mining activities on behalf of the applicant;

(j) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the applicant has requested a permit;

(k) the results of any test borings or core samplings that the applicant or the applicant's agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam,

an analysis of the chemical properties of the minerals, including the acidity, sulfur content, and trace mineral elements of any coal seam, as well as the British thermal unit (Btu) content of the seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application must contain two copies each of two sets of geologic cross sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set must depict subsurface conditions at intervals the department requires across the surface and must run at a 90-degree angle to the other set. The department may not require intervals of less than 500 feet. Each cross section must depict the thickness and geologic character of all known strata, beginning with the topsoil. In addition, each application for an underground-mining permit must be accompanied by cross sections and maps showing the proposed underground locations of all shafts, entries, and haulageways or other excavations to be excavated during the permit period. These cross sections must also include all existing shafts, entries, and haulageways.

(l) the name and date of a daily newspaper of general circulation within the county in which the applicant will prominently publish at least once a week for 4 successive weeks after submission of the application an announcement of the applicant's application for a strip-mining or underground-mining permit and a detailed description of the area of land to be affected if a permit is granted;

(m) a determination of the probable hydrologic consequences of coal mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime and quantity and quality of water in surface water and ground water systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas, so that cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability can be made. However, this determination is not required until hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit may not be approved until the information is available and is incorporated into the application. The determination of probable hydrologic consequences must include findings on:

(i) whether adverse impacts may occur to the hydrologic balance;

(ii) whether acid-forming or toxic-forming materials are present that could result in the contamination of ground water or surface water supplies;

(iii) whether the proposed operation may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas that is used for domestic, agricultural, industrial, or other beneficial use; and

(iv) what impact the operation will have on:

(A) sediment yields from the disturbed area;

(B) acidity, total suspended and dissolved solids, and other important water quality parameters of local impact;

(C) flooding or streamflow alteration;

(D) ground water and surface water availability; and

(E) other characteristics required by the department that potentially affect beneficial uses of water in and adjacent to the permit area;

(n) a plan for monitoring ground water and surface water, based upon the determination of probable hydrologic consequences required under subsection (1)(m). The plan must provide for the monitoring of parameters that relate to the

availability and suitability of ground water and surface water for current and approved postmining land uses and the objectives for protection of the hydrologic balance.

(o) a map depicting the projected postmining topography, using cross sections, range diagrams, or other methods approved by the department, showing the manner of spoil placement, showing removal of coal volume and overburden swell, and including:

(i) locations and elevations of tie-in points with adjacent unmined drainageways;

(ii) approximate locations of primary or highest order drainageways and associated drainage divides in the reclaimed topography; and

(iii) projected elevations of primary drainageways and associated drainage divides and generalized slopes with the level of detail appropriate to project the approximate original contour;

(p) the condition of the land to be covered by the permit prior to any mining, including:

(i) the land uses existing at the time of the application and, if the land has a history of previous mining, the uses that preceded any mining;

(ii) the capability of the land prior to any mining to support a variety of uses, giving consideration to soil characteristics, topography, and vegetative cover; and

(iii) the productivity of the land prior to mining, including appropriate classification as prime farm land, as well as the average yield of food, fiber, forage, or wood products from land under high levels of management;

(q) a coal conservation plan; and

(r) other or further information as the department may require.

(2) The application for a permit must be accompanied by two copies of all maps meeting the requirements of subsections (2)(a) through (2)(n). The maps must:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining or surface mining, the boundaries of surface properties, and names of owners of record of the affected area and within 1,000 feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within 1,000 feet of the area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the final surface and underground water drainage plan on and away from the area of land affected. This plan must indicate the directional and volume flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

(g) show the proposed location of waste or refuse area;

(h) show the proposed location of temporary subsoil and topsoil storage area;

(i) show the proposed location of all facilities;

(j) show the location of test boring holes;

(k) show the surface location lines of any geologic cross sections that have been submitted;

(l) show a listing of plant varieties encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree varieties and the approximate number of each variety occurring per acre on the area to be affected, and the locations generally of the various kinds and varieties of plants, including but not limited to grasses, shrubs, legumes, forbs, and trees;

(m) be certified as follows: "I, the undersigned, hereby certify that this map is correct and shows to the best of my knowledge and belief all the information required by the mining laws of this state." The certification must be signed ~~and notarized~~. The department may reject a map as incomplete if its accuracy is not attested *by the signed certification*.

(n) contain other or further information as the department may require.

(3) If the department finds that the probable total annual production at all locations of any strip-mining or underground-coal-mining operation applied for will not exceed 100,000 tons, any determination of probable hydrologic consequences that the department requires and the statement of result of test borings or core samplings must, upon written request of the operator, be performed by a qualified public or private laboratory designated by the department. The department shall assume the cost of the determination and statement to the extent that it has received funds for this purpose.

(4) In addition to the information and maps required by this section, each application for a permit must be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, subsidence stabilization, water control, grading work, highwall reduction, topsoiling, planting, and revegetating, and a reclamation plan for the area affected by the operation, which proposals must meet the requirements of this part and rules adopted under this part. The reclamation plan must address the life of the operation and indicate the size, sequence, and the timing of the subareas for which it is anticipated that individual permits will be sought.

(5) Each applicant for a coal mining permit shall submit as part of the application a certificate issued by an insurance company authorized to do business in the state, certifying that the applicant has in force for the strip-mining or underground-mining and reclamation operations for which the permit is sought a public liability insurance policy or evidence that the applicant has satisfied other state or federal self-insurance requirements. This policy must provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of strip-mining or underground-coal-mining and reclamation operations, including use of explosives, and entitled to compensation under applicable provisions of state law. The permittee shall maintain the policy in full force and effect during the term of the permit and any renewal until all reclamation operations have been completed.

(6) An applicant may revise an application for a permit, a permit amendment, or a permit revision that is pending on January 1, 2004, in order to incorporate the provisions of this part.

(7) A permittee may apply to revise and the department may approve an application to incorporate the provisions of this part into a reclamation plan approved before January 1, 2004. The reclamation plan may be revised whether or not reclamation has been completed pursuant to the reclamation plan.

(8) Each applicant for a strip-mining or underground-mining reclamation permit shall file a copy of the applicant's application for public inspection with the clerk and recorder at the courthouse of the county in which the major portion of mining is proposed to occur."

**Section 11.** Section 87-2-106, MCA, is amended to read:

**"87-2-106. Application for license.** (1) A license may be procured from the director, a warden, or an authorized agent of the director. The applicant shall state the applicant's name, age, [last four digits of the applicant's social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and other facts, data, or descriptions as may be required by the department. An applicant for a resident license shall present a valid Montana driver's license, Montana driver's examiner's identification card, tribal identification card, or other identification specified by the department to substantiate the required information. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a license. Except as provided in subsections (2) through (4), the statements made by the applicant must be subscribed to ~~before the officer or agent issuing the license~~ *by the applicant*.

(2) Except as provided in subsection (3), department employees or officers may issue licenses by telephone, by mail, on the internet, or by other electronic means. ~~Statements on an application for a license to be issued by telephone, by mail, on the internet, or by other electronic means need not be subscribed to before the employee or officer.~~

(3) To apply for a license under the provisions of 87-2-102(7), the applicant shall apply to the director and shall ~~submit at the time of application a notarized affidavit that attests~~ *subscribe* to fulfillment of the requirements of 87-2-102(7). The director shall process the application in an expedient manner.

(4) A resident may apply for and purchase a wildlife conservation license, hunting license, or fishing license for the resident's spouse, parent, child, brother, or sister who is otherwise qualified to obtain the license.

(5) A license is void unless subscribed to by the licensee.

(6) A person whose privilege to hunt, fish, or trap has been revoked is not eligible to purchase any license until all terms of the court sentence in which the privilege was revoked, including making restitution, have been met or the person is in compliance with installment payments specified by the court and the department has received notification from the sentencing court to that effect pursuant to 87-6-922(2).

[(7) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(8) The department shall delete an applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001.)"

Approved March 27, 2013

# CHAPTER NO. 97

[SB 55]

AN ACT CLARIFYING THAT ISSUERS OF HEALTH INSURANCE COVERAGE MAY NOT DENY ROUTINE PATIENT COSTS FOR INDIVIDUALS IN AN APPROVED CLINICAL TRIAL; PROVIDING DEFINITIONS; AMENDING SECTIONS 2-18-704, 33-22-101, 33-31-111, 33-35-306, 53-4-1005, AND 53-6-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Coverage of routine patient costs for participants in cancer clinical trials — definitions — limitations.** (1) A plan of group or individual health insurance coverage that is delivered, issued for delivery, renewed, extended, or modified in this state may not:

(a) deny participation by a qualified individual in an approved clinical trial;

(b) deny, limit, or impose additional conditions on the coverage of routine patient costs; or

(c) discriminate against an individual on the basis of the individual's participation in an approved clinical trial.

(2) A network plan may require a qualified individual who wishes to participate in an approved clinical trial to participate in a trial that is offered through a provider who is part of the network plan if the provider is participating in the trial and the provider accepts the individual as a participant in the trial.

(3) This section applies to a qualified individual who participates in an approved clinical trial that is conducted outside of Montana.

(4) This section does not require a health insurance issuer offering individual or group health insurance coverage to provide benefits for routine patient costs if the services are provided outside of the network plan offered by the health insurance coverage unless out-of-network benefits are otherwise provided under the coverage.

(5) As used in this section, the following definitions apply:

(a) "Approved clinical trial" means a phase I, phase II, phase III, or phase IV clinical trial that is conducted in relation to the prevention, detection, or treatment of cancer and is not designed exclusively to test toxicity or disease pathophysiology. The trial must be:

(i) conducted under an investigational new drug application reviewed by the United States food and drug administration;

(ii) exempt from obtaining an investigational new drug application; or

(iii) approved or funded by:

(A) the national institutes of health, the centers for disease control and prevention, the agency for healthcare research and quality, the centers for medicare and medicaid services, or a cooperative group or center of any of the entities described in this subsection (5)(a)(iii)(A);

(B) a cooperative group or center of the United States department of defense or the United States department of veterans affairs;

(C) a qualified nongovernmental research entity identified in the guidelines issued by the national institutes for health for center support groups; or

(D) the United States departments of veterans affairs, defense, or energy if the study or investigation has been reviewed and approved through a system of

peer review determined by the United States secretary of health and human services to:

(I) be comparable to the system of peer review of studies and investigations used by the national institutes of health; and

(II) provide unbiased scientific review by individuals who have no interest in the outcome of the review.

(b) "Qualified individual" means an individual with health insurance coverage who is eligible to participate in an approved clinical trial according to the trial protocol for the treatment of cancer because:

(i) the referring health care professional is participating in the clinical trial and has concluded that the individual's participation in the trial would be appropriate; or

(ii) the individual provides medical and scientific information establishing that the individual's participation in the clinical trial is appropriate because the individual meets the conditions described in the trial protocol.

(c) (i) "Routine patient costs" include all items and services covered by a plan of individual or group health insurance coverage when the items or services are typically covered for a qualified individual who is not enrolled in an approved clinical trial.

(ii) The term does not include:

(A) an investigational item, device, or service that is part of the trial;

(B) an item or service provided solely to satisfy data collection and analysis needs for the trial if the item or service is not used in the direct clinical management of the patient;

(C) a service that is clearly inconsistent with widely accepted and established standards of care for the individual's diagnosis; or

(D) an item or service customarily provided and paid for by the sponsor of a clinical trial.

**Section 2.** Section 2-18-704, MCA, is amended to read:

**"2-18-704. Mandatory provisions.** (1) An insurance contract or plan issued under this part must contain provisions that permit:

(a) the member of a group who retires from active service under the appropriate retirement provisions of a defined benefit plan provided by law or, in the case of the defined contribution plan provided in Title 19, chapter 3, part 21, a member with at least 5 years of service and who is at least age 50 while in covered employment to remain a member of the group until the member becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, unless the member is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless the member is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost;

(b) the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (1)(a);

(c) the surviving children of a member to remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in

subsection (1)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

(2) An insurance contract or plan issued under this part must contain the provisions of subsection (1) for remaining a member of the group and also must permit:

(a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

(b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

(c) continued membership in the group by anyone eligible under the provisions of this section, notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

(3) (a) A state insurance contract or plan must contain provisions that permit a legislator to remain a member of the state's group plan until the legislator becomes eligible for medicare under the federal Health Insurance for the Aged Act if the legislator:

(i) terminates service in the legislature and is a vested member of a state retirement system provided by law; and

(ii) notifies the department of administration in writing within 90 days of the end of the legislator's legislative term.

(b) A former legislator may not remain a member of the group plan under the provisions of subsection (3)(a) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost.

(c) A legislator who remains a member of the group under the provisions of subsection (3)(a) and subsequently terminates membership may not rejoin the group plan unless the person again serves as a legislator.

(4) (a) A state insurance contract or plan must contain provisions that permit continued membership in the state's group plan by a member of the judges' retirement system who leaves judicial office but continues to be an inactive vested member of the judges' retirement system as provided by 19-5-301. The judge shall notify the department of administration in writing within 90 days of the end of the judge's judicial service of the judge's choice to continue membership in the group plan.

(b) A former judge may not remain a member of the group plan under the provisions of this subsection (4) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost;

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost; or

(iii) becomes eligible for medicare under the federal Health Insurance for the Aged Act.

(c) A judge who remains a member of the group under the provisions of this subsection (4) and subsequently terminates membership may not rejoin the group plan unless the person again serves in a position covered by the state's group plan.

(5) A person electing to remain a member of the group under subsection (1), (2), (3), or (4) shall pay the full premium for coverage and for that of the person's covered dependents.

(6) An insurance contract or plan issued under this part that provides for the dispensing of prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

(a) must permit any member of a group to obtain prescription drugs from a pharmacy located in Montana that is willing to match the price charged to the group or plan and to meet all terms and conditions, including the same professional requirements that are met by the mail service pharmacy for a drug, without financial penalty to the member; and

(b) may only be with an out-of-state mail service pharmacy that is registered with the board under Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation.

(7) An insurance contract or plan issued under this part must include coverage for treatment of inborn errors of metabolism, as provided for in 33-22-131.

(8) (a) An insurance contract or plan issued under this part that provides coverage for an individual in a member's family must provide coverage for well-child care for children from the moment of birth through 7 years of age. Benefits provided under this coverage are exempt from any deductible provision that may be in force in the contract or plan.

(b) Coverage for well-child care under subsection (8)(a) must include:

(i) a history, physical examination, developmental assessment, anticipatory guidance, and laboratory tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(ii) routine immunizations according to the schedule for immunization recommended by the immunization practice advisory committee of the U.S. department of health and human services.

(c) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit as provided for in this subsection (8).

(d) For purposes of this subsection (8):

(i) "developmental assessment" and "anticipatory guidance" mean the services described in the Guidelines for Health Supervision II, published by the American academy of pediatrics; and

(ii) "well-child care" means the services described in subsection (8)(b) and delivered by a physician or a health care professional supervised by a physician.

(9) Upon renewal, an insurance contract or plan issued under this part under which coverage of a dependent terminates at a specified age must continue to provide coverage for any dependent, as defined in the insurance contract or plan, until the dependent reaches 26 years of age. For insurance contracts or plans issued under this part, the premium charged for the additional coverage of a dependent, as defined in the insurance contract or plan, may be required to be paid by the insured and not by the employer.

(10) Prior to issuance of an insurance contract or plan under this part, written informational materials describing the contract's or plan's cancer screening coverages must be provided to a prospective group or plan member.

(11) The state employee group benefit plans and the Montana university system group benefits plans must provide coverage for hospital inpatient care

for a period of time as is determined by the attending physician and, in the case of a health maintenance organization, the primary care physician, in consultation with the patient to be medically necessary following a mastectomy, a lumpectomy, or a lymph node dissection for the treatment of breast cancer.

(12) (a) The state employee group benefit plans and the Montana university system group benefits plans must provide coverage for outpatient self-management training and education for the treatment of diabetes. Any education must be provided by a licensed health care professional with expertise in diabetes.

(b) Coverage must include a $250 benefit for a person each year for medically necessary and prescribed outpatient self-management training and education for the treatment of diabetes.

(c) The state employee group benefit plans and the Montana university system group benefits plans must provide coverage for diabetic equipment and supplies that at a minimum includes insulin, syringes, injection aids, devices for self-monitoring of glucose levels (including those for the visually impaired), test strips, visual reading and urine test strips, one insulin pump for each warranty period, accessories to insulin pumps, one prescriptive oral agent for controlling blood sugar levels for each class of drug approved by the United States food and drug administration, and glucagon emergency kits.

(d) Nothing in subsection (12)(a), (12)(b), or (12)(c) prohibits the state or the Montana university group benefit plans from providing a greater benefit or an alternative benefit of substantially equal value, in which case subsection (12)(a), (12)(b), or (12)(c), as appropriate, does not apply.

(e) Annual copayment and deductible provisions are subject to the same terms and conditions applicable to all other covered benefits within a given policy.

(f) This subsection (12) does not apply to disability income, hospital indemnity, medicare supplement, accident-only, vision, dental, specific disease, or long-term care policies offered by the state or the Montana university system as benefits to employees, retirees, and their dependents.

(13) (a) The state employee group benefit plans and the Montana university system group benefits plans that provide coverage to the spouse or dependents of a peace officer as defined in 45-2-101, a game warden as defined in 19-8-101, a firefighter as defined in 19-13-104, or a volunteer firefighter as defined in 19-17-102 shall renew the coverage of the spouse or dependents if the peace officer, game warden, firefighter, or volunteer firefighter dies within the course and scope of employment. Except as provided in subsection (13)(b), the continuation of the coverage is at the option of the spouse or dependents. Renewals of coverage under this section must provide for the same level of benefits as are available to other members of the group. Premiums charged to a spouse or dependent under this section must be the same as premiums charged to other similarly situated members of the group. Dependent special enrollment must be allowed under the terms of the insurance contract or plan. The provisions of this subsection (13)(a) are applicable to a spouse or dependent who is insured under a COBRA continuation provision.

(b) The state employee group benefit plans and the Montana university system group benefits plans subject to the provisions of subsection (13)(a) may discontinue or not renew the coverage of a spouse or dependent only if:

(i) the spouse or dependent has failed to pay premiums or contributions in accordance with the terms of the state employee group benefit plans and the

Montana university system group benefits plans or if the plans have not received timely premium payments;

(ii) the spouse or dependent has performed an act or practice that constitutes fraud or has made an intentional misrepresentation of a material fact under the terms of the coverage; or

(iii) the state employee group benefit plans and the Montana university system group benefits plans are ceasing to offer coverage in accordance with applicable state law. (See compiler's comments for contingent termination of certain text.)

*(14) The state employee group benefit plans and the Montana university system group benefits plans must comply with the provisions of [section 1].*"

**Section 3.** Section 33-22-101, MCA, is amended to read:

**"33-22-101. Exceptions to scope.** (1) Subject to subsection (2), parts 1 through 4 of this chapter, except 33-22-107, 33-22-110, 33-22-111, 33-22-114, 33-22-125, 33-22-129, 33-22-130 through 33-22-136, *[section1],* 33-22-140, 33-22-141, 33-22-142, 33-22-243, and 33-22-304, and part 19 of this chapter do not apply to or affect:

(a) any policy of liability or workers' compensation insurance with or without supplementary expense coverage;

(b) any group or blanket policy;

(c) life insurance, endowment, or annuity contracts or supplemental contracts that contain only those provisions relating to disability insurance that:

(i) provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means; or

(ii) operate to safeguard contracts against lapse or to give a special surrender value or special benefit or an annuity if the insured or annuitant becomes totally and permanently disabled as defined by the contract or supplemental contract;

(d) reinsurance.

(2) Sections 33-22-137, 33-22-150 through 33-22-152, and 33-22-301 apply to group or blanket policies."

**Section 4.** Section 33-31-111, MCA, is amended to read:

**"33-31-111. Statutory construction and relationship to other laws.** (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, part 19;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) Title 33, chapter 1, parts 12 and 13, Title 33, chapter 2, part 19, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-401, 33-3-422, 33-3-431, 33-15-308, Title 33, chapter 17, Title 33, chapter 19, 33-22-107, 33-22-129, 33-22-131, 33-22-136, 33-22-137, *[section 1],* 33-22-141, 33-22-142, 33-22-152, 33-22-244, 33-22-246, 33-22-247, 33-22-514, 33-22-515, 33-22-521, 33-22-523, 33-22-524, 33-22-526, and 33-22-706 apply to health maintenance organizations."

**Section 5.** Section 33-35-306, MCA, is amended to read:

**"33-35-306. Application of insurance code to arrangements.** (1) In addition to this chapter, self-funded multiple employer welfare arrangements are subject to the following provisions:

(a) 33-1-111;

(b) Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare arrangement is limited to those matters to which the arrangement is subject to regulation under this chapter;

(c) Title 33, chapter 1, part 7;

(d) 33-3-308;

(e) Title 33, chapter 18, except 33-18-242;

(f) Title 33, chapter 19;

(g) 33-22-107, 33-22-131, 33-22-134, 33-22-135, *[section 1],* 33-22-141, 33-22-142, and 33-22-152; and

(h) 33-22-512, 33-22-515, 33-22-525, and 33-22-526.

(2) Except as provided in this chapter, other provisions of Title 33 do not apply to a self-funded multiple employer welfare arrangement that has been issued a certificate of authority that has not been revoked."

**Section 6.** Section 53-4-1005, MCA, is amended to read:

**"53-4-1005. (Temporary) Benefits provided.** (1) Benefits provided to participants in the program may include but are not limited to:

(a) inpatient and outpatient hospital services;

(b) physician and advanced practice registered nurse services;

(c) laboratory and x-ray services;

(d) well-child and well-baby services;

(e) immunizations;

(f) clinic services;

(g) dental services;

(h) prescription drugs;

(i) mental health and substance abuse treatment services;

(j) hearing and vision exams; and

(k) eyeglasses.

*(2) The program must comply with the provisions of [section 1].*

~~(2)~~*(3)* The department shall adopt rules, pursuant to its authority under 53-4-1009, allowing it to cover significant dental needs beyond those covered in the basic plan. Expenditures under this subsection may not exceed $100,000 in state funds, plus any matched federal funds, each fiscal year.

~~(3)~~*(4)* The department is specifically prohibited from providing payment for birth control contraceptives under this program.

~~(4)~~*(5)* The department shall notify enrollees of any restrictions on access to health care providers, of any restrictions on the availability of services by out-of-state providers, and of the methodology for an out-of-state provider to be an eligible provider. (Terminates on occurrence of contingency—sec. 15, Ch. 571, L. 1999; sec. 3, Ch. 169, L. 2007.)"

**Section 7.** Section 53-6-101, MCA, is amended to read:

**"53-6-101. Montana medicaid program — authorization of services.** (1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq. The department shall administer the Montana medicaid program.

(2) The department and the legislature shall consider the following funding principles when considering changes in medicaid policy that either increase or reduce services:

(a) protecting those persons who are most vulnerable and most in need, as defined by a combination of economic, social, and medical circumstances;

(b) giving preference to the elimination or restoration of an entire medicaid program or service, rather than sacrifice or augment the quality of care for several programs or services through dilution of funding; and

(c) giving priority to services that employ the science of prevention to reduce disability and illness, services that treat life-threatening conditions, and services that support independent or assisted living, including pain management, to reduce the need for acute inpatient or residential care.

(3) Medical assistance provided by the Montana medicaid program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;

(d) skilled nursing services in long-term care facilities;

(e) physicians' services;

(f) nurse specialist services;

(g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;

(h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

(i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;

(j) services that are provided by physician assistants within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;

(k) health services provided under a physician's orders by a public health department; ~~and~~

(l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2)*; and*

*(m) routine patient costs for qualified individuals enrolled in an approved clinical trial for cancer as provided in [section 1]*.

(4) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy services;

(f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 10;

(g) clinical social worker services;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) prescribed eyeglasses;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) inpatient psychiatric hospital services for persons under 21 years of age;

(l) services of professional counselors licensed under Title 37, chapter 23;

(m) hospice care, as defined in 42 U.S.C. 1396d(o);

(n) case management services, as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill;

(o) services of psychologists licensed under Title 37, chapter 17;

(p) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and

(q) any additional medical service or aid allowable under or provided by the federal Social Security Act.

(5) Services for persons qualifying for medicaid under the medically needy category of assistance, as described in 53-6-131, may be more limited in amount, scope, and duration than services provided to others qualifying for assistance under the Montana medicaid program. The department is not required to provide all of the services listed in subsections (3) and (4) to persons qualifying for medicaid under the medically needy category of assistance.

(6) In accordance with federal law or waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department may implement limited medicaid benefits, to be known as basic medicaid, for adult recipients who are eligible because they are receiving

financial assistance, as defined in 53-4-201, as the specified caretaker relative of a dependent child under the FAIM project and for all adult recipients of medical assistance only who are covered under a group related to a program providing financial assistance, as defined in 53-4-201. Basic medicaid benefits consist of all mandatory services listed in ~~subsections (3)(a) through (3)(l)~~ *subsection (3)* but may include those optional services listed in subsections (4)(a) through (4)(q) that the department in its discretion specifies by rule. The department, in exercising its discretion, may consider the amount of funds appropriated by the legislature, whether approval has been received, as provided in 53-1-612, and whether the provision of a particular service is commonly covered by private health insurance plans. However, a recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage.

(7) The department may implement, as provided for in Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(8) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(9) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

(10) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended.

(11) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(12) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program after taking into consideration the funding principles set forth in subsection (2)."

**Section 8. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, apply to [section 1].

**Section 9. Effective date.** [This act] is effective on passage and approval.

**Section 10. Contingent termination.** [Section 6] terminates on occurrence of the contingency contained in section 15, Chapter 571, Laws of 1999.

Approved March 27, 2013

## CHAPTER NO. 98

[SB 92]

AN ACT REVISING THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT; STREAMLINING PERMIT APPLICATION REQUIREMENTS; CLARIFYING REQUIREMENTS FOR A COAL PROSPECTING PERMIT AND FOR REPLACEMENT OF UNDERGROUND WATER SOURCES; STREAMLINING ANNUAL REPORT REQUIREMENTS; PROVIDING FOR CHALLENGES TO OWNERSHIP AND CONTROL

LISTINGS; AND AMENDING SECTIONS 82-4-222, 82-4-226, 82-4-227, 82-4-237, AND 82-4-253, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 82-4-222, MCA, is amended to read:

**"82-4-222. Permit application — application revisions.** (1) An operator desiring a permit shall file an application that must contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land and water to be affected by the operation. The plan must reflect thorough advance investigation and study by the operator, include all known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of use, and provide:

(a) the location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the area of land to be affected by the permit and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the affected area;

(c) the names and addresses of the present owners of record and any purchasers under contracts for deed of all subsurface minerals in the land to be affected;

(d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

(e) the permanent and temporary post-office addresses of the applicant;

(f) whether the applicant or any person associated with the applicant holds or has held any other permits under this part and an identification of those permits;

(g) (i) whether the applicant is in compliance with 82-4-251 and, if known, whether each officer, partner, director, or any individual, owning of record or beneficially, alone or with associates, 10% or more of any class of stock of the applicant, is subject to any of the provisions of 82-4-251. If so, the applicant shall certify the fact.

(ii) whether any of the parties or persons specified in subsection (1)(g)(i) have ever had a strip-mining or underground-mining license or permit issued by any other state or federal agency revoked or have ever forfeited a strip-mining or underground-mining bond or a security deposited in lieu of a bond. If so, a detailed explanation of the facts involved in each case must be attached.

(h) whether the applicant has a record of outstanding reclamation fees with the federal coal regulatory authority;

(i) the names and addresses of any persons who are engaged in strip-mining or underground-mining activities on behalf of the applicant;

(j) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the applicant has requested a permit;

(k) the results of any test borings or core samplings that the applicant or the applicant's agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of the minerals, including the acidity, sulfur content, and trace mineral elements of any coal seam, as well as the British thermal unit (Btu) content of the seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted,

each permit application must contain ~~two copies each of~~ two sets of geologic cross sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set must depict subsurface conditions at intervals the department requires across the surface and must run at a 90-degree angle to the other set. The department may not require intervals of less than 500 feet. Each cross section must depict the thickness and geologic character of all known strata, beginning with the topsoil. In addition, each application for an underground-mining permit must be accompanied by cross sections and maps showing the proposed underground locations of all shafts, entries, and haulageways or other excavations to be excavated during the permit period. These cross sections must also include all existing shafts, entries, and haulageways.

(l) the name ~~and date~~ of a ~~daily~~ newspaper of general circulation ~~within the county~~ *in the locality of the proposed activity* in which the applicant will prominently publish at least once a week for 4 successive weeks after submission of the application an announcement of the applicant's application for a strip-mining or underground-mining permit and a detailed description of the area of land to be affected if a permit is granted~~;~~. *If that newspaper is not published in Montana, the applicant shall also provide the name of a newspaper of general circulation in the county in which the proposed operation is located that is published in Montana in which the applicant will publish an announcement and description in accordance with this subsection.*

(m) a determination of the probable hydrologic consequences of coal mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime and quantity and quality of water in surface water and ground water systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas, so that cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability can be made. However, this determination is not required until hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit may not be approved until the information is available and is incorporated into the application. The determination of probable hydrologic consequences must include findings on:

(i) whether adverse impacts may occur to the hydrologic balance;

(ii) whether acid-forming or toxic-forming materials are present that could result in the contamination of ground water or surface water supplies;

(iii) whether the proposed operation may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas that is used for domestic, agricultural, industrial, or other beneficial use; and

(iv) what impact the operation will have on:

(A) sediment yields from the disturbed area;

(B) acidity, total suspended and dissolved solids, and other important water quality parameters of local impact;

(C) flooding or streamflow alteration;

(D) ground water and surface water availability; and

(E) other characteristics required by the department that potentially affect beneficial uses of water in and adjacent to the permit area;

(n) a plan for monitoring ground water and surface water, based upon the determination of probable hydrologic consequences required under subsection

(1)(m). The plan must provide for the monitoring of parameters that relate to the availability and suitability of ground water and surface water for current and approved postmining land uses and the objectives for protection of the hydrologic balance.

(o) a map depicting the projected postmining topography, using cross sections, range diagrams, or other methods approved by the department, showing the manner of spoil placement, showing removal of coal volume and overburden swell, and including:

(i) locations and elevations of tie-in points with adjacent unmined drainageways;

(ii) approximate locations of primary or highest order drainageways and associated drainage divides in the reclaimed topography; and

(iii) projected elevations of primary drainageways and associated drainage divides and generalized slopes with the level of detail appropriate to project the approximate original contour;

(p) the condition of the land to be covered by the permit prior to any mining, including:

(i) the land uses existing at the time of the application and, if the land has a history of previous mining, the uses that preceded any mining;

(ii) the capability of the land prior to any mining to support a variety of uses, giving consideration to soil characteristics, topography, and vegetative cover; and

(iii) the productivity of the land prior to mining, including appropriate classification as prime farm land, as well as the average yield of food, fiber, forage, or wood products from land under high levels of management;

(q) a coal conservation plan; and

(r) other or further information as the department may require.

(2) The application for a permit must be accompanied by ~~two copies of all~~ maps meeting the requirements of subsections (2)(a) through ~~(2)(n)~~ *(2)(n)*. The maps must:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining or surface mining, the boundaries of surface properties, and names of owners of record of the affected area and within 1,000 feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within 1,000 feet of the area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the final surface and underground water drainage plan on and away from the area of land affected. This plan must indicate the directional and volume flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

(g) show the proposed location of waste or refuse area;

(h) show the proposed location of temporary subsoil and topsoil storage area;

(i) show the proposed location of all facilities;

(j) show the location of test boring holes;

(k) show the surface location lines of any geologic cross sections that have been submitted;

(l) show a listing of plant ~~varieties~~ *species* encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree ~~varieties~~ *species* and the approximate number of each ~~variety~~ *species* occurring per acre on the area to be affected, and the locations generally of the various ~~kinds and varieties~~ *species* of plants~~,~~*;* ~~including but not limited to grasses, shrubs, legumes, forbs, and trees;~~

~~(m) be certified as follows: "I, the undersigned, hereby certify that this map is correct and shows to the best of my knowledge and belief all the information required by the mining laws of this state." The certification must be signed and notarized. The department may reject a map as incomplete if its accuracy is not attested.~~

*(m) be certified by a professional engineer or professional land surveyor licensed as provided by Title 37, chapter 67; and*

~~(n)~~*(n)* contain other or further information as the department may require.

(3) If the department finds that the probable total annual production at all locations of any strip-mining or underground-coal-mining operation applied for will not exceed 100,000 tons, any determination of probable hydrologic consequences that the department requires and the statement of result of test borings or core samplings must, upon written request of the operator, be performed by a qualified public or private laboratory designated by the department. The department shall assume the cost of the determination and statement to the extent that it has received funds for this purpose.

(4) In addition to the information and maps required by this section, each application for a permit must be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, subsidence stabilization, water control, grading work, highwall reduction, topsoiling, planting, and revegetating, and a reclamation plan for the area affected by the operation, which proposals must meet the requirements of this part and rules adopted under this part. The reclamation plan must address the life of the operation and indicate the size, sequence, and the timing of the subareas for which it is anticipated that individual permits will be sought.

(5) Each applicant for a coal mining permit shall submit as part of the application a certificate issued by an insurance company authorized to do business in the state, certifying that the applicant has in force for the strip-mining or underground-mining and reclamation operations for which the permit is sought a public liability insurance policy or evidence that the applicant has satisfied other state or federal self-insurance requirements. This policy must provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of strip-mining or underground-coal-mining and reclamation operations, including use of explosives, and entitled to compensation under applicable provisions of state law. The permittee shall maintain the policy in full force and effect during the term of the permit and any renewal until all reclamation operations have been completed.

(6) An applicant may revise an application for a permit, a permit amendment, or a permit revision that is pending on January 1, 2004, in order to incorporate the provisions of this part.

(7) A permittee may apply to revise and the department may approve an application to incorporate the provisions of this part into a reclamation plan approved before January 1, 2004. The reclamation plan may be revised whether or not reclamation has been completed pursuant to the reclamation plan.

(8) Each applicant for a strip-mining or underground-mining reclamation permit shall file a copy of the applicant's application for public inspection with the clerk and recorder at the courthouse of the county in which the major portion of mining is proposed to occur *or at another accessible public office or facility approved by the department*."

**Section 2.** Section 82-4-226, MCA, is amended to read:

**"82-4-226. Prospecting permit.** (1) Except as provided in subsection (7), prospecting by any person on land not included in a valid strip-mining or underground-mining permit is unlawful without possessing a valid prospecting permit issued by the department as provided in this section. A prospecting permit may not be issued until the person submits an application, the application is examined, amended if necessary, and approved by the department, and an adequate reclamation performance bond is posted, all of which prerequisites must be done in conformity with the requirements of this part.

(2) ~~Except for an application filed pursuant to subsection (8), an~~ *An* application for a prospecting permit *filed pursuant to subsection (1)* must be made in writing, notarized, and submitted to the department ~~in duplicate~~ upon forms prepared and furnished by it. The application must include among other things a prospecting map and a prospecting reclamation plan of substantially the same character as required for a surface-mining or underground-mining map and reclamation plan under this part. The department shall determine by rules the precise nature of the required prospecting map and reclamation plan. Any applicant who intends to prospect by means of core drilling shall specify the location and number of holes to be drilled, methods to be used in sealing aquifers, and other information that may be required by the department. The applicant shall state what types of prospecting and excavating techniques will be employed on the affected land. The application must also include any other or further information that the department may require.

(3) Before the department gives final approval to the prospecting permit application, the applicant shall file with the department a reclamation and revegetation bond in a form and in an amount as determined in the same manner for strip-mining or underground-mining reclamation and revegetation bonds under this part.

(4) In the event that the holder of a prospecting permit desires to strip mine or underground mine the area covered by the prospecting permit and has fulfilled all the requirements for a strip-mining or underground-mining permit, the department may permit the postponement of the reclamation of the acreage prospected if that acreage is incorporated into the complete reclamation plan submitted with the application for a strip-mining or underground-mining permit. Any land actually affected by prospecting or excavating under a prospecting permit and not covered by the strip-mining or underground-mining reclamation plan must be promptly reclaimed.

(5) The prospecting permit is valid for 1 year and is subject to renewal, suspension, and revocation in the same manner as strip-mining or underground-mining permits under this part.

(6) The holder of the prospecting permit shall file with the department the same progress reports, maps, and revegetation progress reports as are required of strip-mining or underground-mining operators under this part.

(7) (a) Prospecting that is not conducted in an area designated unsuitable for coal mining pursuant to 82-4-227 or 82-4-228, that is not conducted for the purpose of determining the location, quality, or quantity of a mineral deposit, and that does not remove more than 250 tons of coal is not subject to subsections (1) through (6). ~~In addition, coal prospecting that is conducted to determine the location, quality, or quantity of a mineral deposit outside an area designated unsuitable, that does not remove more than 250 tons of coal, and that does not substantially disturb the natural land surface is not subject to subsections (1) through (6).~~ However, ~~except for a prospecting operation for which a permit is required by subsection (7)(b),~~ a person who conducts prospecting described in this subsection *(7)(a)* shall file with the department a notice of intent to prospect that contains the information required by the department before commencing prospecting operations. If this prospecting substantially disturbs the natural land surface, it must be conducted in accordance with the performance standards of the board's rules regulating the conduct and reclamation of prospecting operations that remove coal. The department may inspect these prospecting and reclamation operations at any reasonable time.

(b) *(i)* Prospecting conducted to determine the location, quality, or quantity of coal outside an area designated unsuitable that is not included in a valid strip-mining or underground-mining permit*, that does not substantially disturb the land surface,* and that does not remove more than 250 tons of coal *is not subject to subsections (1) and (2) but* may not be conducted without a valid prospecting permit issued pursuant to subsection (8).

*(ii) For purposes of this subsection (7)(b), the drilling of coal prospecting holes, the installation and use of associated disposal pits, and the installation of ground water monitoring wells does not constitute substantial disturbance.*

(8) (a) An application for a coal prospecting permit required by subsection (7)(b) must contain:

(i) the name, address, and telephone number of the person who seeks to prospect;

(ii) the name, address, and telephone number of the person's representative who will be present at and responsible for conducting the prospecting activities;

(iii) a narrative describing the proposed prospecting area or a map of the prospecting area at a scale of 1:24,000 or greater showing:

(A) the general location of drill holes and trenches;

(B) existing and proposed roads;

(C) occupied dwellings;

(D) topographic features;

(E) bodies of water; and

(F) pipelines;

(iv) a copy of the documents upon which the applicant bases its legal right to prospect, including documentation that the owners of the land affected have been notified and understand that the department will make investigations and inspections to ensure compliance;

(v) a statement of the period of intended prospecting; and

(vi) a description of the method of prospecting to be used and the practices that will be followed to protect the environment and reclaim disturbed areas,

including plugging of prospecting holes, in accordance with rules adopted by the board.

(b) Within 10 working days of receipt of an application, the department shall notify the applicant in writing as to whether the application is complete and preliminarily acceptable. If the department determines that the application is not complete or not preliminarily acceptable, the department shall include a detailed identification of information necessary to cure the deficiency.

(c) Within 5 working days of receipt of the applicant's response to the identified deficiencies, the department shall review the response and notify the person as to whether the application is complete and preliminarily acceptable. If the department determines the application is not complete or preliminarily acceptable, the department shall notify the person in writing and include a detailed identification of information necessary to make the application complete and preliminarily acceptable.

(d) When the department determines that the application is complete and preliminarily acceptable, the department shall notify the applicant in writing. The notification must include the amount of bond that is required to be posted in order for the permit to be issued.

(e) Upon receipt of the department's determination of preliminary acceptability, the applicant shall place an advertisement in a newspaper of general circulation in the locality of the proposed prospecting. The notice must describe the application and a place in the locality where the public may examine the application and must notify the public that it may submit written comments by delivering or mailing them to the department within 10 days following publication of the notice.

(f) After close of the public comment period, the department shall notify the applicant as to whether the application is acceptable. The department shall issue the notification within 5 working days of the close of the comment period if no comments are received and within 10 working days if comments are received. In the notice of acceptability, the department shall notify the applicant of any adjustment in the amount of the bond.

(g) A permit issued pursuant to this subsection (8) is subject to subsections (3) through (6)."

**Section 3.** Section 82-4-227, MCA, is amended to read:

**"82-4-227. Refusal of permit — *applicant violator system.*** (1) An application for a prospecting, strip-mining, or underground-mining permit or major revision may not be approved by the department unless, on the basis of the information set forth in the application, in an onsite inspection, and in an evaluation of the operation by the department, the applicant has affirmatively demonstrated that the requirements of this part and rules will be observed and that the proposed method of operation, backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, revegetation, or reclamation of the affected area can be carried out consistently with the purpose of this part. The applicant for a permit or major revision has the burden of establishing that the application is in compliance with this part and the rules adopted under it.

(2) The department may not approve the application for a prospecting, strip-mining, or underground-mining permit when the area of land described in the application includes land that has special, exceptional, critical, or unique characteristics or when mining or prospecting on that area would adversely affect the use, enjoyment, or fundamental character of neighboring land that

has special, exceptional, critical, or unique characteristics. For the purposes of this part, land is defined as having these characteristics if it possesses special, exceptional, critical, or unique:

(a) biological productivity, the loss of which would jeopardize certain species of wildlife or domestic stock;

(b) ecological fragility, in the sense that the land, once adversely affected, could not return to its former ecological role in the reasonably foreseeable future;

(c) ecological importance, in the sense that the particular land has such a strong influence on the total ecosystem of which it is a part that even temporary effects felt by it could precipitate a systemwide reaction of unpredictable scope or dimensions; or

(d) scenic, historic, archaeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational significance. In applying the provisions of this subsection (d), particular attention should be paid to the inadequate preservation previously accorded Plains Indian history and culture.

(3) The department may not approve an application for a strip- or underground-coal-mining permit or major revision unless the application affirmatively demonstrates that:

(a) the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance has been made by the department and the proposed operation of the mining operation has been designed to prevent material damage to the hydrologic balance outside the permit area; and

(b) the proposed strip- or underground-coal-mining operation would not:

(i) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, excluding undeveloped rangelands that are not significant to farming on alluvial valley floors and excluding land about which the department finds that if any farming will be interrupted, discontinued, or precluded, it is of such small acreage as to be of negligible impact on the farm's agricultural production; or

(ii) materially damage the quantity or quality of water in surface water or underground water systems that supply the valley floors described in subsection (3)(b)(i).

(4) Subsection (3)(b) does not affect those strip- or underground-coal-mining operations that in the year preceding the enactment of Public Law 95-87 produced coal in commercial quantities and were located within or adjacent to alluvial valley floors or had obtained specific permit approval by the department to conduct strip- or underground-coal-mining operations within alluvial valley floors. If coal deposits are precluded from being mined under this subsection, the director of the department shall certify to the secretary of interior that the mineral owner or lessee may be eligible for participation in coal exchange programs pursuant to section 510(5) of Public Law 95-87.

(5) (a) If the area proposed to be mined contains prime farmland, the department may not grant a permit to mine coal on the prime farmland unless it finds in writing that the applicant:

(i) has the technological capability to restore the mined area, within a reasonable time, to levels of yield equivalent to or higher than nonmined prime farmland in the surrounding area under equivalent levels of management; and

(ii) can meet the soil reconstruction standards of 82-4-232(3).

(b) Nothing in this subsection (5) applies to a permit issued prior to August 3, 1977, or to any revisions or renewals of the permit or to any existing strip- or underground-mining operations for which a permit was issued prior to August 3, 1977.

(6) If the department finds that the overburden on any part of the area of land described in the application for a prospecting, strip-mining, or underground-mining permit is such that experience in the state with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in streambeds, subsidence, landslides, or water pollution cannot feasibly be prevented, the department shall delete that part of the land described in the application upon which the overburden exists. The burden is on the applicant to demonstrate that any area should not be deleted under this subsection.

(7) If the department finds that the operation will constitute a hazard to a dwelling, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property, the department shall delete those areas from the prospecting, strip-mining, or underground-mining permit application before it can be approved. Strip- or underground-coal-mining may not be allowed:

(a) within 300 feet of an occupied dwelling, unless waived by the owner;

(b) within 300 feet of any public building, school, church, community, or institutional building, or public park;

(c) within 100 feet of a cemetery;

(d) within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join the right-of-way line. The department may permit the roads to be relocated or the area affected to lie within 100 feet of the road if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected will be protected.

(8) ~~Strip-~~ *Strip-mining* or underground-mining may not be conducted within 500 feet of active or abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners. However, the department shall permit an operator to mine near, through, or partially through an abandoned underground mine or closer to an active underground mine if:

(a) the nature, timing, and sequencing of specific strip-mine activities and specific underground-mine activities are jointly approved by the department and the regulatory authority concerned with the health and safety of underground miners; and

(b) the operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

(9) The department may not approve an application for a strip- or underground-coal-mining operation if the area proposed to be mined is included:

(a) within an area designated unsuitable for strip or underground coal mining; or

(b) within an area under review for this designation under an administrative proceeding, unless in an area as to which an administrative proceeding has commenced pursuant to this part, the operator making the permit application demonstrates that prior to January 1, 1977, the operator made substantial legal and financial commitments in relation to the operation for which the operator is applying for a permit.

(10) A permit or major permit revision for a strip- or underground-coal-mining operation may not be issued unless the applicant has affirmatively demonstrated by its coal conservation plan that failure to conserve coal will not occur. The department may require the applicant to submit any information it considers necessary for review of the coal conservation plan.

(11) Whenever information available to the department indicates that a strip- or underground-coal-mining operation that is owned or controlled by the applicant or by any person who owns or controls the applicant is currently in violation of Public Law 95-87, as amended, any state law required by Public Law 95-87, as amended, or any law, rule, or regulation of the United States or of any department or agency in the United States pertaining to air or water environmental protection, the department may not issue a strip- or underground-coal-mining permit or amendment, other than an incidental boundary revision, until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the administering agency.

(12) The department may not issue a strip- or underground-coal-mining permit or amendment, other than an incidental boundary revision, to any applicant that it finds, after an opportunity for hearing, owns or controls any strip- or underground-coal-mining operation that has demonstrated a pattern of willful violations of Public Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, when the nature and duration of the violations and resulting irreparable damage to the environment indicate an intent not to comply with the provisions of this part.

(13) Subject to valid existing rights, no strip- or underground-coal-mining operations except those that existed as of August 3, 1977, may be conducted:

(a) on lands within the boundaries of units of the national park system, the national wildlife refuge system, the national wilderness preservation system, the national system of trails, the wild and scenic rivers system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act or study rivers or study river corridors established in any guidelines issued under that act, or national recreation areas designated by an act of congress; or

(b) on any federal lands within national forests, subject to the exceptions and limitations of 30 CFR 761.11(b) and the procedures of 30 CFR 761.13.

*(14) (a) A person who is listed by the department in the applicant violator system maintained by the office of surface mining reclamation and enforcement of the U.S. department of the interior pursuant to the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201, et seq., as owning or controlling a strip-mining or underground-mining operation may challenge the ownership or control listing by filing a written request with the department for review of the listing. In the request, the person must include a written explanation of the basis for the challenge and any evidence the person wishes the department to consider. The department shall provide a written response within 60 days of receipt of the request for review.*

*(b) Within 30 days of receipt of the response pursuant to (14)(a), the person who is listed may request a hearing before the board by submitting to the board a written request for hearing that states the reason for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to the hearing.*"

**Section 4.** Section 82-4-237, MCA, is amended to read:

**"82-4-237. Operator to file annual reports.** (1) An operator shall file an annual report with the department ~~within 30 days of the anniversary date of each permit. In lieu of an annual report for each permit, the department may allow the operator to file an annual report for each operation~~ on a date determined by the department. ~~Included within an~~ *An* annual report ~~shall be~~ *must include*:

(a) the name and address of the operator and permit number or numbers; *and*

(b) a report ~~in such~~ *with* detail ~~as the~~ *required by the* department ~~shall require~~, supplemented with maps, cross sections, or other material indicating the extent to which mining operations have been carried out, the progress of all reclamation work, including the type of planting or seeding, mixture and amount of seed, date of planting or seeding, and area of land planted, ~~the extent to which expectations and predictions made in the original application have been fulfilled and any deviation therefrom,~~ and the number of acres affected~~;~~ ~~and~~

~~(c) a revised schedule or timetable of operations and reclamation and an estimate of the number of acres to be affected during the next 1-year period~~.

(2) Upon receipt of the annual report, the department may ~~make further inquiry and~~ request ~~further~~ *additional* information and~~, if it does so,~~ shall allow a reasonable opportunity for the operator to respond *to the request*.

(3) When ~~problem situations~~ *problems* are revealed by review of new information or as a result of field inspections, the department may order ~~such~~ *necessary* changes in the mining and reclamation plans ~~as are necessary~~ to ~~insure~~ *ensure* compliance with this part."

**Section 5.** Section 82-4-253, MCA, is amended to read:

**"82-4-253. Suit for damage to water supply.** (1) An owner of an interest in real property who obtains all or part of a supply of water for domestic, agricultural, industrial, or other legitimate use from an underground source other than a subterranean stream having a permanent, distinct, and known channel may sue an operator to recover damages for contamination, diminution, or interruption of the water supply, proximately resulting from strip mining or underground mining.

(2) Prima facie evidence of injury in a suit under this section is established by the removal of coal or disruption of overlying aquifer from designated ground water areas as prescribed in Title 85, chapter 2, part 5. If the area is not a designated ground water area, a showing that the coal or overlying strata is an aquifer in that geographical location and that the coal or the overlying strata has been removed or disrupted shifts the burden to the defendant (operator) to show that the plaintiff's (owner's) water supply was not injured thereby.

(3) An owner of water rights adversely affected may file a complaint detailing the loss of water in quality and quantity with the department. Upon receipt of this complaint the department shall:

(a) investigate the complaint using all available information including monitoring data gathered at the mine site;

(b) require the defendant (operator) to install monitoring wells or other practices that may be needed to determine the cause of water loss, if there is a loss, in terms of quantity or quality;

(c) issue within 90 days a written finding specifying the cause of the water loss, if there is a loss, in terms of quantity or quality;

(d) order the mining operator in compliance with chapter 2 of Title 85 to replace the water immediately on a temporary basis to provide the needed water and within a reasonable time, replace the water in like quality, quantity, and duration, if the loss is caused by the ~~surface coal mining~~ *strip- or underground-coal-mining* operation; and

(e) order the suspension of the operator's permit for failure to replace the water, until such time as the operator provides substitute water.

(4) A servient tract of land is not bound to receive surface water contaminated by strip mining or underground mining on a dominant tract of land, and the owner of the servient tract may sue an operator to recover the damages proximately resulting from the natural drainage from the dominant tract of surface waters contaminated by strip mining or underground mining on the dominant tract.

(5) This section and 82-4-252 do not create, modify, or affect any right, liability, or remedy other than as expressly provided."

**Section 6. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Approved March 27, 2013

# CHAPTER NO. 99

[SB 104]

AN ACT CLARIFYING THAT AN ACCOUNTING FIRM MAY ISSUE SHARES IN THE FIRM TO PERSONS NOT LICENSED AS ACCOUNTANTS; AND AMENDING SECTION 35-4-301, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 35-4-301, MCA, is amended to read:

**"35-4-301. Issuance and transfer of shares.** (1) *Except as provided in 37-50-330, a* ~~A~~ professional corporation may issue shares, fractional shares, and rights or options to purchase shares only to:

(a) natural persons authorized by law of this or any other state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of incorporation of the corporation;

(b) general partnerships in which all the partners are authorized by law of this or any other state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of incorporation and in which at least one partner is authorized by law in this state to render a professional service permitted by the articles of incorporation of the corporation; and

(c) professional corporations, domestic or foreign, authorized by law in this state to render a professional service permitted by the articles of incorporation of the corporation.

(2) The licensing authority may by rule further restrict or condition the issuance of shares in order to preserve ethical standards, but ~~no~~ *the* rule may *not* cause a person holding shares at the time the rule becomes effective to become a disqualified person.

(3) A shareholder of a professional corporation may transfer or pledge shares, fractional shares, and rights or options to purchase shares of the corporation only to natural persons, general partnerships, and professional

corporations qualified to hold shares issued directly to them by the corporation. This subsection does not prohibit the transfer of shares of a professional corporation by operation of law or court decree.

(4) Each certificate representing shares of a professional corporation must state conspicuously upon its face that the shares are subject to restrictions on transfer imposed by this chapter and to restrictions on transfer imposed by the licensing authority pursuant to this chapter.

(5) Any issuance or transfer of shares in violation of this section or a rule promulgated under this section is void."

Approved March 27, 2013

# CHAPTER NO. 100

[SB 211]

AN ACT CLARIFYING THE FEE TO BE PAID TO THE DEPARTMENT OF LIVESTOCK FOR COLLECTING THE NATIONAL BEEF CHECKOFF; AMENDING SECTION 81-8-901, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 81-8-901, MCA, is amended to read:

**"81-8-901. Beef promotion and marketing — powers and duties of department — contract.** (1) The department shall:

(a) enter into a contract with the Montana beef council to collect on behalf of the beef council an assessment of $1 for each head of Montana cattle sold as established in the national Beef Promotion and Research Act of 1985, 7 U.S.C. 2901 through 2911, also referred to as the national beef ~~check-off~~ *checkoff*, and 7 CFR, part 1260, subpart A;

(b) adopt rules necessary for the administration of this section.

(2) (a) Except as provided in subsection (2)(b), the contract agreed to under this section between the department and the Montana beef council must include a provision that the beef council shall pay a fee, not to exceed 5% of the total ~~check-off~~ *checkoff* funds collected *by department employees and deposited in the state treasury*, to reimburse the department for all expenses directly incurred through collection of the ~~check-off~~ *checkoff* as verified by the legislative auditor *during regularly scheduled financial compliance audits*.

(b) The department is not obligated under this section or any other state law to contract for collection of the fee if the department's direct collection costs as verified by the legislative auditor exceed 5% of the ~~check-off~~ *checkoff* funds collected *by department employees and deposited in the state treasury*."

**Section 2. Applicability.** [This act] applies to contracts between the department of livestock and the Montana beef council that are effective on or after October 1, 2013.

Approved March 27, 2013

# CHAPTER NO. 101

[SB 213]

AN ACT REQUIRING CERTAIN SEX OFFENDERS TO PROVIDE A DNA SAMPLE FOR ENTRY INTO THE MONTANA DNA DATABASE; AND AMENDING SECTIONS 44-6-103 AND 46-23-504, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 44-6-103, MCA, is amended to read:

**"44-6-103. Collection of samples and maintenance of data.** (1) Following entry of judgment, a person convicted of a felony offense, a youth found under 41-5-1502 to have committed a sexual or violent offense, a defendant ordered under 46-18-202 to provide a biological sample for DNA testing, *a person required to register as a sexual or violent offender under 46-23-504,* or an adult offender convicted in another state and sentenced to death or imprisonment for more than 1 year who is subject to supervision by the department of corrections pursuant to the Interstate Compact for Adult Offender Supervision provided for in 46-23-1115 shall provide a biological sample for DNA analysis to determine identification characteristics specific to the person. The sample must be provided to the department of corrections if the person is incarcerated in a facility administered by the department of corrections. If the person is not incarcerated in a facility administered by the department of corrections, the sample must be provided to a person or entity designated by the county sheriff.

(2) The biological sample must be collected, stored, and sent by the department of corrections or the person or entity designated by the county sheriff under subsection (1) to the department for entry in the DNA identification index in accordance with rules adopted by the department with the advice of the department of public health and human services.

(3) The offender is responsible, if able to pay, for the cost of the collection of the sample. The fees charged for the collection may not exceed the actual costs of collection.

(4) The forensic DNA laboratory may perform DNA analysis only for those markers that have value for law enforcement identification purposes.

(5) The knowing refusal or failure to provide a biological sample under this part is grounds for revocation of a suspended or deferred imposition of sentence."

**Section 2.** Section 46-23-504, MCA, is amended to read:

**"46-23-504. Persons required to register — procedure.** (1) Except as provided in 41-5-1513, a sexual or violent offender:

(a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced to confinement or is not sentenced to the department and placed in confinement by the department;

(b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if sentenced to confinement or sentenced to the department and placed in confinement by the department;

(c) shall register within 3 business days of entering a county of this state for the purpose of residing or setting up a temporary residence for 10 days or more or for an aggregate period exceeding 30 days in a calendar year; and

(d) who is a transient shall register within 3 business days of entering a county of this state.

(2) Registration under subsection (1)(a), (1)(c), or (1)(d) must be with the appropriate registration agency. If an offender registers with a police department, the department shall notify the sheriff's office of the county in which the municipality is located of the registration. The probation officer having supervision over an offender required to register under subsection (1)(a) shall verify the offender's registration status with the appropriate registration agency.

(3) At the time of registering, the offender shall sign a statement in writing giving the information required by subsections (3)(a) through (3)(g) and any other information required by the department of justice. The registration agency shall fingerprint the offender, unless the offender's fingerprints are on file with the department of justice, ~~and shall~~ photograph the offender*, and obtain a DNA sample from the offender*. Within 3 days, the registration agency shall send copies of the statement, fingerprints, and photographs to the department of justice. *The registration agency shall send the DNA sample to the department of justice for analysis and entry of the DNA record into the DNA identification index.* The registration agency shall require an offender given a level 2 or level 3 designation to appear before the registration agency for a new photograph every year. The information collected from the offender at the time of registration must include the:

(a) name of the offender and any aliases used by the offender;

(b) offender's social security number;

(c) residence information required by subsection (4);

(d) name and address of any business or other place where the offender is or will be an employee;

(e) name and address of any school where the offender will be a student;

(f) offender's driver's license number; and

(g) description and license number of any motor vehicle owned or operated by the offender.

(4) (a) If, at the time of registration, the offender regularly resides in more than one county or municipality, the offender shall register with the registration agency of each county or municipality in which the offender resides. If an offender resides in more than one location within the same county or municipality, the registration agency may require the offender to provide all of the locations where the offender regularly resides and to designate one of them as the offender's primary residence.

(b) Registration of more than one residence pursuant to this section is an exception from the single residence rule provided in 1-1-215.

(5) A transient shall report monthly, in person, to the registration agency with which the transient registered pursuant to subsection (1)(d). The transient shall report on a day specified by the registration agency and during the normal business hours of that agency. On that day, the transient shall provide the registration agency with the information listed in subsections (3)(a) through (3)(g). The registration agency to which the transient reports may also require the transient to provide the locations where the transient stayed during the previous 30 days and may stay during the next 30 days.

(6) (a) The department of justice shall mail a registration verification form:

(i) each 90 days to an offender designated as a level 3 offender under 46-23-509;

(ii) each 180 days to an offender designated as a level 2 offender under 46-23-509; and

(iii) each year to a violent offender or an offender designated as a level 1 offender under 46-23-509.

(b) If the offender is a transient, the department of justice shall mail the offender's registration verification form to the registration agency with which the offender last registered.

(c) The form must require the offender's notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it to the registration agency where the offender last registered or, if the offender was initially registered pursuant to subsection (1)(b), to the registration agency in the county or municipality in which the offender is located. A sexual offender shall return the form to the appropriate registration agency in person, and at the time that the sexual offender returns the registration verification form, the registration agency shall take a photograph of the offender *and collect a DNA sample if one has not already been collected. The registration agency shall send the DNA sample to the department of justice for analysis and entry into the DNA identification index*.

(7) Within 3 days after receipt of a registration verification form, the registration agency shall provide a copy of the form and most recent photograph to the department of justice.

(8) The offender is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration. The department of justice may adopt a rule establishing fees to cover registration costs incurred by the department of justice in maintaining registration and address verification records. The fees must be deposited in the general fund.

(9) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."

Approved March 27, 2013

## CHAPTER NO. 102

[SB 343]

AN ACT GENERALLY REVISING LAWS RELATED TO THE BOARD OF BARBERS AND COSMETOLOGISTS; REQUIRING TWO APPOINTEES TO THE BOARD OF BARBERS AND COSMETOLOGISTS TO BE AFFILIATED WITH SCHOOLS; PROVIDING 3 YEARS OF EXPERIENCE AS AN ALTERNATE INSTRUCTOR QUALIFICATION; AND AMENDING SECTIONS 2-15-1747 AND 37-31-305, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-15-1747, MCA, is amended to read:

**"2-15-1747. Board of barbers and cosmetologists.** (1) There is a board of barbers and cosmetologists.

(2) The board consists of nine members appointed by the governor with the consent of the senate and must include:

(a) three licensed cosmetologists each of whom has been a resident of this state for a least 5 years and has been actively engaged in the profession of

cosmetology for at least 5 years immediately prior to being appointed to the board;

(b) one member who has been a resident of this state for at least 5 years and has been actively engaged as a licensed electrologist, esthetician, or manicurist for at least 5 years immediately prior to being appointed to the board;

(c) three licensed barbers each of whom has been a resident of this state for at least 5 years and has been actively engaged in the profession of barbering for at least 5 years immediately prior to appointment to the board; and

(d) two members of the public who are not engaged in the practice of barbering, cosmetology, electrology, esthetics, or manicuring.

(3) ~~Not more than two~~ *Two* members of the board ~~may~~ *must* be ~~members of or~~ affiliated with a school.

(4) (a) If there is not a licensed barber qualified and willing to serve on the board in one of the three barber positions, the governor may appoint a cosmetologist, electrologist, esthetician, or manicurist otherwise qualified under this section to fill the position.

(b) If there is not a licensed cosmetologist qualified and willing to serve on the board in one of the three cosmetologist positions, the governor may appoint a barber, electrologist, esthetician, or manicurist otherwise qualified under this section to fill the position.

(5) Each member shall serve for a term of 5 years. The terms must be staggered.

~~(6)~~*(6)* The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

**Section 2.** Section 37-31-305, MCA, is amended to read:

**"37-31-305. Qualifications of applicants for license to teach.** (1) Before a person may teach or instruct in a school of barbering, cosmetology, electrology, esthetics, or manicuring, the person shall obtain from the department a license to teach.

(2) To be eligible for a license to teach barbering, cosmetology, electrology, esthetics, or manicuring, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma that is recognized by the superintendent of public instruction;

(b) have a license to practice issued by the department in the particular area of practice in which the person plans to teach;

(c) have been actively engaged in that particular area of practice for 12 continuous months before taking the teacher's examination; and

(d) *(i)* have received a diploma from a licensed school approved by the board, certifying satisfactory completion of 650 hours of student teacher training*; or*

*(ii) have 3 years of experience in that particular area of practice. A person who qualifies for a license under this subsection (2)(d)(ii) has 2 years to complete board-approved coursework related to teaching methodology before a license to teach is renewed.*"

Approved March 27, 2013

# CHAPTER NO. 103

[HB 45]

AN ACT REQUIRING THAT A COMPLAINT FOR CONDEMNATION INCLUDE A COPY OF THE ENVIRONMENTAL QUALITY COUNCIL'S EMINENT DOMAIN IN MONTANA HANDBOOK; AMENDING SECTION 70-30-203, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 70-30-203, MCA, is amended to read:

**"70-30-203. Contents of complaint.** (1) The complaint for condemnation must contain:

(a) the name of the corporation, association, commission, or person in charge of the public use for which the property is sought to be taken, who is the plaintiff;

(b) the names of all owners, purchasers under contracts for deed, mortgagees, and lienholders of record and any other claimants of record of the property sought to be taken, if known, or a statement that they are unknown, who are the defendants;

(c) a statement of the right of the plaintiff to take the property for public use;

(d) statements of each of the facts necessary to be found in 70-30-111;

(e) a description of each interest in real property sought to be taken, a statement of whether the property sought to be taken includes the whole or only a part of the entire parcel or tract, and a statement that the interest sought is the minimum necessary interest. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties.

(f) a statement of the condemnor's claim of appropriate payment for damages to the property proposed to be taken as well as to any remaining parcel of property.

*(2) In addition to the items listed in subsection (1), a copy of the current publication produced by the environmental quality council entitled "Eminent Domain In Montana" must be attached to the complaint as an exhibit.*

~~(2)~~*(3)* If a right-of-way is sought, in addition to the items listed in subsection (1), the complaint must show the location, general route, and termini and must be accompanied with a map of the route, so far as the route is involved in the action or proceeding.

~~(3)~~*(4)* (a) If a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir is sought to be taken, in addition to the items listed in subsection (1), the complaint must include a description of the reservoir and of the land in which the reservoir is alleged to be contained and a description of all other property and rights sought to be taken for use in connection with the right to store natural gas in and withdraw natural gas from the reservoir.

(b) In addition, the complaint must state facts showing that:

(i) the reservoir is subject to being taken by the plaintiff;

(ii) the underground storage of natural gas in the land sought to be taken is in the public interest;

(iii) the reservoir is suitable and practicable for natural gas storage;

(iv) the plaintiff in good faith has been unable to acquire the rights sought to be taken; and

(v) a statement that the rights and property sought to be taken are not prohibited by law from being taken.

(c) The complaint must be accompanied by a certificate from the board of oil and gas conservation as provided in 82-10-304."

**Section 2. Applicability.** [This act] applies to complaints filed on or after [the effective date of this act].

Approved March 28, 2013

# CHAPTER NO. 104

[HB 136]

AN ACT REVISING THE APPLICATION PROCESS FOR A NONRESIDENT YOUTH COMBINATION LICENSE; REVISING THE LICENSING REQUIREMENTS FOR AN ACCOMPANYING ADULT; AND AMENDING SECTIONS 87-2-511 AND 87-2-522, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 87-2-511, MCA, is amended to read:

**"87-2-511. Sale and use of Class B-10, Class B-11, and Class B-13 licenses.** (1) The department shall offer the Class B-10 and Class B-11 licenses for sale on March 15, with 2,000 of the authorized Class B-11 licenses reserved for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor, as provided in subsections (2) and (3).

(2) Each application for a resident-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant intends to hunt with a resident sponsor and must indicate the name of the resident sponsor with whom the applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed by a resident sponsor and that affirms that the resident sponsor will:

(a) direct the applicant's hunting and advise the applicant of game and trespass laws of the state;

(b) submit to the department, in a manner prescribed by the department, complete records of who hunted with the resident sponsor, where they hunted, and what game was taken; and

(c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the sponsor. If there is a sufficient number of licenses set forth in subsection (1), the department shall issue a license to one applicant sponsored by each resident landowner who owns 640 or more contiguous acres. If enough licenses remain for a second applicant for each resident landowner sponsor, the department shall issue a license to the second applicant sponsored by each resident landowner. The department shall conduct a drawing for any remaining resident-sponsored licenses. If there is not a sufficient number of licenses set forth in subsection (1) to allow each resident landowner who owns 640 contiguous acres to sponsor one applicant, the department shall conduct a drawing for the resident-sponsored licenses. However, a resident sponsor of a Class B-11 license may submit no more than 15 certificates of sponsorship in any license year.

(4) A nonresident who hunts under the authority of a resident landowner-sponsored license shall conduct all deer hunting on the deeded lands of the sponsoring landowner.

(5) All Class B-10 and Class B-11 licenses that are not reserved under subsection (1) must be issued by a drawing among all applicants for the respective unreserved licenses.

(6) (a) An applicant who applies for a Class B-10 license and an applicable special elk permit but who is not successful in a drawing for the special elk permit may choose to retain only the Class B-7 portion of the Class B-10 license. The department shall sell the Class B-7 portion as a Class B-11 license for the fee set in 87-2-510. The provisions of this subsection (6)(a) do not affect the limits established in 87-2-510(2). The remaining elk tag portion of the Class B-10 license must be sold by the department as an elk-only combination license for a fee that is $150 less than that set for a Class B-10 license in 87-2-505.

(b) The department may charge a $25 processing fee if an applicant chooses to buy only a portion of the Class B-10 license pursuant to subsection (6)(a) after the Class B-10 license has been issued to the applicant.

(c) The revenue collected pursuant to this subsection (6) must be deposited in the state special revenue account to the credit of the department and may not be allocated pursuant to other statutory requirements generally applicable to Class B-10 or Class B-11 licenses.

(7) ~~The department shall offer the Class B-13 nonresident youth big game combination license for sale on March 1. An~~ *Subject to 87-2-522(2), at the time of application, an* applicant *for a Class B-13 license* shall provide the name and automated licensing system number of the adult immediate family member who will accompany the youth. ~~The adult sponsor must possess either a valid Class B-10 or Class B-11 license or a valid resident deer or elk tag at the time of application.~~"

**Section 2.** Section 87-2-522, MCA, is amended to read:

**"87-2-522. Class B-13—nonresident youth big game combination license.** (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, and who is 12 years of age or older or will turn 12 years old before or during the season for which the license is issued and who is under 18 years of age may, upon payment of a fee of one-half the cost of a regularly priced Class B-10 nonresident big game combination license, plus the nonresident hunting access enhancement fee in 87-2-202(3)(d), and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office in Helena, Montana, to purchase a Class B-13 nonresident youth big game combination license.

(2) The holder of a Class B-13 license is entitled to all the privileges of a Class B license, a Class B-1 license, a Class B-7 license, an elk tag, and a nonresident wildlife conservation license. When using a Class B-13 license, the holder must be accompanied by an adult immediate family member who is the holder of a valid ~~nonresident Class B-10 or Class B-11 combination~~ *Class B-7, Class B-10, Class B-11, or Class B-15* license or who is the holder of a valid resident deer or elk tag. As used in this subsection, an adult immediate family member means an applicant's natural or adoptive parent, grandparent, brother, or sister who is 18 years of age or older.

(3) Class B-13 licenses are not included in the limit on the number of available Class B-10 nonresident big game combination licenses issued pursuant to 87-2-505.

(4) The holder of a valid Class B-13 license may apply for a Class B-12 nonresident elk B tag license when authorized by the commission pursuant to 87-2-104. The fee for a Class B-12 license is $270. The license entitles the holder to hunt in the hunting district or portion of a hunting district and under the terms and conditions specified by the commission."

Approved March 28, 2013

## CHAPTER NO. 105

[HB 172]

AN ACT ALLOWING AN ATTORNEY WHO IS A MEMBER OF THE MONTANA STATE BAR TO SERVE AS A JUDGE PRO TEMPORE WHEN A MUNICIPAL COURT JUDGE IS SICK, DISQUALIFIED, OR UNABLE TO ACT; AND AMENDING SECTION 3-6-204, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 3-6-204, MCA, is amended to read:

**"3-6-204. Disqualification — judge pro tempore.** When a judge of a municipal court has been disqualified or is sick or unable to act, the judge shall call in a sitting or retired judge of a court of record or an attorney who ~~has been~~ *is* a member of the state bar of Montana ~~for 5 or more years~~ *and is in good standing* to act as a judge pro tempore. The judge pro tempore has the same power and authority as the municipal court judge."

Approved March 28, 2013

## CHAPTER NO. 106

[HB 270]

AN ACT ALLOWING THE OWNER OF A MOTOR VEHICLE, TRAILER, SEMITRAILER, OR POLE TRAILER MANUFACTURED IN THE YEAR 1948, 1949, OR 1950 TO DISPLAY A SINGLE ORIGINAL MONTANA LICENSE PLATE; AND AMENDING SECTION 61-3-412, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-3-412, MCA, is amended to read:

**"61-3-412. Display of original Montana license plates on collector's item and general transportation collector's item motor vehicles — definition — validation.** (1) As used in 61-3-413 and this section, "original Montana license plate" means a license plate issued according to the provisions of 61-3-331; section 53-116, R.C.M. 1947; section 1759.1, R.C.M. 1935; or section 1759, R.C.M. 1921; whichever section was effective during the year of the manufacture of the motor vehicle, trailer, semitrailer, or pole trailer on which the license plate is authorized to be displayed.

(2) Notwithstanding the provisions of 61-3-332, the department shall authorize the owner of a motor vehicle, trailer, semitrailer, or pole trailer registered as provided in 61-3-411 or 61-3-413 to display original Montana license plates, with validation as required in 61-3-413 or subsection (3) of this section, after:

(a) payment of the fee required in subsection (5);

(b) inspection by a highway patrol officer of the original Montana license plate to be displayed on the motor vehicle, trailer, semitrailer, or pole trailer

and, upon payment of a $5 fee, receipt of the highway patrol officer's certification that the officer has determined that:

(i) the license plate is legible and meets the requirements of subsection (1); and

(ii) in the case of a license plate intended for use on a general transportation collector's item, the license plate is visible at night;

(c) receipt of an application by the owner of the motor vehicle, trailer, semitrailer, or pole trailer as provided for in 61-3-411 or 61-3-413; and

(d) in the case of a general transportation collector's item application, certification from the department that a duplicate license plate number does not exist among currently issued license plates.

*(3) The owner of a motor vehicle, trailer, semitrailer, or pole trailer manufactured in the year 1948, 1949, or 1950 may display a single original Montana license plate that is affixed to the rear of the vehicle. The original Montana license plate must be legible and must bear the year that matches the year in which the vehicle was manufactured.*

~~(3)~~*(4)* If the owner of a motor vehicle, trailer, semitrailer, or pole trailer meets the requirements of subsection (2), the department shall:

(a) register the motor vehicle, trailer, semitrailer, or pole trailer as prescribed in 61-3-303; and

(b) issue a validating decal inscribed with:

(i) a unique number; and

(ii) the letter:

(A) "P" to designate motor vehicles, trailers, semitrailers, or pole trailers described in 61-3-411(2)(a); or

(B) "V" to designate motor vehicles, trailers, semitrailers, or pole trailers described in 61-3-411(2)(b).

~~(4)~~*(5)* The owner of the motor vehicle, trailer, semitrailer, or pole trailer shall permanently affix the validating decal to the windshield of the collector's item motor vehicle, trailer, semitrailer, or pole trailer or, if a windshield does not exist, to another prominent and visible position on the motor vehicle, trailer, semitrailer, or pole trailer.

~~(5)~~*(6)* The owner of the motor vehicle, trailer, semitrailer, or pole trailer shall pay to the department with the application required under this section a one-time special collector's item motor vehicle, trailer, semitrailer, or pole trailer license fee of $20."

Approved March 28, 2013

# CHAPTER NO. 107

[HB 273]

AN ACT REMOVING THE SUNSET DATE ON A MEASURE ALLOWING LICENSES FOR A NONRESIDENT TO HUNT WITH A RESIDENT SPONSOR OR FAMILY MEMBER; REMOVING THE DATE RESTRICTION FOR A HUNTER SAFETY COURSE; AMENDING SECTION 87-2-526, MCA; REPEALING SECTION 4, CHAPTER 345, LAWS OF 2009; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 87-2-526, MCA, is amended to read:

**"87-2-526. ~~(Temporary)~~ License for nonresident to hunt with resident sponsor or family member — use of license revenue.** (1) In addition to the nonresident licenses provided for in 87-2-505 and 87-2-510, the department may offer for sale 500 B-10 nonresident big game combination licenses and 500 B-11 nonresident deer combination licenses. The licenses may be used only as provided in this section and as authorized by department rules. Sale of licenses pursuant to this section may not affect the license quotas established in 87-2-505 and 87-2-510. The price of licenses sold under this subsection must be the same as nonresident big game combination licenses and nonresident deer combination licenses offered by general drawing pursuant to 87-2-505 and 87-2-510.

(2) A license authorized in subsection (1) may be used only by an adult nonresident family member of a resident who sponsors the license application and who meets the qualifications of subsection (3). The nonresident family member must have completed a Montana hunter safety and education course ~~prior to March 1, 2010,~~ or have previously purchased a resident hunting license. A nonresident family member who receives a license pursuant to subsection (1) must be accompanied in the field by a sponsor or family member who meets the qualifications of subsection (3).

(3) To qualify as a sponsor or family member who will accompany a nonresident licensed under subsection (1), a person must be a resident, as defined in 87-2-102, who is 18 years old or older and possesses a current resident hunting license and who is related to the nonresident within the second degree of kinship by blood or marriage. The second degree of kinship includes a mother, father, brother, sister, son, daughter, spouse, grandparent, grandchild, brother-in-law, sister-in-law, son-in-law, daughter-in-law, father-in-law, mother-in-law, stepfather, stepmother, stepbrother, stepsister, stepson, and stepdaughter. The sponsor shall list on the license application the names of family members who are eligible to hunt with the nonresident hunter.

(4) If the department receives more applications for licenses than the number that are available under subsection (1), the department shall conduct a drawing for the licenses. Applicants who are unsuccessful in the drawing must be entered in the general drawing for a nonresident license provided under 87-2-505 or 87-2-510, as applicable.

(5) All money received from the sale of licenses under subsection (1) must be deposited in a separate account and must be used by the department to acquire public hunting access to inaccessible public land, which may include obtaining hunting access through private land to inaccessible public land. ~~(Terminates March 1, 2014—sec. 4, Ch. 345, L. 2009.)~~"

**Section 2. Repealer.** Section 4, Chapter 345, Laws of 2009, is repealed.

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved March 28, 2013

# CHAPTER NO. 108

[HB 347]

AN ACT PROVIDING THAT A PROVISION IN A MOTOR CARRIER TRANSPORTATION CONTRACT THAT REQUIRES CERTAIN TYPES OF CROSS-PARTY INDEMNIFICATION IS VOID; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Motor carrier transportation contract indemnification — limitation.** (1) Except as provided in subsection (2), a motor carrier transportation contract provision that requires one party to the contract to indemnify, hold harmless, insure, or defend the other party to the contract or the other party's officers, employees, or agents for liability, damages, losses, or costs that are caused by the negligence, recklessness, or intentional misconduct of the other party or the other party's officers, employees, or agents is void as against the public policy of this state.

(2) A motor carrier transportation contract may contain a provision requiring one party to the contract to indemnify, hold harmless, or insure the other party to the contract or the other party's officers, employees, or agents for liability, damages, losses, or costs, including but not limited to reasonable attorney fees, only to the extent that the liability, damages, losses, or costs are caused by the negligence, recklessness, or intentional misconduct of a third party or of the indemnifying party or the indemnifying party's officers, employees, or agents.

(3) This section does not apply to the Uniform Intermodal Interchange and Facilities Access Agreement administered by the intermodal association of North America or other agreements providing for the interchange, use, or possession of intermodal chassis or containers or other intermodal equipment.

(4) As used in this section, the following definitions apply:

(a) "Motor carrier" has the meaning provided in 61-1-101.

(b) "Motor carrier transportation contract" means a contract, agreement, or understanding covering:

(i) the transportation of property for compensation or hire by a motor carrier;

(ii) entrance onto a property by a motor carrier for the purpose of loading, unloading, or transporting property for compensation or hire; or

(iii) a service incidental to an activity described in subsection (4)(a) or (4)(b), including but not limited to storage of property.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 28, chapter 2, and the provisions of Title 28, chapter 2, apply to [section 1].

**Section 3. Effective date.** [This act] is effective on passage and approval.

**Section 4. Applicability.** [This act] applies to motor carrier transportation contracts entered into or renewed on or after [the effective date of this act].

Approved March 28, 2013

# CHAPTER NO. 109

[SB 40]

AN ACT GENERALLY REVISING PROVISIONS GOVERNING SUBDIVISION REVIEW; REVISING PROCEDURES FOR THE SUBMISSION OF SUBDIVISION APPLICATIONS; AMENDING SECTIONS 76-3-504, 76-3-601, AND 76-3-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 76-3-504, MCA, is amended to read:

**"76-3-504. Subdivision regulations — contents.** (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);

(b) except as provided in 76-3-509, 76-3-609, or 76-3-616, require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;

(d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques or other mitigation measures authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.

(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(g) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;

(iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet the:

(A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that will create one or more parcels containing less than 20 acres; and

(B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and

(iv) the location and installation of public utilities;

(h) provide procedures for the administration of the park and open-space requirements of this chapter;

(i) provide for the review of subdivision applications by affected public utilities and those agencies of local, state, and federal government identified during the preapplication consultation conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

(j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single

entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

(k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:

(A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

(ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

(A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(B) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(m) require the subdivider to describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(n) establish whether the governing body, its authorized agent or agency, or both will hold public hearings;

(o) establish procedures describing how the governing body or its agent or agency will address information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

(p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.

(q) establish a preapplication process that:

(i) requires a subdivider to meet with the authorized agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;

(ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

(iv) requires that a preapplication meeting take place no more than 30 days from the date that the authorized agent or agency receives a written request for a preapplication meeting from the subdivider; and

(v) establishes a time limit after a preapplication meeting by which an application must be submitted ~~as provided in 76-3-604~~;

(r) requires that the written decision required by 76-3-620 must be provided to the applicant within 30 working days following a decision by the governing body to approve, conditionally approve, or deny a subdivision.

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster development.

~~(3) The governing body may establish deadlines for submittal of subdivision applications.~~"

**Section 2.** Section 76-3-601, MCA, is amended to read:

**"76-3-601. Submission of application and preliminary plat for review — water and sanitation information required.** (1) ~~Subject to the submittal deadlines established as provided in 76-3-504(3), the~~ *The* subdivider shall present to the governing body or to the agent or agency designated by the governing body the subdivision application, including the preliminary plat of the proposed subdivision, for local review. The preliminary plat must show all pertinent features of the proposed subdivision and all proposed improvements and must be accompanied by the preliminary water and sanitation information required under 76-3-622.

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the application and preliminary plat must be submitted to and approved by the city or town governing body.

(b) When the proposed subdivision is situated entirely in an unincorporated area, the application and preliminary plat must be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town, within 2 miles of a second-class city, or within 3 miles of a first-class city, the county governing body shall submit the application and preliminary plat to the city or town governing body or its designated agent for review and comment. If the proposed subdivision is situated within a rural school district, as described in 20-9-615, the county governing body shall provide a summary of the information contained in the application and preliminary plat to school district trustees.

(c) If the proposed subdivision lies partly within an incorporated city or town, the application and preliminary plat must be submitted to and approved by both the city or town and the county governing bodies.

(d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible.

(3) The provisions of 76-3-604, 76-3-605, 76-3-608 through 76-3-610, and this section do not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444."

**Section 3.** Section 76-3-604, MCA, is amended to read:

**"76-3-604. Review of subdivision application — review for required elements and sufficiency of information.** (1) (a) ~~Within 5 working days of receipt of a subdivision application submitted in accordance with any deadlines established pursuant to 76-3-504(3) and receipt of the review fee submitted as provided in 76-3-602, the reviewing agent or agency shall~~ *A subdivision application is considered to be received on the date of delivery to the reviewing agent or agency and when accompanied by the review fee submitted as provided in 76-3-602.*

*(b) Within 5 working days of receipt of a subdivision application, the reviewing agent or agency shall* determine whether the application contains all of the listed materials as required by 76-3-504(1)(a) and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination.

~~(b)~~ If the reviewing agent or agency determines that elements are missing from the application, the reviewing agent or agency shall identify those elements in the notification.

(2) (a) Within 15 working days after the reviewing agent or agency notifies the subdivider or the subdivider's agent that the application contains all of the required elements as provided in subsection (1), the reviewing agent or agency shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under the provisions of this chapter and the local regulations adopted pursuant to this chapter and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination.

(b) If the reviewing agent or agency determines that information in the application is not sufficient to allow for review of the proposed subdivision, the reviewing agent or agency shall identify the insufficient information in its notification.

(c) A determination that an application contains sufficient information for review as provided in this subsection (2) does not ensure that the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the reviewing agent or agency or the governing body to request additional information during the review process.

(3) The time limits provided in subsections (1) and (2) apply to each submittal of the application until:

(a) a determination is made that the application contains the required elements and sufficient information; and

(b) the subdivider or the subdivider's agent is notified.

(4) After the reviewing agent or agency has notified the subdivider or the subdivider's agent that an application contains sufficient information as provided in subsection (2), the governing body shall approve, conditionally approve, or deny the proposed subdivision within 60 working days or 80 working days if the proposed subdivision contains 50 or more lots, based on its determination of whether the application conforms to the provisions of this chapter and to the local regulations adopted pursuant to this chapter, unless:

(a) the subdivider and the reviewing agent or agency agree to an extension or suspension of the review period, not to exceed 1 year; or

(b) a subsequent public hearing is scheduled and held as provided in 76-3-615.

(5) (a) If the governing body fails to comply with the time limits under subsection (4), the governing body shall pay to the subdivider a financial penalty of $50 per lot per month or a pro rata portion of a month, not to exceed the total amount of the subdivision review fee collected by the governing body for the subdivision application, until the governing body denies, approves, or conditionally approves the subdivision.

(b) The provisions of subsection (5)(a) do not apply if the review period is extended or suspended pursuant to subsection (4).

(6) If the governing body denies or conditionally approves the proposed subdivision, it shall send the subdivider a letter, with the appropriate signature, that complies with the provisions of 76-3-620.

(7) (a) The governing body shall collect public comment submitted at a hearing or hearings regarding the information presented pursuant to 76-3-622 and shall make any comments submitted or a summary of the comments submitted available to the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat.

(b) The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the:

(i) reviewing authority provided for in Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres; and

(ii) local health department or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.

(8) (a) For a proposed subdivision that will create one or more parcels containing less than 20 acres, the governing body may require approval by the department of environmental quality as a condition of approval of the final plat.

(b) For a proposed subdivision that will create one or more parcels containing 20 acres or more, the governing body may condition approval of the

final plat upon the subdivider demonstrating, pursuant to 76-3-622, that there is an adequate water source and at least one area for a septic system and a replacement drainfield for each lot.

(9) (a) Review and approval, conditional approval, or denial of a proposed subdivision under this chapter may occur only under those regulations in effect at the time a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the review periods provided in subsections (1) and (2), the determination of whether the application contains the required elements and sufficient information must be based on the new regulations."

**Section 4. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 5. Effective date.** [This act] is effective on passage and approval.

**Section 6. Applicability.** [This act] applies to subdivision applications submitted on or after July 1, 2013.

Approved March 28, 2013

# CHAPTER NO. 110

[SB 77]

AN ACT RAISING FROM $50,000 TO $80,000 THE CONTRACT AMOUNT ON CERTAIN LOCAL GOVERNMENT AND SCHOOL PURCHASE AND CONSTRUCTION CONTRACTS THAT REQUIRE USE OF THE COMPETITIVE, ADVERTISED BIDDING PROCESS; AMENDING SECTIONS 7-5-2301, 7-5-4302, AND 20-9-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-5-2301, MCA, is amended to read:

**"7-5-2301. Competitive, advertised bidding required for certain large purchases or construction contracts.** (1) Except as provided in 7-5-2304 and Title 18, chapter 2, part 5, a contract for the purchase of any vehicle, road machinery or other machinery, apparatus, appliances, equipment, or materials or supplies or for construction, repair, or maintenance in excess of ~~$50,000~~ *$80,000* may not be entered into by a county governing body without first publishing a notice calling for bids.

(2) The notice must be published as provided in 7-1-2121.

(3) Subject to 7-5-2309 and except as provided in Title 18, chapter 2, part 5, every contract subject to bidding must be let to the lowest responsible bidder."

**Section 2.** Section 7-5-4302, MCA, is amended to read:

**"7-5-4302. Competitive, advertised bidding required for certain purchase and construction contracts.** (1) Except as provided in 7-5-4303, 7-5-4310, or Title 18, chapter 2, part 5, a contract for the purchase of any automobile, truck, other vehicle, road machinery, other machinery, apparatus, appliances, equipment, or materials or supplies or for construction, repair, or maintenance in excess of ~~$50,000~~ *$80,000* must be let to the lowest responsible bidder after advertisement for bids.

(2) The advertisement must be published as provided in 7-1-4127, and the second publication must be made not less than 5 days or more than 12 days before the consideration of bids. If the advertisement is made by posting, 15 days must elapse, including the day of posting, between the time of the posting of the advertisement and the day set for considering bids.

(3) The council may:

(a) postpone awarding a contract until the next regular meeting after bids are received in response to the advertisement;

(b) reject any or all bids; and

(c) readvertise as provided in this section."

**Section 3.** Section 20-9-204, MCA, is amended to read:

**"20-9-204. Conflicts of interests, letting contracts, and calling for bids — exceptions.** (1) It is unlawful for a trustee to:

(a) have any pecuniary interest, either directly or indirectly, in any contract made by the trustee while acting in that official capacity or by the board of trustees of which the trustee is a member; or

(b) be employed in any capacity by the trustee's own school district, with the exception of officiating at athletic competitions under the auspices of the Montana officials association.

(2) For the purposes of subsection (1):

(a) "contract" does not include:

(i) merchandise sold to the highest bidder at public auctions;

(ii) investments or deposits in financial institutions that are in the business of loaning or receiving money when the investments or deposits are made on a rotating or ratable basis among financial institutions in the community or when there is only one financial institution in the community; or

(iii) contracts for professional services, other than salaried services, or for maintenance or repair services or supplies when the services or supplies are not reasonably available from other sources if the interest of any board member and a determination of the lack of availability are entered in the minutes of the board meeting at which the contract is considered; and

(b) "pecuniary interest" does not include holding an interest of 10% or less in a corporation.

(3) (a) Except for district needs that must be met because of an unforeseen emergency, as defined in 20-3-322(5), or as provided in subsections (4) and (6) of this section, whenever any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district is necessary, the work done or the purchase made must be by contract if the sum exceeds ~~$50,000~~ *$80,000*.

(b) Except as provided in Title 18, chapter 2, part 5, each contract must be let to the lowest responsible bidder after advertisement for bids. The advertisement for bids under this subsection (3)(b) must be published in the newspaper that will give notice to the largest number of people of the district as determined by the trustees. The advertisement must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section is void. The bidding requirements applicable to services performed for the benefit of the district under this section do not apply to:

(i) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(ii) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(iii) an attorney;

(iv) a consulting actuary;

(v) a private investigator licensed by any jurisdiction;

(vi) a claims adjuster;

(vii) an accountant licensed under Title 37, chapter 50; or

(viii) a project, as defined in 18-2-501, for which a governing body, as defined in 18-2-501, enters into an alternative project delivery contract pursuant to Title 18, chapter 2, part 5.

(4) A district may enter into a cooperative purchasing contract for the procurement of supplies or services with one or more districts. A district participating in a cooperative purchasing group may purchase supplies and services through the group without complying with the provisions of subsection (3) if the cooperative purchasing group has a publicly available master list of items available with pricing included and provides an opportunity at least twice yearly for any vendor, including a Montana vendor, to compete, based on a lowest responsible bidder standard, for inclusion of the vendor's supplies and services on the cooperative purchasing group's master list.

(5) This section may not require the board of trustees to let a contract for any routine and regularly performed maintenance or repair project or service that can be accomplished by district staff whose regular employment with the school district is related to the routine performance of maintenance for the district.

(6) Subsection (3) does not apply to the solicitation or award of a contract for an investment grade energy audit or an energy performance contract pursuant to Title 90, chapter 4, part 11, including construction and installation of conservation measures pursuant to the energy performance contract."

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved March 28, 2013

# CHAPTER NO. 111

[SB 145]

AN ACT DESIGNATING AS CONFIDENTIAL CRIMINAL JUSTICE INFORMATION THE INFORMATION CONTAINED ON AN APPLICATION FOR A PERMIT TO CARRY A CONCEALED WEAPON; AND AMENDING SECTION 45-8-322, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 45-8-322, MCA, is amended to read:

**"45-8-322. Application, renewal, permit, and fees.** (1) The application form must be readily available at the sheriff's office and must read as follows:

CONCEALED WEAPON PERMIT APPLICATION

To be completed by each person making application:

RESIDENT OF MONTANA AT LEAST 6 MONTHS ( ) Yes ( ) No

CITIZEN OF THE UNITED STATES ( ) Yes ( ) No

18 YEARS OF AGE OR OLDER ( ) Yes ( ) No

PLEASE TYPE OR PRINT

Full name: .....
Last First Middle

Alias/Maiden/Nickname: .....

Address: Home: ..... Zip .....

Employer: ..... Zip .....

Phone: ...../ ...../ .....
Home Employer Message

Place of birth: ..... Date of birth: .....

Driver's license #: ..... Issuing state: .....

Social Security #: .....

Sex ..... Ht. ..... Wt. ..... Eyes ..... Hair .....

LIST EACH FORMER EMPLOYER OR BUSINESS ENGAGED IN FOR THE LAST 5 YEARS:

| | Employer or business name | Address | Dates of employment |
|---|---|---|---|
| 1. | ..... | ..... | ..... |
| 2. | ..... | ..... | ..... |
| 3. | ..... | ..... | ..... |
| 4. | ..... | ..... | ..... |
| 5. | ..... | ..... | ..... |
| 6. | ..... | ..... | ..... |

LIST EACH PLACE IN WHICH YOU HAVE LIVED FOR THE LAST 5 YEARS:

| | City | State | Dates of residence |
|---|---|---|---|
| 1. | ..... | ..... | ..... |
| 2. | ..... | ..... | ..... |
| 3. | ..... | ..... | ..... |
| 4. | ..... | ..... | ..... |
| 5. | ..... | ..... | ..... |
| 6. | ..... | ..... | ..... |

MILITARY SERVICE, BRANCH ..... FROM ..... TO .....

TYPE OF DISCHARGE ..... RANK UPON DISCHARGE .....

HAVE YOU EVER BEEN ARRESTED FOR OR CONVICTED OF A CRIME OR FOUND GUILTY IN A COURT-MARTIAL PROCEEDING?

( ) YES ( ) NO

IF YES, COMPLETE THE FOLLOWING (Exceptions: minor traffic violations) (Attach additional sheet if necessary):

| | City | State | Charge | Date |
|---|---|---|---|---|
| 1. | ..... | ..... | ..... | ..... |
| 2. | ..... | ..... | ..... | ..... |
| 3. | ..... | ..... | ..... | ..... |
| 4. | ..... | ..... | ..... | ..... |
| 5. | ..... | ..... | ..... | ..... |

LIST THREE PERSONS WHOM YOU HAVE KNOWN FOR AT LEAST 5 YEARS THAT WILL BE CREDIBLE WITNESSES TO YOUR GOOD MORAL

CHARACTER AND PEACEABLE DISPOSITION (DO NOT include relatives or present/past employers):

| Name | Address | Phone |
|---|---|---|
| 1. ..... | ..... | ..... |
| 2. ..... | ..... | ..... |
| 3. ..... | ..... | ..... |

PLEASE EXPLAIN YOUR REASONS FOR REQUESTING THIS PERMIT (Attach additional sheet if necessary):

.....

.....

.....

I, the undersigned applicant, swear that the foregoing information is true and correct to the best of my knowledge and belief and is given with the full knowledge that any misstatement may be sufficient cause for denial or revocation of a permit to carry a concealed weapon. I authorize any person having information concerning me that relates to the information requested by this application and the requirements for a concealed weapon permit, either public record or otherwise, to furnish it to the sheriff to whom this application is made.

.....

Signature

.....

Date of application

This application must be signed in the presence of the sheriff or a designee.

(2) The application must be in triplicate. The applicant must be given the original at the time the completed application is filed with the sheriff, the sheriff shall keep a copy for at least 4 years, and a copy must, within 7 days of the sheriff's receipt of the application, be mailed to the chief of police if the applicant resides in a city or town with a police force.

(3) The fee for issuance of a permit is $50. The permit must be renewed for additional 4-year periods upon payment of a $25 fee for each renewal and upon request for renewal made within 90 days before expiration of the permit. The permit and each renewal must be in triplicate, in a form prescribed by the department of justice, and must, at a minimum, include the name, address, physical description, signature, driver's license number, state identification card number, or tribal identification card number, and a picture of the permittee. A person in the United States armed forces satisfies the requirement of submitting a picture if the person submits pictures of the front of the person's military identification card and the person's Montana driver's license. The permit must state that federal and state laws on possession of firearms and other weapons differ and that a person who violates the federal law may be prosecuted in federal court and the Montana permit will not be a defense. The permittee must be given the original, and the sheriff shall keep a copy and send a copy to the department of justice, which shall keep a central repository record of all permits. Replacement of a lost permit must be treated as a renewal under this subsection.

(4) The sheriff shall conduct a background check of an applicant to determine whether the applicant is eligible for a permit under 45-8-321, may

require an applicant to submit the applicant's fingerprints, and may charge the applicant $5 for fingerprinting.

(5) Permit, background, and fingerprinting fees may be retained by the sheriff and used to implement 45-8-321 through 45-8-325.

(6) A state or local government law enforcement agency or other agency or any of its officers or employees may not request a permittee to voluntarily submit information in addition to that required on an application and permit.

*(7) All of the information on the application is confidential, and the sheriff shall treat the confidential information on the application as confidential criminal justice information pursuant to Title 44, chapter 5.*"

Approved March 28, 2013

# CHAPTER NO. 112

[SB 146]

AN ACT REVISING CRITERIA FOR LOCAL SUBDIVISION REVIEW TO REQUIRE THAT CERTAIN INFORMATION SUBMITTED BY A GOVERNMENTAL ENTITY BE USED BY A GOVERNING BODY ONLY IF IT IS SCIENTIFIC INFORMATION; REQUIRING A GOVERNMENTAL ENTITY THAT HAS BEEN INVOLVED IN CERTAIN PROPERTY ACQUISITION EFFORTS TO DISCLOSE THAT INFORMATION TO THE LOCAL GOVERNING BODY; AMENDING SECTION 76-3-608, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 76-3-608, MCA, is amended to read:

**"76-3-608. Criteria for local government review.** (1) The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services or based solely on parcels within the subdivision having been designated as wildland-urban interface parcels under 76-13-145.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection (6) of this section or except as provided in 76-3-509, 76-3-609(2) or (4), or 76-3-616, the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements within and to the proposed subdivision for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the subdivision.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

(6) A governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-604 on the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce.

(7) A governing body may not require as a condition of subdivision approval that a property owner waive a right to protest the creation of a special improvement district or a rural improvement district for capital improvement projects that does not identify the specific capital improvements for which protest is being waived. A waiver of a right to protest may not be valid for a time period longer than 20 years after the date that the final subdivision plat is filed with the county clerk and recorder.

*(8) If a federal or state governmental entity submits a written or oral comment or an opinion regarding wildlife, wildlife habitat, or the natural environment relating to a subdivision application for the purpose of assisting a governing body's review, the comment or opinion may be included in the governing body's written statement under 76-3-620 only if the comment or opinion provides scientific information or a published study that supports the comment or opinion. A governmental entity that is or has been involved in an effort to acquire or assist others in acquiring an interest in the real property identified in the subdivision application shall disclose that the entity has been involved in that effort prior to submitting a comment, an opinion, or information as provided in this subsection.*"

**Section 2. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 3. Effective date.** [This act] is effective on passage and approval.

**Section 4. Applicability.** [This act] applies to subdivision applications submitted on or after July 1, 2013.

Approved March 28, 2013

# CHAPTER NO. 113

[SB 225]

AN ACT REVISING THE USE OF TEMPORARY WARNING SIGNS AT THE SCENE OF A TRAFFIC INCIDENT; AND AMENDING SECTION 61-9-431, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-9-431, MCA, is amended to read:

**"61-9-431. Use of warning signs, flares, reflectors, lanterns, and flag persons.** (1) The operator of a commercial tow truck, in compliance with the requirements of 61-8-906 and 61-8-907, shall, when rendering assistance at a hazard on the highway that necessitates the obstruction of a portion or all of the roadway *exclusive of the berm or shoulder*, place at least two warning signs as required in this section as soon as is practicable under the circumstances. Flag persons and cones may be used to augment the warning signs.

(2) Highway warning signs must be of a uniform type, with dimensions of 3 x 3 feet, lettering 5 inches high, and reflectorized orange *or reflectorized fluorescent pink* background and black border, as prescribed by the department. The signs must be designed to be visible both during the day and at night. The warning signs must bear the words ~~"hazard ahead",~~ *"accident ahead", "emergency vehicle ahead",* "lane closed ahead", "road closed ahead", "wreck ahead", "tow truck ahead", or "wrecker ahead", as prescribed by the department.

(3) The operator of a commercial tow truck used for the purpose of rendering assistance at a hazard on the highway that necessitates the obstruction of a portion of the roadway shall place a highway warning sign as required in subsection (2):

(a) in an area in which the posted speed limit is 45 miles an hour or less, not less than 600 feet in advance of the hazard and an equal distance to the rear of the hazard; and

(b) in an area in which the posted speed limit is more than 45 miles an hour or no speed limit is posted, 1,000 feet in advance of the hazard, except on a divided highway where the hazard does not cause disruption of traffic traveling on the opposite side of the divided highway, and an equal distance to the rear of the hazard.

(4) A local government unit may adopt an ordinance exempting an operator of a commercial tow truck from the requirements of subsection (2) within the limits of an incorporated city or town.

(5) When a hazard exists on the highway during the hours of darkness, the operator of a commercial tow truck called to render assistance shall place warning signs upon the highway as prescribed in this section and shall also place at least one red flare, red lantern, or warning light or reflector in close proximity to each warning sign.

(6) A violation of warning signs placed as provided in subsection (3) is considered reckless endangerment of a highway worker, as provided in 61-8-301(4), and is punishable as provided in 61-8-715."

Approved March 28, 2013

# CHAPTER NO. 114

[SB 235]

AN ACT ESTABLISHING THE PHARMACY AUDIT INTEGRITY ACT; AND PROVIDING FOR PROCEDURES AND REQUIREMENTS FOR THE AUDIT OF PHARMACY RECORDS.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 6] may be cited as the "Pharmacy Audit Integrity Act".

**Section 2. Definitions.** As used in [sections 1 through 6], the following definitions apply:

(1) "Audit" means a review of the records of a pharmacy by or on behalf of an entity that finances or reimburses the cost of health care services or pharmaceutical products.

(2) "Entity" includes:

(a) a pharmacy benefits manager;

(b) a health benefit plan;

(c) a third-party administrator; and

(d) a company, group, or agent that represents or is engaged by one of the entities described in this subsection (2).

(3) "Fraud" means an intentional act of deception, misrepresentation, or concealment in order to gain something of value.

(4) "Health benefit plan" means a policy or certificate that provides health care insurance or major medical expense insurance or that is offered as a substitute for hospital or medical expense insurance. The term does not include a policy or certificate that provides benefits solely for accident, dental, vision, income replacement, long-term care, a Medicare supplement, a specified disease, or a short-term limited duration or that is offered and marketed as supplemental health insurance.

**Section 3. Applicability.** (1) Except as provided in subsection (2), [sections 1 through 6] apply to an audit of the records of a pharmacy licensed under Title 37, chapter 7.

(2) [Sections 1 through 6] do not apply to an audit of pharmacy records when fraud or other intentional and willful misrepresentation is evidenced by the review of claims data, statements, physical review, or other investigative methods.

**Section 4. Audit of pharmacy records.** (1) An entity conducting an audit of pharmacy records shall audit a pharmacy using the same standards and parameters as used by the entity in auditing other pharmacies on behalf of the same audit client.

(2) An audit that involves clinical or professional judgment must be conducted by or in consultation with a licensed pharmacist who is employed by or working with the entity conducting the audit.

(3) If an audit is conducted onsite at a pharmacy, the entity conducting the audit:

(a) shall give the pharmacy 10 days' advance written notice of the audit, along with the range of prescription numbers or a date range that will be included in the audit; and

(b) may not audit the pharmacy during the first 5 business days of the month unless the pharmacy agrees to the timing of the audit.

(4) An entity may not audit prescription records that exceed 275 selected prescriptions. The period covered by the audit may not exceed 24 months from the date that the prescription was submitted to or adjudicated by the entity unless a longer period is required under state or federal law.

(5) Except as required by state or federal law, an entity conducting an audit may have access to a pharmacy's previous audit report only if the previous report was prepared by that entity.

(6) To validate a pharmacy record, a pharmacy may use documented statements of records in the pharmacy or pharmacy system, including medication administration records of a nursing home, assisted living facility, hospital, physician, surgeon, or other prescriber authorized by the laws of this state.

(7) If an audit results in the dispute or denial of a claim, the entity conducting the audit shall allow the pharmacy to produce additional claims documentation using any commercially reasonable method, including fax, mail, or e-mail.

**Section 5. Prohibitions — recoupment — payment — interest.** An entity conducting an audit may not:

(1) include dispensing fees unless a prescription was not actually dispensed, the prescriber denied authorization, the prescription dispensed was a dispensing error by the pharmacy, or the identified overpayment is based solely on an extra dispensing fee;

(2) recoup funds for prescription clerical or recordkeeping errors, including typographical errors, scrivener's errors, and computer errors, in a required document or record unless the error results in actual financial harm to the entity or to a consumer;

(3) collect any funds, charge-backs, or penalties until the audit and all appeals are final unless the entity is alleging fraud or other intentional or willful misrepresentation that is evidenced by the review of claims data, statements, physical review, or other investigative methods;

(4) use extrapolation or other statistical expansion techniques in calculating the amount of any recoupment or penalty;

(5) pay the agent or employee who conducted the audit based on a percentage of the amount recovered; or

(6) charge interest during the audit period.

**Section 6. Onsite audits — preliminary and final reports — appeals.** For audits conducted onsite, the following provisions apply:

(1) An entity that audits a pharmacy shall provide the pharmacy with a preliminary audit report, delivered to the pharmacy or its corporate office of record within 60 days after completion of the audit.

(2) A pharmacy has 30 days following receipt of the preliminary audit report to respond to questions, provide additional documentation, and comment on and clarify findings of the audit. The date of receipt of the report must be determined by the postmark date or the date of the electronic transmission if transferred electronically.

(3) If an audit results in the dispute or denial of a claim, the entity conducting the audit shall allow the pharmacy, for 30 days following receipt of

the preliminary audit report, to produce additional claims documentation using any commercially reasonable method, including fax, mail, or e-mail.

(4) (a) Within 120 days after the completion of the appeals process under subsection (5), a final audit report must be delivered to the pharmacy or its corporate office of record.

(b) The final audit report must include a disclosure of any money recovered by the entity that conducted the audit.

(5) An entity that audits a pharmacy shall establish a written policy for a pharmacy to appeal a final audit report. If no remedies are specified by contract or in the pharmacy services manual, the pharmacy may seek to resolve the dispute through mediation.

**Section 7. Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 33, chapter 2, and the provisions of Title 33, chapter 2, apply to [sections 1 through 6].

Approved March 28, 2013

# CHAPTER NO. 115

[SB 266]

AN ACT REVISING LAWS RELATED TO SACRAMENTAL WINE; AMENDING SECTIONS 16-1-106, 16-1-411, 16-3-218, 16-3-402, 16-4-108, AND 16-4-313, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 16-1-106, MCA, is amended to read:

**"16-1-106. Definitions.** As used in this code, the following definitions apply:

(1) "Agency franchise agreement" means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.

(2) "Agency liquor store" means a store operated under an agency franchise agreement in accordance with this code for the purpose of selling liquor at either the posted or the retail price for off-premises consumption.

(3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(5) (a) "Beer" means:

(i) a malt beverage containing not more than 8.75% of alcohol by volume; or

(ii) an alcoholic beverage containing not more than 14% alcohol by volume:

(A) that is made by the alcoholic fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted cereal grain; and

(B) in which the sugars used for fermentation of the alcoholic beverage are at least 75% derived from malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.

(b) The term does not include a caffeinated or stimulant-enhanced malt beverage.

(6) "Beer importer" means a person other than a brewer who imports malt beverages.

(7) "Brewer" means a person who produces malt beverages.

(8) "Caffeinated or stimulant-enhanced malt beverage" means:

(a) a beverage:

(i) that is fermented in a manner similar to beer and from which some or all of the fermented alcohol has been removed and replaced with distilled ethyl alcohol;

(ii) that contains at least 0.5% of alcohol by volume;

(iii) that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer as described in 27 CFR 25.55; and

(iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and taurine; or

(b) a beverage:

(i) that contains at least 0.5% of alcohol by volume;

(ii) that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer as described in 27 CFR 25.55;

(iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract;

(iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and taurine;

(v) for which the producer is required to file a formula for approval with the United States alcohol and tobacco tax and trade bureau pursuant to 27 CFR 25.55; and

(vi) that is not exempt pursuant to 27 CFR 25.55(f).

(9) "Community" means:

(a) in an incorporated city or town, the area within the incorporated city or town boundaries;

(b) in an unincorporated city or area, the area identified by the federal bureau of the census as a community for census purposes; and

(c) in a consolidated local government, the area of the consolidated local government not otherwise incorporated.

(10) "Department" means the department of revenue, unless otherwise specified, and includes the department of justice with respect to receiving and processing, but not granting or denying, an application under a contract entered into under 16-1-302.

(11) "Growler" means any refillable, resealable container complying with federal law.

(12) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the juices of apples or pears and that contains not less than 0.5% of alcohol by volume and not more than 6.9% of alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

(13) "Immediate family" means a spouse, dependent children, or dependent parents.

(14) "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

(15) "Liquor" means an alcoholic beverage except beer and table wine. The term includes a caffeinated or stimulant-enhanced malt beverage.

(16) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome products suitable for human food consumption.

(17) "Package" means a container or receptacle used for holding an alcoholic beverage.

(18) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses as fixed and determined by the department and in addition an excise and license tax as provided in this code. In the case of sacramental wine *sold in agency liquor stores*, the wholesale price may not exceed the sum of the department's cost to acquire the sacramental wine, the department's current freight rate to agency liquor stores, and a 20% markup.

(19) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

(20) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(21) "Retail price" means the price established by an agent for the sale of liquor to persons who do not hold liquor licenses. The retail price may not be less than the department's posted price.

(22) "Rules" means rules adopted by the department or the department of justice pursuant to this code.

(23) "Sacramental wine" means wine *that contains more than 0.5% but not more than 24% of alcohol by volume* that is manufactured and sold exclusively for use as sacramental wine or for other religious purposes.

(24) "Special event", as it relates to an application for a beer and wine special permit, means a short, infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

(25) "State liquor warehouse" means a building owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

(26) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, which building or structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

(27) "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(28) "Table wine" means wine that contains not more than 16% of alcohol by volume and includes cider.

(29) "Table wine distributor" means a person importing into or purchasing in Montana table wine *or sacramental wine* for sale or resale to retailers licensed in Montana.

(30) "Warehouse" means a building or structure located in Montana that is owned or operated by a licensed beer wholesaler or table wine distributor for the

receiving, storage, and distribution of beer or table wine as permitted by this code.

(31) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

**Section 2.** Section 16-1-411, MCA, is amended to read:

**"16-1-411. Tax on wine and hard cider — penalty and interest.** (1) (a) A tax of 27 cents per liter is imposed on *sacramental wine and* table wine, except hard cider, imported by a table wine distributor or the department.

(b) A tax of 3.7 cents per liter is imposed on hard cider imported by a table wine distributor or the department.

(2) The tax imposed in subsection (1) must be paid by the table wine distributor by the 15th day of the month following sale of the *sacramental wine,* table wine*,* or hard cider from the table wine distributor's warehouse. Failure to file a tax return or failure to pay the tax required by this section subjects the table wine distributor to the penalties and interest provided for in 15-1-216.

(3) The tax paid by a table wine distributor in accordance with subsection (2) must, in accordance with the provisions of 17-2-124, be distributed as follows:

(a) 69% to the state general fund; and

(b) 31% to the state special revenue fund to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency.

(4) The tax computed and paid in accordance with this section is the only tax imposed by the state or any of its subdivisions, including cities and towns.

(5) For purposes of this section, "table wine" has the meaning assigned in 16-1-106, but does not include hard cider."

**Section 3.** Section 16-3-218, MCA, is amended to read:

**"16-3-218. "Distribute" defined.** As used in 16-3-219, 16-3-220, 16-4-103, and 16-4-108, "distribute" means to deliver beer or wine to a retailer's premises licensed to sell beer*,* ~~or~~ table wine*, or sacramental wine*."

**Section 4.** Section 16-3-402, MCA, is amended to read:

**"16-3-402. Importation of wine — records.** (1) Except as provided in 16-3-411*, 16-4-313,* and 16-4-901, all table wine manufactured outside of Montana and shipped into Montana must be consigned to and shipped to a licensed table wine distributor and be unloaded by the distributor into the distributor's warehouse in Montana or subwarehouse in Montana. The distributor shall distribute the table wine from the warehouse or subwarehouse.

(2) The distributor shall keep records at the distributor's principal place of business of all table wine, including the name or kind received, on hand, sold, and distributed. The records may at all times be inspected by the department.

(3) Table wine that has been shipped into Montana in violation of this code must be seized by any peace officer or representative of the department and may

be confiscated in the manner as provided for the confiscation of intoxicating liquor."

**Section 5.** Section 16-4-108, MCA, is amended to read:

**"16-4-108. Table wine distributor's license.** (1) Any person desiring to sell and distribute table wine *or sacramental wine* at wholesale to retailers under the provisions of this code shall apply to the department of revenue for a license to do so and shall submit with the application the annual license fee of $400. The department may issue licenses to qualified applicants in accordance with the provisions of this code.

(2) All table wine distributors' licenses issued in any year expire on June 30 of that year at midnight.

(3) A license fee may not be imposed upon table wine distributors by a municipality or any other political subdivision of the state.

(4) The license must be at all times prominently displayed in the place of business of the table wine distributor.

(5) An applicant must have a fixed place of business, sufficient capital, the facilities, storehouse, and receiving house or warehouse for the receiving, storage, handling, and moving of table wine in large and jobbing quantities for distribution and sale in original packages to other licensed table wine distributors or licensed retailers. Each table wine distributor is entitled to only one wholesale table wine license, which must be issued for the distributor's principal place of business in Montana. A duplicate license may be issued for one subwarehouse only in Montana for each table wine distributor's license. The duplicate license must at all times be prominently displayed at the subwarehouse. A table wine distributor may also hold a license to sell beer at wholesale but may not hold or have any interest, direct or indirect, in any license to sell beer, table wine, or liquor at retail.

(6) If the applicant is a foreign corporation, the corporation must be authorized to do business in Montana.

(7) As used in subsection (1), "distribute" has the meaning provided in 16-3-218."

**Section 6.** Section 16-4-313, MCA, is amended to read:

**"16-4-313. Sacramental wine license.** (1) The department may issue a sacramental wine license to an establishment *whether* located in *or outside* Montana that sells *church supplies, including* sacramental wine*,* at retail to rabbis, priests, pastors, ministers, or other officials of churches or other established religious organizations exclusively for ~~their off-premises~~ use as sacramental wine or for other religious purposes. *Sales of sacramental wine may not be made to the public.*

(2) An application for a license under this section must be accompanied by a fee of ~~$200~~ *$100*, which constitutes the first annual license fee. The annual license renewal fee is ~~$100~~ *$50*.

(3) Unless the sacramental wine is purchased onsite ~~at the premises of the licensed retailer~~, an establishment selling sacramental wine for religious purposes ~~shall~~ *may sell and* deliver directly to the religious organization's premises *by:*

*(a)* using the establishment's own employees and equipment*;*

*(b) contracting with a licensed table wine distributor; or*

*(c) contracting with a common carrier, which maintains an alcohol shipment program, to ship and deliver the wine. If the wine is shipped and delivered by the*

*common carrier, the shipment must be in boxes marked with the words "Wine Shipment From Sacramental Wine Licensee for Religious Purposes Only" and the boxes must also be conspicuously labeled with the words "Contains Alcohol: Signature of Person 21 Years of Age or Older Required for Delivery".*

(4) A sacramental wine licensee shall maintain records of all wine sales made during the preceding 2 years and shall allow the department access to the records when requested so that the department can ascertain whether the limitations of subsection (1) are being complied with. *The required record must include the addresses to which the sacramental wine is delivered and the printed name of the official of the church or other religious organization who signed for delivery.*

*(5) A sacramental wine licensee located out of state making sales under the provisions of this section is considered a table wine distributor for the purposes of 16-1-411.*

~~(5)~~*(6)* Upon receipt of a completed application for a license under this section, the department ~~may request that the department of justice make a background investigation of all matters relating to the application.~~

~~(6) Based on the results of the investigation or~~ *shall,* in exercising its sound discretion, ~~the department shall~~ determine whether:

(a) the applicant is qualified *under this section* to receive a license;

(b) the applicant's premises are suitable for the carrying on of the business; and

(c) the requirements of this code and the rules promulgated by the department are being met and complied with.

(7) License applications submitted under this section are not subject to the provisions of *16-3-402,* 16-4-203*,* and 16-4-207.

~~(8) If the premises proposed for licensing under this section are a new or remodeled structure, the department may issue a conditional license prior to completion of the premises upon reasonable evidence that the premises will be suitable for the carrying on of business as a bona fide establishment for selling sacramental wine.~~

*(8) A person licensed under subsection (1) may transport sacramental wine from the licensee's premises to the religious organization's premises in any quantity for religious purposes.*

*(9) A sacramental wine licensee is not subject to the provisions of 16-4-1005 requiring licensees to ensure training.*"

**Section 7. Effective date.** [This act] is effective July 1, 2013.

Approved March 28, 2013

# CHAPTER NO. 116

[HB 367]

AN ACT GENERALLY REVISING MOTOR VEHICLE SALVAGE TITLE LAWS; CLARIFYING THE SALVAGE CERTIFICATE APPLICATION PROCESS; AND AMENDING SECTION 61-3-211, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-3-211, MCA, is amended to read:

**"61-3-211. Surrender of certificate of title — issuance of salvage certificate — salvage retitling requirements.** (1) ~~An~~ *When an* insurer

~~acquiring~~ *acquires* ownership of a motor vehicle that is less than 15 years of age and that ~~the insurer determines~~ *has been determined* to be a salvage vehicle*, the insurer* shall ~~surrender the certificate of title to the department within 15 days after acquiring the certificate of title. If the insurer has not sold the salvage vehicle prior to the time of surrendering the certificate of title, the insurer shall~~ apply for a salvage certificate on a form prescribed by the department. *The application must be accompanied by a certificate of title assigned to the insurer unless the application indicates that the insurer was unable to obtain the certificate of title after making at least two attempts to do so following oral or written acceptance by the owner of the salvage vehicle of the settlement offer for the salvage vehicle.* If the certificate of title *or electronic record of title maintained by the department* names one or more holders of a perfected security interest in the motor vehicle, the insurer shall secure and deliver to the department a release from each secured party of the secured interest.

(2) ~~Upon receipt of a properly executed certificate of title and a salvage certificate application from an insurer, the~~ *The* department shall issue a salvage certificate to the insurer within 5 working days of the date of receipt of the application. Upon receipt of a salvage certificate issued by the department, an insurer may possess, retain, transport, sell, transfer, or otherwise dispose of the salvage vehicle. The salvage certificate is prima facie evidence of ownership of a salvage vehicle.

(3) If the insurer ~~sells~~ *elects to sell* a salvage vehicle *before a salvage certificate is obtained under subsections (1) and (2),* ~~within the 15-day period established in subsection (1) prior to surrendering the certificate of title,~~ the insurer shall complete a salvage receipt on a form prescribed by the department. The insurer shall deliver the original salvage receipt to the salvage vehicle purchaser only after ~~obtaining~~ a *release has been obtained from each secured party of any security interest in the salvage vehicle* ~~clear title and lien release~~. ~~Prior to disposing of the salvage vehicle, the salvage vehicle purchaser shall apply for a salvage certificate by completing the salvage receipt and submitting it to the department.~~ The insurer shall *then* deliver *to the department* a copy of the salvage receipt*, any security releases, and a certificate of title assigned to the insurer unless the insurer was unable to obtain the certificate of title after making at least two attempts to do so following oral or written acceptance by the owner of the salvage vehicle of the settlement offer for the salvage vehicle* ~~with the surrendered certificate of title to the department~~. Upon *submission of the original salvage* receipt ~~of the certificate of title from the insurer and the application from~~ *by* the salvage vehicle purchaser, the department shall issue a salvage certificate to the salvage vehicle purchaser that is prima facie evidence of ownership. *A salvage certificate must be obtained before the salvage vehicle purchaser disposes of the salvage vehicle.*

(4) If an insurer determines that a salvage vehicle will remain with the owner after an agreed settlement, the insurer shall notify the department of the settlement on a form prescribed by the department. Upon receipt of the notice, the department may require the owner to surrender the certificate of title in compliance with this part, regardless of whether ownership of the salvage vehicle was obtained in a jurisdiction not requiring the surrender of the certificate of title or a comparable ownership document.

(5) At the time of surrender of a certificate of title for a salvage vehicle not acquired by an insurer, the department shall issue a salvage certificate to the owner. Upon receipt of a salvage certificate issued by the department to a noninsurer, the owner may possess, retain, transport, sell, transfer, or

otherwise dispose of the salvage vehicle. A salvage certificate is prima facie evidence of ownership of a salvage vehicle.

(6) A fee of $5 must be paid to the department for the issuance of a salvage certificate.

(7) A salvage vehicle owned by or in the inventory of a motor vehicle wrecking facility on October 1, 1991, is exempt from the provisions of this section if the owner of the facility has complied with the provisions of 61-3-225."

Approved March 29, 2013

# CHAPTER NO. 117

[HB 422]

AN ACT REVISING THE PROCESS FOR THE PAYMENT AND REIMBURSEMENT OF ABANDONED VEHICLE REMOVAL CHARGES; AND AMENDING 61-12-401, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-12-401, MCA, is amended to read:

**"61-12-401. Taking vehicle into custody.** (1) The following law enforcement agencies may take into custody any motor vehicle found abandoned for a period of 48 hours or more on a public highway or for a period of 5 days or more on a city street, public property, or private property:

(a) the Montana highway patrol if the vehicle is upon the right-of-way of any public highway other than a county road;

(b) the sheriff of the county if the vehicle is upon the right-of-way of any county road;

(c) the city police if the vehicle is upon a city street.

(2) The Montana highway patrol, sheriff of the county, or city police may use their personnel, equipment, and facilities for the removal and storage of the vehicle or may hire other personnel, equipment, and facilities for those purposes.

*(3)* ~~The~~ *If the Montana highway patrol, the* sheriff of the county*,* or the chief of police of the city in which the vehicle is being stored *has hired other personnel, equipment, and facilities to remove and store a vehicle, the Montana highway patrol, sheriff, or chief of police shall either:*

*(a) pay the person hired to remove the vehicle an amount not to exceed the amount for a removal charge established by rules adopted by the department of environmental quality and* may request reimbursement of the hired removal charge from the motor vehicle recycling and disposal program of the department of environmental quality in an amount and manner established by rules adopted by the department of environmental quality for this purpose*; or*

*(b) authorize the person hired to remove the vehicle to submit directly to the department of environmental quality a claim for payment to be made directly to the person hired to remove the vehicle*.

~~(3)~~*(4)* (a) At the request of the owner or person in lawful possession or control of the private property, the sheriff of the county in which the vehicle is located or the city police of the city in which the vehicle is located may remove and hold it in the manner and upon the conditions provided in subsections (1) and (2).

(b) A private landowner owning property considered to be part of ways of this state open to the public, as defined in 61-8-101, who can demonstrate

meeting the 5-day waiting period in subsection (1) by calling one of the law enforcement agencies listed in subsection (1) at the start of the 5-day period may remove the abandoned vehicle within the conditions provided for in subsections (1) and (2)."

Approved March 29, 2013

# CHAPTER NO. 118

[SB 2]

AN ACT ELIMINATING THE REQUIREMENTS THAT THE OFFICE OF PUBLIC INSTRUCTION REPORT ON AT-RISK STUDENTS AND ON THE AMERICAN INDIAN ACHIEVEMENT GAP IN 2010 AND REQUIRING EACH REPORT ON A BIENNIAL BASIS; ELIMINATING THE DISCRETIONARY BIENNIAL REPORT OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION; AND AMENDING SECTIONS 20-3-105, 20-9-328, AND 20-9-330, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-3-105, MCA, is amended to read:

**"20-3-105. Administrative powers and duties.** In administering the affairs of the office, the superintendent of public instruction has the power and it is the superintendent's duty to:

(1) keep a record of official acts and all documents applicable to the administration of the office, preserve all official reports submitted to the superintendent for the period required by law, and surrender them to the superintendent's successor at the expiration of the term;

(2) preserve all books, educational media, instructional equipment, and any other articles of educational interest and value that come into the superintendent's possession and surrender them to the superintendent's successor at the expiration of the term;

(3) cause the printing and distribution of all reports and forms necessary for the proper conduct of business by a district or school in the manner prescribed by the provisions of this title;

(4) provide and keep an official seal of the superintendent of public instruction by which official acts must be authenticated;

(5) if considered necessary, cause the printing of a complete and updated volume of the school laws of the state, which must be offered and sold at cost of the printing and shipping to any school official or other person;

(6) whenever a replacement volume is not printed under the provisions of subsection (5), cause the printing of a cumulative supplement to the most recent volume of school laws immediately after the conclusion of any session of the legislature at which new school laws or amendments to the school laws were adopted. It must be offered and sold at cost of the printing and shipping to any school official or other person.

~~(7) if considered necessary, publish a biennial report of the superintendent of public instruction;~~

~~(8)~~*(7)* counsel with and advise county superintendents on matters involving the welfare of the schools and, when requested, give a county superintendent a written answer to any question concerning school law;

~~(9)~~*(8)* call an annual meeting of the county superintendents when considered advisable;

~~(10)~~*(9)* as far as practicable, address public assemblies on subjects pertaining to education in Montana; and

~~(11)~~*(10)* faithfully work in all practical and possible ways for the welfare of the public schools of the state."

**Section 2.** Section 20-9-328, MCA, is amended to read:

**"20-9-328. At-risk student payment.** (1) The state shall provide an at-risk student payment to public school districts, as defined in 20-6-101 and 20-6-701, for at-risk students, as defined in 20-1-101 and referred to in 20-9-309.

(2) The at-risk student payment must be distributed to public school districts by the office of public instruction in the same manner that the office of public instruction allocates the funds received under 20 U.S.C. 6332, et seq. The office of public instruction shall prorate payments to districts based upon the available appropriation.

~~(3) On or before September 15, 2010, the office of public instruction shall report to the governor and the legislature on the change in status of standardized test scores, graduation rates, and drop-out rates of at-risk students using fiscal year 2006 data as a baseline.~~

*(3) On or before September 15 of even-numbered years, the office of public instruction shall report to the governor and the legislature on the change in status of standardized test scores, graduation rates, and drop-out rates of at-risk students.*"

**Section 3.** Section 20-9-330, MCA, is amended to read:

**"20-9-330. American Indian achievement gap payment.** (1) The state shall provide an American Indian achievement gap payment to public school districts, as defined in 20-6-101 and 20-6-701, for the purpose of closing the educational achievement gap that exists between American Indian students and non-Indian students.

(2) (a) The American Indian achievement gap payment is calculated as provided in 20-9-306, using the number of American Indian students enrolled in the district based on the count of regularly enrolled students on the first Monday in October of the prior school year as reported to the office of public instruction.

(b) A school district may not require a student to disclose the student's race.

(3) The district shall deposit the payment in the general fund of the district.

~~(4) On or before September 15, 2010, the office of public instruction shall report to the governor and the legislature on the change in status of standardized test scores, graduation rates, and drop-out rates of American Indian students using fiscal year 2006 data as a baseline.~~

*(4) On or before September 15 of even-numbered years, the office of public instruction shall report to the governor and the legislature on the change in status of standardized test scores, graduation rates, and drop-out rates of American Indian students.*"

Approved March 29, 2013

## CHAPTER NO. 119

[SB 34]

AN ACT CREATING THE UNCLAIMED LIFE INSURANCE BENEFITS ACT; PROVIDING THAT UNCLAIMED DEATH BENEFITS ESCHEAT TO THE STATE OF MONTANA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 6] may be cited as the "Unclaimed Life Insurance Benefits Act".

**Section 2. Purpose.** The purposes of [sections 1 through 6] are to require recognition of the escheat or unclaimed property statutes of Montana and to require complete and proper disclosure, transparency, and accountability relating to any method of payment for life insurance death benefits regulated by the commissioner.

**Section 3. Applicability.** (1) [Sections 1 through 6] apply to life insurance policies, annuity contracts, certificates under a life insurance policy or annuity contract, or certificates issued to a fraternal benefit society under which benefits are payable upon the death of the insured.

(2) [Sections 1 through 6] may not be construed to limit any agreement by the commissioner with a company regarding unclaimed life insurance benefits.

(3) For the purposes of [sections 1 through 6], the term "annuity contract" does not include an annuity used to fund an employment-based retirement plan or program when the insurer is not committed by terms of the annuity contract to pay death benefits to the beneficiaries of specific plan participants.

**Section 4. Definitions.** As used in [sections 1 through 6], the following definitions apply:

(1) (a) "Certificate under a life insurance policy" means a certificate of life insurance that provides a death benefit.

(b) The term does not include a certificate of life insurance that provides a death benefit under:

(i) an employee benefit plan that is subject to the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.;

(ii) any federal employee benefit program;

(iii) a policy or certificate used to fund a preneed funeral contract or prearrangement; or

(iv) a policy or certificate of credit life insurance or accidental death insurance.

(2) "Death master file" means the social security administration's death master file or any other database or service at least as comprehensive as the social security administration's death master file used for determining that a person has reportedly died.

(3) "Match" means a search of the death master file that results in a match of the social security number or the name and date of birth of an insured, annuitant, or retained asset account owner.

(4) "Policy" means a policy that provides a death benefit. The term does not include a policy that provides a death benefit under:

(a) an employee benefit plan that is subject to the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.;

(b) any federal employee benefit program;

(c) a policy or certificate of insurance used to fund a preneed funeral contract or prearrangement;

(d) a policy or certificate of credit life insurance or accidental death insurance; or

(e) a policy issued to a group master policyholder for which the insurer does not provide recordkeeping services.

**Section 5. Insurer conduct.** (1) An insurer shall perform a comparison of life insurance policies, annuity contracts, and retained asset accounts that are in force for its insureds against a death master file on at least a semiannual basis to identify potential matches of its insureds. For any potential matches, the insurer shall within 90 days:

(a) make a reasonable effort, documented by the insurer, to confirm the death of the insured, annuity contract holder, or retained asset account holder; and

(b) determine whether benefits are due in accordance with the applicable policy or contract.

(2) If benefits are due in accordance with the applicable policy or contract, the insurer shall:

(a) use reasonable efforts, documented by the insurer, to locate the beneficiary; and

(b) provide the appropriate claims forms or instructions to the beneficiary to make a claim, including the requirement to provide an official death certificate, if applicable under the policy or contract.

(3) With respect to group life insurance, an insurer is required to confirm the possible death of an insured when the insurer maintains at least the following information with regard to those covered under a policy or contract:

(a) social security number or name and date of birth;

(b) beneficiary designation information;

(c) coverage eligibility;

(d) benefit amount; and

(e) premium payment status.

(4) To the extent permitted by law, an insurer may disclose minimum necessary personal information about an insured or beneficiary to a person the insurer reasonably believes may be able to assist the insurer in locating the beneficiary or a person otherwise entitled to payment of claim proceeds.

(5) An insurer or its service provider may not charge insureds, account holders, or beneficiaries for any fees or costs associated with a search or verification conducted pursuant to this section.

(6) The benefits from a life insurance policy, an annuity contract, or a retained asset account, plus any applicable accrued interest, must be first payable to the designated beneficiary. In the event the beneficiary cannot be found, the benefits escheat to the state as unclaimed property pursuant to Title 70, chapter 9, part 8.

(7) If claim proceeds are presumed abandoned pursuant to 70-9-803, the insurer shall notify the department of revenue that:

(a) the beneficiary of a life insurance policy, annuity contract, or retained asset account has not submitted a claim with the insurer; and

(b) the insurer has been unable, after reasonable efforts documented by the insurer, to contact the beneficiary.

(8) In addition to giving notice to the department of revenue, the insurer shall immediately submit the unclaimed life insurance or annuity contract benefits or the unclaimed retained asset accounts, plus any applicable accrued interest, to the department of revenue.

**Section 6. Unfair trade practices.** A violation of the provisions of [section 5] by an insurer constitutes an unfair method of competition or a deceptive act or practice in the business of insurance as provided in Title 33, chapter 18, part 2.

**Section 7. Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 33, chapter 15, and the provisions of Title 33, chapter 15, apply to [sections 1 through 6].

**Section 8. Effective date.** [This act] is effective January 1, 2014.

Approved March 29, 2013

# CHAPTER NO. 120

[SB 49]

AN ACT ELIMINATING CERTAIN REPORTS TO THE LEGISLATIVE FISCAL ANALYST AND THE LEGISLATIVE FINANCE COMMITTEE; REQUIRING THAT CERTAIN REPORTS BE PROVIDED IN AN ELECTRONIC FORMAT; REDIRECTING CERTAIN REPORTS FROM THE LEGISLATIVE FINANCE COMMITTEE TO THE LEGISLATIVE FISCAL ANALYST AND REQUIRING THE LEGISLATIVE FISCAL ANALYST TO PRESENT CONCERNS ON THOSE REPORTS TO THE LEGISLATIVE FINANCE COMMITTEE; AMENDING SECTION 2, CHAPTER 435, LAWS OF 2009; AMENDING SECTIONS 2-17-101, 5-12-302, 17-1-102, 17-1-505, 17-2-107, 17-2-304, 17-5-820, 17-7-140, 17-8-101, 33-22-1514, 39-71-2363, 47-1-201, 50-4-805, 53-6-110, 53-21-702, 61-2-109, 75-1-1101, 85-1-605, AND 90-6-703, MCA; REPEALING SECTION 17-2-111, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2, Chapter 435, Laws of 2009, is amended to read:

**"Section 2. Appropriations and authorizations.** (1) All business application systems funded under this section must have a plan approved by the chief information officer for the design, definition, creation, storage, and security of the data associated with the application system. The security aspects of the plan must address but are not limited to authentication and granting of system privileges, safeguards against unauthorized access to or disclosure of sensitive information, and, consistent with state records retention policies, plans for the removal of sensitive data from the system when it is no longer needed. It is the intent of this subsection that specific consideration be given to the potential sharing of data with other state agencies in the design, definition, creation, storage, and security of the data

(2) Funds may not be released for the project until the chief information officer and budget director approve the plans described in subsection (1).

(3) The following money is appropriated to the department of administration to be used only for the indicated information technology capital projects:

| Agency/Project | LRITP | State Special Revenue | Federal Special Revenue | Total |
|---|---|---|---|---|
| DEPARTMENT OF REVENUE | | | | |
| Efficiency through Imaging | 3,366,178 | | | 3,366,178 |
| DEPARTMENT OF LABOR AND INDUSTRY | | | | |
| Building Standards | | 2,400,000 | | 2,400,000 |

| | | | | |
|---|---|---|---|---|
| Licensing Standards | | 2,250,000 | | 2,250,000 |
| Unemployment Insurance | | | | |
| Tax Modernization | | 16,735,567 | 3,000,000 | 19,735,567 |
| DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES | | | | |
| Medicaid Management Information | | | | |
| System Replacement | 3,500,000 | | 62,000,000 | 65,500,000 |
| SECRETARY OF STATE | | | | |
| Information Management System | 1,500,000 | | | 1,500,000 |

(4) The projects for which funds are appropriated to the department of public health and human services in [section 3] and this section and those projects authorized in section 14, Chapter 3, Special Laws of May 2007, are authorized for the transfer of appropriations and authority within the long-range information technology fund type and among department of public health and human services projects. The projects for which funds are appropriated to the department of public health and human services in [section 3] and this section and those projects authorized in section 14, Chapter 3, Special Laws of May 2007, are authorized for the transfer of appropriations and authority within the federal special revenue fund type and among department of public health and human services projects. ~~The department of public health and human services shall report changes to appropriations and authority related to the information technology projects in section 14, Chapter 3, Special Laws of May 2007, and in [section 3] and this section to the interim legislative finance committee upon occurrence.~~

(5) The department of labor and industry is authorized to transfer appropriations between federal and state special revenue funds for purposes of funding the unemployment insurance tax modernization project. To reduce state risk, a scoring preference for bidders of not less than 10% of the total scoring for the request for proposals for the unemployment insurance tax modernization project must be established and may be given only to vendors who have installed in at least one other state a substantially similar project, that meets all federal department of labor reporting requirements. In responding to the request for proposals, each vendor shall identify in what states the vendor's substantially similar project has been installed, how long it has been in production, and whether the project meets all federal department of labor reporting requirements.

(6) For the item Medicaid Management Information System Replacement in subsection (3), the department of public health and human services shall provide a work plan with milestones, goals, and measures to guide the medicaid management information system replacement to the Legislative Finance Committee at its June 2009 meeting. At each legislative finance committee meeting, the department shall provide an update on its activities and progress toward achieving elements of the work plan in a format developed in conjunction with the legislative finance committee. To reduce state risk, a vendor who successfully bids on the medicaid management information system replacement project must have experience, proven performance, corporate resources, and corporate qualifications in large-scale data processing system development along with health care claims processing experience in system planning, design, development, implementation, and operation. In responding to the request for proposals, each vendor shall identify whether the vendor's proposed solution is substantially similar to a project that has been installed in another state, how

long the project has been in production, and whether the project has been approved by the centers for medicare and medicaid services."

**Section 2.** Section 2-17-101, MCA, is amended to read:

**"2-17-101. Allocation of space — leasing — definition.** (1) The department of administration shall determine the space required by state agencies other than the university system and shall allocate space in buildings owned or leased by the state, based on each agency's need. To efficiently and effectively allocate space, the department shall identify the amount, location, and nature of space used by each agency, including summary information on average cost per square foot for each municipality, and report this to the office of budget and program planning and to the legislative fiscal analyst by September 1 of each even-numbered year. *The report must be provided in an electronic format.*

(2) An agency requiring additional space shall notify the department. The department, in consultation with the agency, shall determine the amount and nature of the space needed and locate space within a building owned or leased by the state, including buildings in Helena and in other areas, to meet the agency's requirements. If space is not available in a building owned or leased by the state, the department shall locate space to be leased in an appropriate existing building or a build-to-lease building, including buildings in Helena and in other areas, or recommend alternatives to leasing, such as remodeling or exchanging space with another agency. A state agency may not lease, rent, or purchase real property without prior approval of the department.

(3) (a) The location of the chambers for the house of representatives must be determined in the sole discretion of the house of representatives. The location of the chambers for the senate must be determined in the sole discretion of the senate.

(b) Subject to 2-17-108, the department, with the advice of the legislative council, shall allocate other space for the use of the legislature, including but not limited to space for committee rooms and legislative offices.

(4) The department shall consolidate the offices of state agencies in a single, central location within a municipality whenever the consolidation would result in a cost savings to the state while permitting sufficient space and facilities for the agencies. The department may purchase, lease, or acquire, by exchange or otherwise, land and buildings in a municipality to achieve consolidation. Offices of the law enforcement services division and motor vehicle division of the department of justice are exempted from consolidation.

(5) Any lease for more than 40,000 square feet or for a term of more than 20 years must be submitted as part of the long-range building program and approved by the legislature before the department of administration may proceed with the lease. Multiple leases in the same building entered into within any 60-day period are to be aggregated for purposes of this threshold calculation. When immediate relocation of agency employees is required due to a public exigency, the requirements of this subsection do not apply, but the new lease must be reported as required by subsection (1).

(6) The department shall include language in every lease providing that if funds are not appropriated or otherwise made available to support continued performance of the lease in subsequent fiscal periods, the lease must be canceled.

(7) "Public exigency" means that due to unforeseen circumstances a facility occupied by state employees is uninhabitable due to immediate conditions that adversely impact the health or safety of the occupants of the facility."

**Section 3.** Section 5-12-302, MCA, is amended to read:

**"5-12-302. Fiscal analyst's duties.** The legislative fiscal analyst shall:

(1) provide for fiscal analysis of state government and accumulate, compile, analyze, and furnish information bearing upon the financial matters of the state that is relevant to issues of policy and questions of statewide importance, including but not limited to investigation and study of the possibilities of effecting economy and efficiency in state government;

(2) estimate revenue from existing and proposed taxes;

(3) analyze the executive budget and budget requests of selected state agencies and institutions, including proposals for the construction of capital improvements;

(4) make the reports and recommendations that the legislative fiscal analyst considers desirable to the legislature and make reports and recommendations as requested by the legislative finance committee and the legislature;

(5) assist committees of the legislature and individual legislators in compiling and analyzing financial information; ~~and~~

(6) assist the revenue and transportation interim committee in performing its revenue estimating duties~~.~~*; and*

*(7) review all reports submitted to the legislative fiscal analyst and notify the legislative finance committee of any concerns the fiscal analyst identifies in a report.*"

**Section 4.** Section 17-1-102, MCA, is amended to read:

**"17-1-102. Uniform accounting system and expenditure control.** (1) The department shall establish a system of financial control so that the functioning of the various agencies of the state may be improved, duplications of work by different state agencies and employees may be eliminated, public service may be improved, and the cost of government may be reduced.

(2) The department shall prescribe and install a uniform accounting and reporting system for all state agencies and institutions, reporting the receipt, use, and disposition of all public money and property in accordance with generally accepted accounting principles.

(3) The uniform accounting and reporting system must contain three levels of expenditure. The first level must include general categories, such as personal services, operating expenses, equipment, capital outlay, local assistance, grants, benefits and claims, transfers, and debt service. The second level of expenditure must include specific categories of expenditures within each first-level category. The third level of expenditure must include specific items of expenditure within each category of the second level.

(4) All state agencies, including units of the university system but excluding community colleges, shall input all necessary transactions to the accounting system prescribed in subsection (2) before the accounts are closed at the end of the fiscal year in order to present the receipt, use, and disposition of all money and property for which the agency is accountable in accordance with generally accepted accounting principles, except that for budgetary control purposes, encumbrances that are required by generally accepted accounting principles to be reported as a reservation of fund balance must be recorded as expenditures

and liabilities on the accounting records in accordance with the following requirements:

(a) Goods and services, grants, and local assistance that are paid for with the general fund, in whole or in part, may be encumbered. The general fund encumbrances must be reviewed by the department, and a specific extension plan must be presented by the encumbering agency to the department prior to the fiscal yearend. If a valid extension plan is not received and approved, the department shall delete the encumbrance at fiscal yearend. The department shall present a fiscal yearend report to the office of budget and program planning and to the legislative ~~finance committee~~ *fiscal analyst* on each general fund encumbrance remaining at fiscal yearend. *The report must be provided in an electronic format.*

(b) Nongeneral fund encumbrances also require a valid extension plan approved by the department at the end of each fiscal year. After 3 years, approved extensions must be included by the department in its fiscal yearend report to the office of budget and program planning and to the legislative finance committee."

**Section 5.** Section 17-1-505, MCA, is amended to read:

**"17-1-505. Review of dedicated revenue provisions.** (1) The legislature recognizes that dedicated revenue provisions are subject to review by:

(a) the office of budget and program planning in the development and implementation of the executive budget and analysis of legislation;

(b) the legislative fiscal division in analyzing the executive budget;

(c) the legislative services division in drafting legislation;

(d) the legislative auditor in auditing agencies;

(e) the department of administration in performing the functions provided for in 17-2-106 ~~and 17-2-111~~; and

(f) the department of revenue in reviewing revenue sources and determining distributions to local governments.

(2) To avoid unnecessary and unjustified use of dedicated revenue provisions, the entities listed in subsection (1) shall, in the course of current duties, consider the principles in 17-1-507 and the criteria listed in this subsection for each new or existing dedicated revenue provision. If an entity referred to in subsection (1) determines that the use of a dedicated revenue provision is not justified, the use or proposed use must be reported to the legislative fiscal analyst. ~~The legislative fiscal analyst shall maintain a list of unjustified dedicated revenue provisions and shall report on the unjustified dedicated revenue provisions to the legislative finance committee no later than October 31 of the year preceding a regular legislative session.~~ A dedicated revenue provision should not give a program or activity an unfair advantage for funding. The expenditures from a dedicated revenue provision must be based on requirements for meeting a legislatively established outcome. Statutorily mandated programs or activities funded through dedicated revenue provisions from general revenue sources must be reviewed to the same extent as programs or activities funded from the general fund. The use of a dedicated revenue provision may be justified if it satisfies one or more of the following:

(a) The program or activity funded provides direct benefits for those who pay the dedicated tax, fee, or assessment, and the tax, fee, or assessment is commensurate with the costs of the program or activity.

(b) The use of the dedicated revenue provision provides special information or other advantages that could not be obtained if the revenue were allocated to the general fund.

(c) The dedicated revenue provision provides program funding at a level equivalent to the expenditures established by the legislature.

(d) The dedicated revenue provision involves collection and allocation formulas that are appropriate to the present circumstances and current priorities in state government.

(e) The dedicated revenue provision does not impair the legislature's ability to scrutinize budgets, control expenditures, and establish priorities for state spending.

(f) The dedicated revenue provision results in an appropriate projected ending fund balance.

(g) The dedicated revenue provision fulfills a continuing, legislatively recognized need.

(h) The dedicated revenue provision does not result in accounting or auditing inefficiency.

(3) A local government dedicated revenue provision may be justified if it satisfies any of the following:

(a) The program or activity funded provides direct benefits or services for those who pay the dedicated tax, fee, or assessment, and the tax, fee, or assessment is commensurate with the costs of the program or activity.

(b) The provision provides necessary information or other advantages that could not be obtained if the revenue were allocated to the state general fund.

(c) The provision involves collection and allocation formulas that are appropriate to the present circumstances and current priorities of state and local government.

(d) The provision does not impair the ability of the legislature to scrutinize budgets, control expenditures, and establish state spending priorities.

(e) The provision fulfills a legislatively recognized continuing need.

(f) The provision does not result in accounting or auditing inefficiency or unnecessary complexity and instability of local government funding structures."

**Section 6.** Section 17-2-107, MCA, is amended to read:

**"17-2-107. Accurate accounting records and interentity loans.** (1) The department shall record receipts and disbursements for treasury funds and for accounting entities within treasury funds and shall maintain records in a manner that reflects the total cash and invested balance of each fund and each accounting entity. The department shall adopt the necessary procedures to ensure that interdepartmental or intradepartmental transfers of money or loans do not result in inflation of figures reflecting total governmental costs and revenue.

(2) (a) Except as provided in 77-1-108 and subject to 17-2-105, when the expenditure of an appropriation from a fund designated in 17-2-102(1) through (3) is necessary and the cash balance in the accounting entity from which the appropriation was made is insufficient, the department may authorize a temporary loan, bearing no interest, of unrestricted money from other accounting entities if there is reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is recorded in the state accounting records. An accounting entity receiving a loan or an

accounting entity from which a loan is made may not be so impaired that all proper demands on the accounting entity cannot be met even if the loan is extended.

(b) (i) When an expenditure from a fund or subfund designated in 17-2-102(4) is necessary and the cash balance in the fund or subfund from which the expenditure is to be made is insufficient, the commissioner of higher education may authorize a temporary loan, bearing interest as provided in subsection (4) of this section, of money from the agency's other funds or subfunds if there is reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is recorded in the state accounting records. A fund or subfund receiving a loan or from which a loan is made may not be so impaired that all proper demands on the fund or subfund cannot be met even if the loan is extended.

(ii) One accounting entity within each fund or subfund designated in 17-2-102(4) must be established for the sole purpose of recording loans between the funds or subfunds. This accounting entity is the only accounting entity within each fund or subfund that may receive a loan or from which a loan may be made.

(c) A loan made under subsection (2)(a) or (2)(b) must be repaid within 1 calendar year of the date on which the loan is approved unless it is extended under subsection (3) or by specific legislative authorization.

(3) Under unusual circumstances, the director of the department or the board of regents may grant one extension for up to 1 year for a loan made under subsection (2)(a) or (2)(b). The director or board shall prepare a written justification and proposed repayment plan for each loan extension authorized and shall furnish a copy of the written justification and proposed repayment plan to the house appropriations and senate finance and claims committees at the next legislative session.

(4) Any loan from the current unrestricted subfund to funds designated in 17-2-102(4)(a)(iv) and (4)(b) through (4)(f) must bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investments' short-term investment pool.

(5) If for 2 consecutive fiscal yearends a loan or an extension of a loan has been authorized to the same accounting entity as provided in subsection (2) or (3), the department or the commissioner of higher education shall submit to the legislative ~~finance committee~~ *fiscal analyst* by September 1 of the following fiscal year a written report containing an explanation as to why the second loan or extension was made, an analysis of the solvency of the accounting entity or accounting entities within the university fund or subfund, and a plan for repaying the loans. *The report must be provided in an electronic format.*

(6) If for 2 consecutive fiscal yearends an accounting entity in a fund or subfund designated in 17-2-102(4) has a negative cash balance, the commissioner of higher education shall submit to the legislative ~~finance committee~~ *fiscal analyst* by September 1 of the following fiscal year a written report containing an explanation as to why the accounting entity has a negative cash balance, an analysis of the solvency of the accounting entity, and a plan to address any problems concerning the accounting entity's negative cash balance or solvency. *The report must be provided in an electronic format.*

(7) (a) An accounting entity in a fund designated in 17-2-102(1) through (3) may not have a negative cash balance at fiscal yearend. The department may, however, allow a fund type within each agency to carry a negative balance at any

point during the fiscal year if the negative cash balance does not exist for more than 7 working days.

(b) (i) Except as provided in subsection (7)(b)(ii) of this section, a unit of the university system shall maintain a positive cash balance in the funds and subfunds designated in 17-2-102(4).

(ii) If a fund or subfund inadvertently has a negative cash balance, the department may allow the fund or subfund to carry the negative cash balance for no more than 7 working days. If the negative cash balance exists for more than 7 working days, a transaction may not be processed through the statewide accounting system for that fund or subfund.

(8) Notwithstanding the provisions of subsections (2) through (4), the department may authorize loans to accounting entities in the federal and state special revenue funds with long-term repayment whenever necessary because of the timing of the receipt of agreed-upon reimbursements from federal, private, or other governmental entity sources for disbursements made. If possible, the loans must be made from funds other than the general fund. The department may approve the loans if the requesting agency can demonstrate that the total loan balance does not exceed total receivables from federal, private, or other governmental entity sources and receivables have been billed on a timely basis. The loan must be repaid under terms and conditions that may be determined by the department or by specific legislative authorization.

(9) A loan may not be authorized under this section to any fund or accounting entity that is owed federal or other third-party funds unless the requesting agency certifies to the agency approving the loan that it has and will continue to bill the federal government or other third party for the requesting agency's share of costs incurred in the fund or accounting entity on the earliest date allowable under federal or other third-party regulations applicable to the program. The requesting agency shall recertify its timely billing status to the agency that approved the loan at least monthly during the term of the loan. If at any time the requesting agency fails to recertify the timely billing, the agency that approved the loan shall cancel the loan and return the money to its original source."

**Section 7.** Section 17-2-304, MCA, is amended to read:

**"17-2-304. Reports required.** (1) The approving authority for a state agency shall annually report in writing to the legislative ~~finance committee~~ *fiscal analyst* by September 15:

(a) each state agency that had a cash balance in a state charge for services fund contrary to the limitation provided in 17-2-302(1) during the previous 12 months;

(b) the facts certified for each state agency by the approving authority pursuant to 17-2-302(2);

(c) each state agency that has complied with the requirements of 17-2-303 and the circumstances of the agency's compliance;

(d) each state agency that has not complied with 17-2-303 and the circumstances of the agency's noncompliance; ~~and~~

(e) all expenditures made by the state agency in the preceding 12 months that are related to the production and distribution of public service announcements~~.~~*; and*

*(f) the report must be provided in an electronic format.*

(2) The director of the department of administration shall report to the legislature at the time and in the manner required by 5-11-210 a list of each local

government entity that had a balance in a local charge for services fund contrary to the limitation provided by 17-2-302(1) or that failed to reduce the charge as provided in 17-2-303, or both, during the previous 12 months."

**Section 8.** Section 17-5-820, MCA, is amended to read:

**"17-5-820. Authorization of bonds.** (1) The board of examiners is authorized to issue and sell general obligation bonds in an amount not exceeding $20 million in accordance with the terms and in the manner required by Title 17, chapter 5, part 8, for the purpose of financing and acquiring infrastructure improvements as enumerated in 7-15-4288 for aerospace transportation and technology infrastructure development projects recommended by the department of commerce in accordance with the authority granted to the board by this section. The bonds are in addition to any other authorization to the board to issue and sell general obligation bonds and subject to the conditions set forth in this section.

(2) The department of commerce may request the board of examiners to issue the bonds for one or more specified projects in one or more series, but the total amount of bonds issued may not exceed $20 million. Bond proceeds must be appropriated to the department of commerce, and the department of commerce is authorized to acquire or construct the infrastructure improvements, to contract with the incorporated city or town, county, or city-county consolidated local government in which a project is located, to contract with an airport authority as defined in 67-1-101, a local port authority as described in 7-14-1101, or a regional port authority as described in 7-14-1102, to contract with a certified regional development corporation as defined in 90-1-116, or, upon a determination that it is in the best interest of the project, to contract with the developer of an approved project for the acquisition or construction of the infrastructure improvement. The plans and specifications for the infrastructure to be financed from the proceeds of the bonds must be prepared by an engineer or architect who is licensed and bonded in Montana, and the state must be named as an additional insured under any contract, performance bond, or other documents for the design of any improvements to be financed by the state. The plans and specifications must be reviewed and approved by the department of commerce after consultation with the architecture and engineering division of the department of administration. The design and acquisition or construction of the infrastructure for approved projects are not, with the exception of Title 18, chapter 2, part 4, subject to the public procurement requirements contained in Title 18. All construction contracts entered into for the construction of improvements to be financed under this section must name the state as an additional insured if the state is not otherwise party to the contract. All improvements financed with bond proceeds must be owned by the state, and the use must be governed by a development agreement between the state and the developer of the project. The agreement may provide for the lease or the use of the infrastructure at less than fair market value, taking into consideration the number of jobs to be created by the project, the salary range of the jobs, the amount of capital contributed by the developer, and the projected tax revenue to be received by the state and local governments from the project over the term of the lease or use agreement. The agreement must require the contractor to insure for liability and workers' compensation claims during construction and must provide the project developer with the right of first refusal for the purchase of any real property and improvements financed by the bonds at fair market value. Fair market value must be determined by a certified appraiser. For purposes of this section, state and local governments may not provide

telecommunications or other services in competition with private providers unless private providers cannot provide the services.

(3) It is the intent of the legislature that state individual and corporate income taxes and state property taxes generated by the aerospace transportation and technology infrastructure development projects will be at least equal to the projected amount of the debt service to be paid by the state for the bonds authorized by this section over the term of the bonds. Prior to requesting the board of examiners to issue the bonds, the department of commerce shall determine that the developer of a proposed project has the financial ability to implement the project based upon the audited financial statements of the developer. When requesting the board to issue the bonds, the department of commerce shall present ~~to the legislative finance committee and~~ to the department of administration for presentation to the board the following:

(a) evidence satisfactory to the board that the developer of each aerospace transportation and technology infrastructure development project has committed itself to locate its project in Montana; and

(b) a certificate signed by the director of the office of budget and program planning that the proposed project will, over the term of the bonds, generate state individual and corporate income taxes and state property taxes at least equal to the total aggregate amount of principal and interest on the bonds over the term of the bonds. In preparing the analysis for the report on the projected tax revenue from the project, the multiplier effect may be taken into account, using the number of jobs, the salary levels for the jobs, and the estimated date of hire for each position that the developer will commit to create as part of the development agreement. The development agreement must provide that if the developer has not created the total number of jobs at the estimated salaries by the date specified in the development agreement and assumed for purposes of meeting the projections, the state may terminate the lease or use of the improvements upon 30 days' notice. If the department of commerce is unable to enter into a new lease or use agreement for the improvements that is advantageous to the state, the state may sell the facility to the highest and best bidder and use the proceeds of the sale to redeem the outstanding bonds.

(4) In determining whether to recommend to the board of examiners that improvements should be constructed by the state from the proceeds of the bonds for a project, the department of commerce may take into consideration only the following factors:

(a) whether the project is eligible for financing;

(b) whether there is sufficient evidence to demonstrate the developer's ability to implement the project;

(c) the projected tax revenue report;

(d) whether the project as proposed and situated can obtain the necessary zoning, building, and environmental permits required; and

(e) whether the project is in the public interest.

(5) In recommending the amount of bonds to be issued for a qualified project, the department of commerce shall independently determine that the proposed estimated cost of the project is not in excess of what is required for the project and independently verify the projected costs of designing and constructing the improvements proposed to be financed exclusive of any development fee to the developer. The authorized bond proceeds must be used for projects on a first-come, first-served basis."

**Section 9.** Section 17-7-140, MCA, is amended to read:

**"17-7-140. Reduction in spending.** (1) (a) As the chief budget officer of the state, the governor shall ensure that the expenditure of appropriations does not exceed available revenue. Except as provided in subsection (2), in the event of a projected general fund budget deficit, the governor, taking into account the criteria provided in subsection (1)(b), shall direct agencies to reduce spending in an amount that ensures that the projected ending general fund balance for the biennium will be at least 1% of all general fund appropriations during the biennium. An agency may not be required to reduce general fund spending for any program, as defined in each general appropriations act, by more than 10% during a biennium. Departments or agencies headed by elected officials or the board of regents may not be required to reduce general fund spending by a percentage greater than the percentage of general fund spending reductions required for the total of all other executive branch agencies. The legislature may exempt from a reduction an appropriation item within a program or may direct that the appropriation item may not be reduced by more than 10%.

(b) The governor shall direct agencies to manage their budgets in order to reduce general fund expenditures. Prior to directing agencies to reduce spending as provided in subsection (1)(a), the governor shall direct each agency to analyze the nature of each program that receives a general fund appropriation to determine whether the program is mandatory or permissive and to analyze the impact of the proposed reduction in spending on the purpose of the program. An agency shall submit its analysis to the office of budget and program planning and shall at the same time provide a copy of the analysis to the legislative fiscal analyst. *The report must be submitted in an electronic format.* The office of budget and program planning shall review each agency's analysis, and the budget director shall submit to the governor a copy of the office of budget and program planning's recommendations for reductions in spending. The budget director shall provide a copy of the recommendations to the legislative fiscal analyst at the time that the recommendations are submitted to the governor and shall provide the legislative fiscal analyst with any proposed changes to the recommendations. *The recommendations must be provided in an electronic format.* The legislative finance committee shall meet within 20 days of the date that the proposed changes to the recommendations for reductions in spending are provided to the legislative fiscal analyst. The legislative fiscal analyst shall provide a copy of the legislative fiscal analyst's review of the proposed reductions in spending to the budget director at least 5 days before the meeting of the legislative finance committee. The committee may make recommendations concerning the proposed reductions in spending. The governor shall consider each agency's analysis and the recommendations of the office of budget and program planning and the legislative finance committee in determining the agency's reduction in spending. Reductions in spending must be designed to have the least adverse impact on the provision of services determined to be most integral to the discharge of the agency's statutory responsibilities.

(2) Reductions in spending for the following may not be directed by the governor:

(a) payment of interest and principal on state debt;

(b) the legislative branch;

(c) the judicial branch;

(d) the school BASE funding program, including special education;

(e) salaries of elected officials during their terms of office; and

(f) the Montana school for the deaf and blind.

(3) (a) As used in this section, "projected general fund budget deficit" means an amount, certified by the budget director to the governor, by which the projected ending general fund balance for the biennium is less than:

(i) 2% of the general fund appropriations for the second fiscal year of the biennium prior to October of the year preceding a legislative session;

(ii) 3/4 of 1% in October of the year preceding a legislative session;

(iii) 1/2 of 1% in January of the year in which a legislative session is convened; and

(iv) 1/4 of 1% in March of the year in which a legislative session is convened.

(b) In determining the amount of the projected general fund budget deficit, the budget director shall take into account revenue, established levels of appropriation, anticipated supplemental appropriations for school equalization aid, and anticipated reversions.

(4) If the budget director determines that an amount of actual or projected receipts will result in an amount less than the amount projected to be received in the revenue estimate established pursuant to 5-5-227, the budget director shall notify the revenue and transportation interim committee of the estimated amount. Within 20 days of notification, the revenue and transportation interim committee shall provide the budget director with any recommendations concerning the amount. The budget director shall consider any recommendations of the revenue and transportation interim committee prior to certifying a projected general fund budget deficit to the governor."

**Section 10.** Section 17-8-101, MCA, is amended to read:

**"17-8-101. Appropriation and disbursement of money from treasury.** (1) For purposes of complying with Article VIII, section 14, of the Montana constitution, money deposited in the general fund, the special revenue fund type (except money deposited in the treasury from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation), and the capital projects fund type, with the exception of refunds authorized in subsection (4), may be paid out of the treasury only on appropriation made by law.

(2) Subject to the provisions of subsection (8), money deposited in the enterprise fund type, debt service fund type, internal service fund type, private purpose trust fund type, agency fund type, and state special revenue fund from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation, may be paid out of the treasury:

(a) by appropriation; or

(b) under general laws, or contracts entered into in pursuance of law, permitting the disbursement if a subclass is established on the state financial system.

(3) The pension trust fund type is not considered a part of the state treasury for appropriation purposes. Money deposited in the pension trust fund type may be paid out of the treasury pursuant to general laws, trust agreement, or contract.

(4) Money paid into the state treasury through error or under circumstances such that the state is not legally entitled to retain it and a refund procedure is not otherwise provided by law may be refunded upon the submission of a verified claim approved by the department.

(5) Authority to expend appropriated money may be transferred from one state agency to another, provided that the original purpose of the appropriation is maintained. ~~The office of budget and program planning shall report semiannually to the legislative finance committee concerning all appropriations transferred under the provisions of this section.~~

(6) Fees and charges for services deposited in the internal service fund type must be based upon commensurate costs. The legislative auditor, during regularly scheduled audits of state agencies, shall audit and report on the reasonableness of internal service fund type fees and charges and on the fund equity balances.

(7) The creation of accounts in the enterprise fund or the internal service fund must be approved by the department, using conformity with generally accepted accounting principles as the primary approval criteria. The department shall report annually to the office of budget and program planning and the legislative ~~finance committee~~ *fiscal analyst* on the nature, status, and justification for all new accounts in the enterprise fund and the internal service fund. *The report must be provided in an electronic format.*

(8) Enterprise and internal service funds must be appropriated if they are used as a part of a program that is not an enterprise or internal service function and that otherwise requires an appropriation. An enterprise fund that is required by law to transfer money to the general fund or to any other appropriated fund is subject to appropriation. The payment of funds into an internal service fund must be authorized by law."

**Section 11.** Section 33-22-1514, MCA, is amended to read:

**"33-22-1514. Administration of association plan — rules.** (1) The association shall select one lead carrier to issue the association plan and the association portability plan. The board of directors of the association shall prepare appropriate specifications and bid forms and may solicit bids from licensed administrators and the members of the association for the purpose of selecting the lead carrier. The selection of the lead carrier must be based upon criteria established by the board of directors.

(2) The lead carrier shall perform all administrative and claims payment functions required by this section upon the commissioner's approval of the policy forms and contracts submitted. The lead carrier shall provide these services for a period of at least 3 years, unless a request to terminate is approved by the association and the commissioner. The association and the commissioner shall approve or deny a request to terminate within 90 days of the receipt of the request. A failure to make a final decision on a request to terminate within the specified period is considered an approval. The association shall invite submissions of policy forms from members of the association, including the lead carrier, 6 months prior to the expiration of each 3-year period. The association shall follow the procedure provided in subsection (1) in selecting a lead carrier for the subsequent 3-year period or, if a request to terminate is approved, on or before the end of the 3-year period.

(3) The lead carrier shall provide all eligible persons involved in the association plan and the association portability plan an individual certificate setting forth a statement as to the insurance protection to which the person is entitled, the method and place of filing claims, and to whom benefits are payable. The certificate must indicate that coverage was obtained through the association.

(4) The lead carrier shall submit to the association, the legislative ~~finance committee~~ *fiscal analyst*, and the commissioner on a semiannual basis a report

of the operation of the association plan and the association portability plan. *The report must be provided in an electronic format.* The association shall determine the specific information to be contained in the report prior to the effective date of the association plan and the association portability plan.

(5) The lead carrier shall pay all claims pursuant to this part and shall indicate that the claim was paid by the association plan or the association portability plan. Each claim payment must include information specifying the procedure involved if a dispute arises over the amount of payment.

(6) The lead carrier must be reimbursed from the association plan and the association portability plan premiums received for its direct and indirect expenses. Direct and indirect expenses include a prorated reimbursement for the portion of the lead carrier's administrative, printing, claims administration, management, and building overhead expenses, which are assignable to the maintenance and administration of the association plan and the association portability plan. The association shall approve cost accounting methods to substantiate the lead carrier's cost reports consistent with generally accepted accounting principles. Direct and indirect expenses may not include costs directly related to the original submission of policy forms prior to selection as the lead carrier.

(7) The lead carrier is, when carrying out its duties under this part, an independent contractor for the association and is individually liable for the lead carrier's actions, subject to the laws of this state."

**Section 12.** Section 39-71-2363, MCA, is amended to read:

**"39-71-2363. Agency law — submission of budget — annual report.** (1) The state fund is subject to state laws applying to state agencies, except as otherwise provided by law, and it is exempt from the provisions of The Legislative Finance Act in Title 5, chapter 12, and the provisions of Title 17, chapter 7, parts 1 through 4. The state fund may use the debt collection procedures provided in Title 17, chapter 4, part 1.

(2) (a) Except as provided in 2-15-2015, the executive director shall annually submit to the board for its approval an estimated budget of the entire expense of administering the state fund for the succeeding fiscal year, with due regard to the business interests and contract obligations of the state fund. A copy of the approved budget must be delivered to the governor and the legislature.

(b) Upon approval of the estimated budget for the succeeding fiscal year, the state fund shall, no later than October 1 of each year, submit the approved annual budget for review to the legislative ~~finance committee established under 5-12-201~~ *fiscal analyst. The budget must be submitted in an electronic format.*

(c) Dividends may not be included as administrative expenditures as provided in subsection (2)(a), but are a disbursement of excess surplus pursuant to 39-71-2323 after a determination by the state fund of income from operations.

(3) The board shall submit an annual financial report to the governor and to the legislature as provided in 5-11-210, indicating the business done by the state fund during the previous year and containing a statement of the estimated liabilities of the state fund as determined by an independent actuary."

**Section 13.** Section 47-1-201, MCA, is amended to read:

**"47-1-201. Office of state public defender — personnel — compensation — expenses — reports.** (1) There is an office of state public defender. The office must be located in Butte, Montana. The head of the office is the chief public defender, who is supervised by the commission.

(2) The chief public defender must be an attorney licensed to practice law in the state. The chief public defender is appointed by and serves at the pleasure of the commission. The position of chief public defender is exempt from the state classification and pay plan as provided in 2-18-103. The commission shall establish compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

(3) The chief public defender shall hire or contract for and supervise other personnel necessary to perform the function of the office of state public defender and to implement the provisions of this chapter, including but not limited to:

(a) the following personnel who are exempt from the state classification and pay plan as provided in 2-18-103:

(i) an administrative director, who must be experienced in business management and contract management;

(ii) a chief contract manager to oversee and enforce the contracting program;

(iii) a training coordinator, appointed as provided in 47-1-210;

(iv) deputy public defenders, as provided in 47-1-215;

(b) assistant public defenders; and

(c) other necessary administrative and professional support staff for the office.

(4) Positions established pursuant to subsections (3)(b) and (3)(c) are classified positions, and persons in those positions are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18.

(5) The following expenses are payable by the office if the expense is incurred at the request of a public defender:

(a) witness and interpreter fees and expenses provided in Title 26, chapter 2, part 5, and 46-15-116; and

(b) transcript fees, as provided in 3-5-604.

(6) If the costs to be paid pursuant to this section are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.

(7) The office may accept gifts, grants, or donations, which must be deposited in the account provided for in 47-1-110.

(8) The office shall provide assistance with the budgeting, reporting, and related administrative functions of the office of appellate defender as provided in 47-1-205.

(9) The chief public defender shall establish procedures to provide for the approval, payment, recording, reporting, and management of defense expenses paid pursuant to this section, including defense expenses paid for work performed by or for the office of appellate defender.

(10) (a) The office of public defender is required to report data for each fiscal year by September 30 of the subsequent fiscal year representing the caseload for the entire public defender system to the legislative ~~finance committee~~ *fiscal analyst*. The report must *be provided in an electronic format and* include unduplicated count data for all cases for which representation is paid for by the office of public defender, the number of new cases opened, the number of cases closed, the number of cases that remain open and active, the number of cases that remain open but are inactive, and the average number of days between case opening and closure for each case type.

(b) The office of public defender is required to report to the legislative ~~finance committee~~ *fiscal analyst* for each fiscal year by September 30 of the

subsequent fiscal year on the amount of funds collected as reimbursement for services rendered, including the number of cases for which a collection is made, the number of cases for which an amount is owed, the amount collected, and the amount remaining unpaid. *The report must be provided in an electronic format.*"

**Section 14.** Section 50-4-805, MCA, is amended to read:

**"50-4-805. Program expenditures — report to legislature.** (1) Subject to appropriation by the legislature, the department shall provide competitive grants in accordance with 50-4-806 and this section to community or tribal boards operating as a nonprofit entity in accordance with the Public Health Service Act, 42 U.S.C. 254b, to increase access to primary care and preventive health services for uninsured, underinsured, low-income, or underserved Montanans.

(2) Grants must be made each year to accomplish any of the following goals:

(a) to create and support new nonfederally funded community health centers with state funding for a maximum of 6 years or until federal funds are granted. Successful applicants for the state grants shall also apply for federally qualified health center look-alike status and federal community health center grants at the first available opportunity.

(b) to expand the medical, mental health, or dental services offered by existing federally qualified community health centers or other facilities that have received federally qualified health center look-alike status; and

(c) to provide one-time grants for capital expenditures to existing federally qualified community health centers and facilities with federally qualified health center look-alike status.

(3) The department shall contract with an entity that is able to:

(a) provide technical assistance to new and existing federally qualified community health centers in their efforts to apply for federal funds;

(b) assist new and existing centers in their efforts to expand services; and

(c) collect standardized data on the provision of services to low-income and uninsured Montanans.

(4) The department shall require the contractor to provide an annual report on the services it has provided, the data it has collected, and the status of applications for federal community health center funding.

(5) ~~(a) The department shall provide regular interim reports on the status of the program and program expenditures to the legislative finance committee and the children, families, health, and human services interim committee.~~

~~(b)~~ The department shall report to the legislature, as provided for in 5-11-210, the following information for each year of the biennium:

~~(i)~~*(a)* the status of the expenditures made pursuant to this part;

~~(ii)~~*(b)* the number of people served by the expenditure of funds; and

~~(iii)~~*(c)* the costs to the state of the services provided pursuant to this part."

**Section 15.** Section 53-6-110, MCA, is amended to read:

**"53-6-110. Report and recommendations on medicaid funding.** (1) As a part of the information required in 17-7-111, the department of public health and human services shall submit a report concerning medicaid funding for the next biennium. This report must include at least the following elements:

(a) analysis of past and present funding levels for the various categories and types of health services eligible for medicaid reimbursement;

(b) projected increased medicaid funding needs for the next biennium. These projections must identify the effects of projected population growth and demographic patterns on at least the following elements:

(i) trends in unit costs for services, including inflation;

(ii) trends in use of services;

(iii) trends in medicaid recipient levels; and

(iv) the effects of new and projected facilities and services for which a need has been identified in the state health care facilities plan.

(2) As an integral part of the report, the department of public health and human services shall present a recommendation of funding levels for the medicaid program. The recommendation need not be consistent with the state health care facilities plan.

(3) In making its appropriations for medicaid funding, the legislature shall specify the portions of medicaid funding anticipated to be allocated to specific categories and types of health care services.

(4) Beginning November 15 of each year through June 15 of the following year, the department of public health and human services shall provide to the legislative ~~finance committee~~ *fiscal analyst* monthly reports containing estimates of the cost for medicaid services and a budget status report for all department programs. The department shall also provide a fiscal yearend summary of medicaid costs and the department budget status report prior to the first legislative finance committee meeting following the end of the fiscal year. The reports must be presented in a format mutually agreed to by the legislative ~~finance committee~~ *fiscal analyst* and the department."

**Section 16.** Section 53-21-702, MCA, is amended to read:

**"53-21-702. Mental health care system — eligibility — services — advisory council.** (1) The department of public health and human services shall develop a delivery system of mental health care from providers or other entities that are able to provide administration or delivery of mental health services. The public mental health care system shall:

(a) include specific outcome and performance measures for the administration or delivery of a continuum of mental health services;

(b) provide for local advisory councils that shall report to and meet on a regular basis with the advisory council provided for in subsection (4);

(c) provide level-of-care appeals that are understandable and accessible; and

(d) provide a system for tracking children who need mental health services that are provided under substantive interagency agreements between state agencies responsible for addictive and mental disorders, foster care, children with developmental disabilities, special education, and juvenile corrections.

(2) The department may establish resource and income standards of eligibility for mental health services that are more liberal than the resource and income standards of eligibility for physical health services. The standards of eligibility for mental health services may provide for eligibility for households not eligible for medicaid with family income that does not exceed 160% of the federal poverty threshold or that does not exceed a lesser amount determined at the discretion of the department. The department may by rule specify under what circumstances deductions for medical expenses should be used to reduce countable family income in determining eligibility. The department may also adopt rules establishing fees, premiums, or copayments to be charged recipients

for services. The fees, premiums, or copayments may vary according to family income.

(3) The department shall establish the amount, scope, and duration of services to be provided under the program. Services for nonmedicaid-eligible individuals may be more limited than those services provided to medicaid-eligible individuals. Services to nonmedicaid-eligible individuals may include a pharmacy benefit.

(4) (a) The department shall form an advisory council, to be known as the mental health oversight advisory council, to provide input to the department in the development and management of any public mental health system. The advisory council is not subject to 2-15-122. The advisory council membership must include:

(i) one-half of the members as consumers of mental health services, including persons with serious mental illnesses who are receiving public mental health services, other recipients of mental health services, former recipients of public mental health services, and immediate family members of recipients of mental health services; and

(ii) advocates for consumers or family members of consumers, members of the public at large, providers of mental health services, legislators, and department representatives.

(b) The advisory council under this section may be administered so as to fulfill any federal advisory council requirements to obtain federal funds for this program.

(c) Geographic representation must be considered when appointing members to the advisory council in order to provide the widest possible representation.

~~(d) The advisory council shall provide a summary of each meeting and a copy of any recommendations made to the department to the legislative finance committee and any other designated appropriate legislative interim committee. The department shall provide the same committees with the department's rationale for not accepting or implementing any recommendation of the advisory council.~~"

**Section 17.** Section 61-2-109, MCA, is amended to read:

**"61-2-109. Emergency medical services grants.** The department of transportation shall report to the governor and the legislative ~~finance committee~~ *fiscal analyst* not later than November 1 of the year preceding a regular session of the legislature regarding emergency medical services grants that are awarded during each biennium. The report must *be provided in an electronic format and* include a listing of all grant requests and a listing of grants awarded, including a summary of the use of grant funds."

**Section 18.** Section 75-1-1101, MCA, is amended to read:

**"75-1-1101. Environmental contingency account objectives.** (1) There is an environmental contingency account within the state special revenue fund established in 17-2-102. The environmental contingency account is controlled by the governor.

(2) At the beginning of each biennium, $175,000 must be allocated to the environmental contingency account from the interest income of the resource indemnity trust fund with the following exceptions:

(a) if at the beginning of any biennium the unobligated cash balance in the environmental contingency account equals or exceeds $750,000, allocation may not be made; and

(b) if at the beginning of any biennium the unobligated cash balance in the environmental contingency account is less than $750,000, then an amount less than or equal to the difference between the unobligated cash balance and $750,000, but not to exceed $175,000, must be allocated to the environmental contingency account from the interest income of the resource indemnity trust fund.

(3) Funds are statutorily appropriated, as provided in 17-7-502, from the environmental contingency account upon the authorization of the governor to meet unanticipated public needs consistent with the following objectives:

(a) to support renewable resource development projects in communities that face an emergency or imminent need for the services or to prevent the physical failure of a project;

(b) to preserve vegetation, water, soil, fish, wildlife, or other renewable resources from an imminent physical threat or during an emergency, not including:

(i) natural disasters adequately covered by other funding sources; or

(ii) fire;

(c) to respond to an emergency or imminent threat to persons, property, or the environment caused by mineral development;

(d) to respond to an emergency or imminent threat to persons, property, or the environment caused by a hazardous material; and

(e) to fund the environmental quality protection fund provided for in 75-10-704 or to take other necessary actions, including the construction of facilities, to respond to actual or potential threats to persons, property, or the environment caused by hazardous wastes or other hazardous materials.

(4) Interest from funds in the environmental contingency account accrues to the general fund.

(5) The governor shall submit *to the legislative fiscal analyst*, as a part of the information required by 17-7-111, a complete financial report on the environmental contingency account, including a description of all expenditures made since the preceding report. *The report must be provided in an electronic format.*"

**Section 19.** Section 85-1-605, MCA, is amended to read:

**"85-1-605. Grants, loans, and bonds for state, local, or tribal government assistance.** (1) The department may recommend to the legislature that grants and loans be made from revenue deposited in the natural resources projects state special revenue account established in 15-38-302, that loans be made from renewable resource bond proceeds deposited in the renewable resource loan proceeds account established in 85-1-617(5), and that coal severance tax bonds be authorized pursuant to Title 17, chapter 5, part 7, to provide financial assistance to a department, agency, board, commission, or other division of state government, to a city, county, or other political subdivision or local government body of the state, including an authority as defined in 75-6-304, or to a tribal government. The legislature may approve by appropriation or other appropriate means those grants and loans that it finds consistent with the policies and purposes of the program.

(2) Nothing in this part creates or expands the state's or a local government's authority to incur debt, and the legislature may authorize loans only to state and local government entities otherwise structured to incur debt.

(3) Loans may not be authorized except to a state, local, or tribal government entity that agrees to secure the authorized loan with its bond.

(4) In addition to implementing those projects approved by the legislature, the department may request up to 10% of the grant funds available and up to $10 million for loans from the natural resources projects state special revenue account established in 15-38-302 and the renewable resource loan proceeds account in any biennium to be used for emergencies. These emergency grant projects or loan projects, or both, may not be made because of the gross negligence of the state, local, or tribal government applicant, must be approved by the department, and must be defined as those projects otherwise eligible for either grant funding or loan funding, or both, that, if delayed until legislative approval can be obtained, will cause substantial damages or legal liability to the project sponsor. In allocating the funds, the department shall inform the legislative ~~finance committee of the legislature~~ *fiscal analyst*.

(5) The grants and loans provided for by this section may be made for projects that enhance renewable resources in the state through conservation, development, management, or preservation; for assessing feasibility or planning; for implementing renewable resource projects; and for similar purposes approved by the legislature.

(6) Grant and loan agreements with tribal governments in Montana entered into under this part must contain, in addition to other appropriate terms and conditions, the following conditions:

(a) a requirement that in the event a dispute or claim arises under the agreement, state law will govern as to the interpretation and performance of the agreement and that any judicial proceeding concerning the terms of the agreement will be brought in the district court of the first judicial district of the state of Montana;

(b) an express waiver of the tribal government's immunity from suit on any issue specifically arising from the transaction of a loan or grant; and

(c) an express waiver of any right to exhaust tribal remedies signed by the tribal government."

**Section 20.** Section 90-6-703, MCA, is amended to read:

**"90-6-703. Types of financial assistance available.** (1) The legislature shall provide for and make available to local governments the following types of financial assistance under this part:

(a) matching grants for local infrastructure projects;

(b) matching grants for infrastructure planning; and

(c) emergency grants for local infrastructure projects.

(2) The department of commerce may provide local governments with emergency grants for infrastructure projects only if necessary to remedy conditions that, if allowed to continue until legislative approval could be obtained, will endanger the public health or safety and expose the applicant to substantial financial risk. The department shall report to the governor and the legislative ~~finance committee~~ *fiscal analyst* regarding emergency grants that are awarded during each biennium. *The report must be provided in an electronic format.*

(3) The department of commerce may provide local governments with matching grants for infrastructure planning. The department shall report to the governor and the legislature regarding infrastructure planning grants that are awarded during each biennium."

**Section 21. Repealer.** The following section of the Montana Code Annotated is repealed:

17-2-111. State special revenue accounts — report.

**Section 22. Effective date.** [This act] is effective July 1, 2013.

Approved March 29, 2013

# CHAPTER NO. 121

[SB 61]

AN ACT REQUIRING THE DEPARTMENT OF ADMINISTRATION TO CONSIDER CREDIT EXPOSURE TO DERIVATIVE TRANSACTIONS FOR LENDING LIMIT PURPOSES; IDENTIFYING PERMISSIBLE INVESTMENT SECURITIES THAT A BANK MAY HOLD; EXPANDING RULEMAKING AUTHORITY; AMENDING SECTIONS 32-1-432 AND 32-1-433, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 32-1-432, MCA, is amended to read:

**"32-1-432. Limitations on loans — rulemaking.** (1) (a) The total loans or extensions of credit to a person, partnership, or corporation by a bank, including loans to a partnership and to the members of the partnership, may not exceed 20% of the amount of the unimpaired capital and surplus of that bank.

(b) The discount of bills of exchange drawn in good faith against actual existing values, the discount of bankers, acceptances of other banks, the discount of commercial or business paper actually owned by the person negotiating it and the obligations of the United States, general obligations of any state or of any political subdivision, or obligations issued under authority of the Federal Farm Loan Act may not be considered as money borrowed.

(c) The limitations imposed on total loans and extensions of credit by this section do not apply to loans and investments secured by obligations of the United States having a current market value of 100% of the amount loaned or invested.

(d) Loans or obligations are not subject under this section to any limitation based upon that unimpaired capital and surplus to the extent that they are secured or covered by guaranties, or by commitments or agreements to take over or to purchase them, made by a federal reserve bank or by the United States or a department, bureau, board, commission, or establishment of the United States, including a corporation wholly owned, directly or indirectly, by the United States.

(2) The combined liabilities of the members of a firm, partnership, or unincorporated association to the loaning bank must be included in the liabilities of the firm, partnership, or unincorporated association. The portion of the liabilities of the firm, partnership, or unincorporated association for which a member individually is legally responsible must be included in the liabilities of the member in determining the limitations imposed by this section. In determining the limitation for loans or extensions of credit to a limited partner of a limited partnership, the portions of the liabilities of the limited partnership for which the limited partner is free from liability must be excluded.

(3) When, in the judgment of the department, the liabilities of a corporation or the combined liabilities of a corporation and one or more of its stockholders to

a bank are excessive, it shall require the reduction to the limits and within the time it prescribes.

(4) The limitations of this section do not apply to the extent that the loan or extension of credit is secured by pledged deposits in the lending bank.

(5) The limitations of this section do not apply to a loan of funds or an extension of credit made by a bank to another bank if the term of the loan or extension of credit does not exceed 2 business days.

(6) The limitations of this section do not apply to the extent that a loan is covered by a guaranty or by commitments or agreements to take over or purchase the loan made by an agency or board of the state of Montana authorized by law to provide the guaranties, commitments, or agreements.

(7) (a) A state-chartered bank may be exempted from the limitations of this section by applying to the department for a written waiver stipulating that the bank will be subject to the limitations imposed on national banks under 12 U.S.C. 84 and the regulations of the office of the comptroller of the currency.

(b) A written waiver provided to a state-chartered bank in accordance with subsection (7)(a) may not be changed by the bank or revoked by the department for 2 years from the date of issue or for a different period determined by the department by rule.

(8) The department may adopt rules to carry out the purposes of this section, *including rules differentiating between discretionary and nondiscretionary contractual commitments and rules specifying the types of derivative transactions in which a bank may engage and setting safety and soundness standards for engaging in derivative transactions*.

(9) For purposes of this section, the terms "loan", ~~and~~ "extension of credit", *and "obligation"* include*:*

*(a)* all direct or indirect advances of funds to a person on the basis of an obligation of the person to repay the funds*.;* ~~The terms also include~~

*(b)* a liability of a state-chartered bank to advance funds to or on behalf of a person pursuant to a contractual commitment~~. The department may adopt a rule differentiating between discretionary and nondiscretionary contractual commitments~~*; and*

*(c) any credit exposure to a person arising from a derivative transaction, as defined in 12 U.S.C. 84(b)(3).*"

**Section 2.** Section 32-1-433, MCA, is amended to read:

**"32-1-433. Investment in certain securities — rulemaking authority.** (1) A bank may purchase, sell, underwrite, and hold investment securities that are obligations in the form of bonds, notes, or debentures, as provided in rules adopted by the department. *In addition, unless limited by the department by rule, a bank may purchase, sell, underwrite, and hold those investment securities that are derivative transactions that national banks are expressly authorized to purchase, sell, underwrite, and hold.* A bank may hold without limit investment securities that are general obligations of the United States, obligations that are guaranteed fully as to principal and interest by the United States, or general obligations of any state.

(2) The department shall adopt rules to implement this section."

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved March 29, 2013

# CHAPTER NO. 122

[SB 62]

AN ACT REVISING CAPITALIZATION REQUIREMENTS FOR FOREIGN TRUST COMPANIES ELECTING NOT TO PROVIDE A BOND BEFORE ACCEPTING APPOINTMENTS OR ACTING AS A TRUSTEE, GUARDIAN, OR CONSERVATOR IN THIS STATE; AND AMENDING SECTION 32-1-1005, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 32-1-1005, MCA, is amended to read:

**"32-1-1005. Bond.** Before accepting an appointment or acting as a trustee, guardian, or conservator, a foreign trust company shall file a bond with a court of competent jurisdiction in an amount as the court directs, with sufficient sureties, conditioned on the faithful discharge of its duties as trustee, guardian, or conservator. In lieu of the bond, the foreign trust company shall certify, in a manner acceptable to the department ~~of administration~~, that the capital stock of the foreign trust company is fully paid in cash, on deposit with an appropriate bank, and is ~~of a sufficient amount to meet the requirements of 32-1-307 for a~~ *of an amount that is certified sufficient by the foreign trust company's primary regulator for the foreign* trust *company's proposed business activities in* ~~company organized under the laws of~~ this state. The deposit must be maintained until the foreign trust company ceases to act as trustee, guardian, or conservator under this part. A foreign trust company is not required to file a bond or certify the deposit of its capital with respect to a trust, ~~created~~ other than a trust created by a will, if the trust instrument requests or directs that a bond is not required of the trustee."

Approved March 29, 2013

# CHAPTER NO. 123

[SB 71]

AN ACT REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CORRECT ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 63RD LEGISLATURE; AND AMENDING SECTIONS 2-15-1028, 2-15-3113, 7-1-4121, 7-14-2826, 15-1-122, 15-1-216, 15-30-2604, 23-2-601, 23-2-614, 23-2-631, 23-2-634, 23-2-641, 23-2-642, 23-2-644, 30-18-117, 31-1-202, 32-1-402, 32-1-425, 32-9-103, 32-9-104, 50-40-103, 50-46-327, 61-11-102, 70-24-430, 76-4-125, 82-11-182, AND 90-3-1001, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-15-1028, MCA, is amended to read:

**"2-15-1028. Public defender commission.** (1) There is a public defender commission.

(2) The commission consists of 11 members appointed by the governor as follows:

(a) two attorneys from nominees submitted by the supreme court;

(b) three attorneys from nominees submitted by the president of the state bar of Montana, as follows:

(i) one attorney experienced in the defense of felonies who has served a minimum of 1 year as a full-time public defender;

(ii) one attorney experienced in the defense of juvenile delinquency and abuse and neglect cases involving the federal Indian Child Welfare Act; and

(iii) one attorney who represents criminal defense lawyers;

(c) two members of the general public who are not attorneys or judges, active or retired, as follows:

(i) one member from nominees submitted by the president of the senate; and

(ii) one member from nominees submitted by the speaker of the house;

(d) one person who is a member of an organization that advocates on behalf of indigent persons;

(e) one person who is a member of an organization that advocates on behalf of a racial minority population in Montana;

(f) one person who is a member of an organization that advocates on behalf of people with mental illness and developmental disabilities; and

(g) one person who is employed by an organization that provides addictive behavior counseling.

(3) A person appointed to the commission must have significant experience in the defense of criminal or other cases subject to the provisions of Title 47, chapter 1, or must have demonstrated a strong commitment to quality representation of indigent defendants.

(4) A vacancy on the commission must be filled in the same manner as the original appointment and in a timely manner.

(5) Members shall serve staggered 3-year terms.

(6) (a) The commission is allocated to the department of administration for administrative purposes only, as provided in 2-15-121, except that:

(i) the commission shall hire staff for the commission subject to subsection (6)(b) and the chief public defender shall hire separate staff for the office, except for any support staff provided by the department of administration for centralized services, such as payroll, human resources, accounting, information technology, or other services determined by the commission and the department to be more efficiently provided by the department; and

(ii) commission and office of state public defender budget requests prepared and presented to the legislature and the governor in accordance with 17-7-111 must be prepared and presented independently of the department of administration. However, nothing in this subsection (6)(a)(ii) prohibits the department from providing administrative support for the budgeting process and including the budget requests in appropriate sections of the department's budget requests for administratively attached agencies.

(b) New staff positions for the commission may be added only when the public defender account established pursuant to 47-1-110 has received sufficient revenue pursuant to ~~46-18-113(1)(a) and (1)(b)~~ *46-8-113(1)(a) and (1)(b)* to maintain a balance in the account that would sustain any staff position approved by the commission for at least 1 year.

(7) While serving a term on the commission, a member of the commission may not serve as a judge, a public defender employed by or under contract with the office of state public defender established in 47-1-201, a county attorney or a deputy county attorney, the attorney general or an assistant attorney general, the United States district attorney or an assistant United States district attorney, or a law enforcement official.

(8) Members of the commission may not receive a salary for service on the commission but must be reimbursed for expenses, as provided in 2-18-501 through 2-18-503, while actually engaged in the discharge of official duties.

(9) The commission shall establish procedures for the conduct of its affairs and elect a presiding officer from among its members."

**Section 2.** Section 2-15-3113, MCA, is amended to read:

**"2-15-3113. Additional powers and duties of livestock loss board.** (1) The livestock loss board shall:

(a) process claims;

(b) seek information necessary to ensure that claim documentation is complete;

(c) provide payments authorized by the board for confirmed and probable livestock losses, along with a written explanation of payment;

(d) submit monthly and annual reports to the board of livestock summarizing claims and expenditures and the results of action taken on claims and maintain files of all claims received, including supporting documentation;

(e) provide information to the board of livestock regarding appealed claims and implement any decision by the board;

(f) prepare the annual budget for the board; and

(g) provide proper documentation of staff time and expenditures.

(2) The livestock loss board may enter into an agreement with any Montana tribe, if the tribe has adopted a wolf management plan for reservation lands that is consistent with the state wolf management plan, to provide that tribal lands within reservation boundaries are eligible for mitigation grants pursuant to 2-15-3111 and that livestock losses on tribal lands within reservation boundaries are eligible for reimbursement payments pursuant to 2-15-3112.

(3) The livestock loss board shall:

(a) coordinate and share information with state, federal, and tribal officials, livestock producers, nongovernmental organizations, and the general public in an effort to reduce livestock losses caused by wolves;

(b) establish an annual budget for the prevention, mitigation, and reimbursement of livestock losses caused by wolves;

(c) perform or contract for the performance of periodic program audits and reviews of program expenditures, including payments to individuals, incorporated entities, and producers who receive loss reduction grants and reimbursement payments;

(d) adjudicate appeals of claims;

(e) investigate alternative or enhanced funding sources, including possible agreements with public entities and private wildlife or livestock organizations that have active livestock loss reimbursement programs in place;

(f) meet as necessary to conduct business; and

(g) report annually to the governor, the legislature, members of the Montana congressional delegation, the board of livestock, the fish, wildlife, and parks commission, and the public regarding results of the programs established in 2-15-3111 through 2-15-3113.

(4) The livestock loss board may sell or auction any wolf carcasses or parts of wolf carcasses received pursuant to 87-1-217. The proceeds, minus the costs of the sale including the preparation of the carcass or part of the carcass for sale, must be deposited into the livestock loss reduction and mitigation special

revenue account established in 81-1-110~~(2)(a)~~ and used for the purposes of 2-15-3111 through 2-15-3114."

**Section 3.** Section 7-1-4121, MCA, is amended to read:

**"7-1-4121. General definitions.** As used in 7-1-4121 through 7-1-4127 and 7-1-4129 through 7-1-4149, unless otherwise provided, the following definitions apply:

(1) "Charter" means a written document defining the powers, structure, privileges, rights, and duties of the government and limitations on the government.

(2) "Chief executive" means the elected executive in a government adopting the commission-executive form, the manager in a government adopting the commission-manager form, the presiding officer in a government adopting the commission-presiding officer form, the town presiding officer in a government adopting the town meeting form, the commission acting as a body in a government adopting the commission form, or the officer or officers designated in the charter in a government adopting a charter.

(3) "Elector" means a resident of the municipality qualified and registered to vote under state law.

(4) "Employee" means a person other than an officer who is employed by a municipality.

(5) "Executive branch" means that part of the municipality, including departments, offices, and boards, charged with implementing actions approved and administering policies adopted by the governing body of the local government or performing the duties required by law.

(6) "Governing body" means the commission or town meeting legislative body established in the alternative form of local government.

(7) "Guideline" means a suggested or recommended standard or procedure to serve as an index of comparison and is not enforceable as a regulation.

(8) "Law" means a statute enacted by the legislature of Montana and approved and signed by the governor or a statute adopted by the people of Montana through statutory initiative procedures.

(9) "Municipality" means an entity that incorporates as a city or town.

(10) "Office of the municipality" means the permanent location of the seat of government from which the records administrator, or the office of the clerk of the governing body ~~where~~ *if* one is appointed, carries out the duties of the records administrator.

(11) "Officer" means a person holding a position with a municipality that is ordinarily filled by election or, in those municipalities with a manager, the manager.

(12) "Ordinance" means an act *that is* adopted and approved by a municipality~~, having~~ *and that has* effect only within the jurisdiction of the local government.

(13) "Person" means any individual, firm, partnership, company, corporation, trust, trustee, assignee or other representative, association, or other organized group.

(14) "Plan of government" means a certificate submitted by a governing body that documents the basic form of government selected, including all applicable suboptions. The plan must establish the terms of all officers and the number of commissioners, if any, to be elected.

(15) "Political subdivision" refers to a local government, authority, school district, or multicounty agency.

(16) "Population" means the number of inhabitants as determined by an official federal, state, or local census or official population estimate approved by the department of commerce.

(17) "Printed" means the act of reproducing a design on a surface by any process as defined by 1-1-203~~(3)~~*(4)*.

(18) "Public agency" means a political subdivision, Indian tribal council, state or federal department or office, or the Dominion of Canada or any provincial department*,* ~~or~~ office*,* or political subdivision.

(19) "Public property" means any property owned by a municipality or held in the name of a municipality by any of the departments, boards, or authorities of the local government.

(20) "Real property" means lands, structures, buildings, and interests in land, including lands under water and riparian rights, and all things and rights usually included within the term "real property", including not only fee simple absolute but also all lesser interests, such as easements, rights-of-way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property.

(21) "Reproduced" means the act of reproducing a design on any surface by any process.

(22) "Resolution" means a statement of policy by the governing body or an order by the governing body that a specific action be taken.

(23) "Service" means an authorized function or activity performed by local government.

(24) "Structure" means the entire governmental organization through which a local government carries out its duties, functions, and responsibilities."

**Section 4.** Section 7-14-2826, MCA, is amended to read:

**"7-14-2826. Regulation of ferry operation — penalties.** (1) The board of county commissioners may make rules ~~for the government~~ *governing the operation* of ferries *and* prescribing:

(a) how many boats must be kept, their character, and how they are propelled;

(b) the number of individuals to be employed and rules for their supervision;

(c) when and under what circumstances ferries may make trips in the nighttime;

(d) who may be ferried free of toll;

(e) in what cases of danger or peril a crossing is *not* to be *made*;

(f) penalties for violation of rules;

(g) the method of and preference in loading and crossing; and

(h) how and by whom action may be brought to recover penalties.

(2) Subject to the rules, ferry operators shall make trips to accommodate all passengers who desire to cross, and any failure to do so subjects the franchise to forfeiture by a proper proceeding for that purpose.

(3) The owner of a ferry shall have the rates of toll, as fixed by the board, printed or written and posted in some conspicuous place on or near the ferry.

(4) All ferry operators shall keep the banks of the streams or waters at the landings of their ferries graded and in good order for the passage of vehicles. For every day *that* compliance with this subsection is neglected, $25 is forfeited~~, to~~

*and must* be collected, except as provided in 3-10-601, for the use of the road fund of the county."

**Section 5.** Section 15-1-122, MCA, is amended to read:

**"15-1-122. Fund transfers.** (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, a base amount of $59,209, and the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) For each fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5, 1.48% of the motor vehicle revenue deposited in the state general fund in each fiscal year. The amount of 9.48% of the allocation in each fiscal year must be used for the purpose of reimbursing the hired removal of abandoned vehicles. Any portion of the allocation not used for abandoned vehicle removal reimbursement must be used as provided in 75-10-532.

(b) to the noxious weed state special revenue account provided for in 80-7-816, 1.50% of the motor vehicle revenue deposited in the state general fund in each fiscal year;

(c) to the department of fish, wildlife, and parks:

(i) 0.46% of the motor vehicle revenue deposited in the state general fund, with the applicable percentage to be:

(A) used to:

(I) acquire and maintain pumpout equipment and other boat facilities, 4.8% in each fiscal year;

(II) administer and enforce the provisions of Title 23, chapter 2, part 5, 19.1% in each fiscal year;

(III) enforce the provisions of 23-2-804, 11.1% in each fiscal year; and

(IV) develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use, 16.7% in each fiscal year; and

(B) deposited in the state special revenue fund established in 23-1-105 in an amount equal to 48.3% in each fiscal year;

(ii) 0.10% of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 50% of the amount to be used for enforcing the purposes of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ *23-2-617*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 and 50% of the amount designated for use in the development, maintenance, and operation of snowmobile facilities; and

(iii) 0.16% of the motor vehicle revenue deposited in the state general fund in each fiscal year to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) 0.64% of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 24.55% to be deposited in the state veterans' cemetery account provided for in 10-2-603 and with 75.45% to be deposited in the veterans' services account provided for in 10-2-112(1);

(e) 0.30% of the motor vehicle revenue deposited in the state general fund in each fiscal year for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112; and

(f) to the search and rescue account provided for in 10-3-801, 0.04% of the motor vehicle revenue deposited in the state general fund in each fiscal year.

(3) The amount of $200,000 is transferred from the state general fund to the livestock loss reduction and mitigation restricted state special revenue account provided for in 81-1-112 in each fiscal year.

(4) For the purposes of this section, "motor vehicle revenue deposited in the state general fund" means revenue received from:

(a) fees for issuing a motor vehicle title paid pursuant to 61-3-203;

(b) fees, fees in lieu of taxes, and taxes for vehicles, vessels, and snowmobiles registered or reregistered pursuant to 61-3-321 and 61-3-562;

(c) GVW fees for vehicles registered for licensing pursuant to Title 61, chapter 3, part 3; and

(d) all money collected pursuant to 15-1-504(3).

(5) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes."

**Section 6.** Section 15-1-216, MCA, is amended to read:

**"15-1-216. Uniform penalty and interest assessments for violation of tax provisions — applicability — exceptions — uniform provision for interest on overpayments.** (1) A person who fails to file a required tax return or other report with the department by the due date, including any extension of time, of the return or report must be assessed a late filing penalty of $50 or the amount of the tax due, whichever is less.

(2) (a) Except as provided in 15-30-2604~~(2)(c)~~*(3)(c)* and subsection (2)(b) of this section, a person who fails to pay a tax when due must be assessed a late payment penalty of 1.2% a month or fraction of a month on the unpaid tax. The penalty may not exceed 12% of the tax due.

(b) A person who fails to pay a tax when due under chapter 30, part 25, chapter 53, chapter 65, or chapter 68 must be assessed a late payment penalty of 1.5% a month or fraction of a month on the unpaid tax. The penalty may not exceed 15% of the tax due.

(c) Except as provided in 15-30-2604~~(2)(c)~~*(3)(c)*, the penalty imposed under subsection (2)(a) or (2)(b) of this section accrues on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing a return.

(3) A person who purposely or knowingly, as those terms are defined in 45-2-101, fails to file a return when due or fails to file a return within 60 days after receiving written notice from the department that a return must be filed is liable for an additional penalty of not less than $1,000 or more than $10,000. The department may bring an action in the name of the state to recover the penalty and any delinquent taxes.

(4) (a) Except as provided in 15-30-2604~~(2)(c)~~*(3)(c)*, interest on taxes not paid when due must be assessed by the department. The department shall determine the interest rates established under subsection (4)(a)(i) for each calendar year by rule subject to the conditions of this subsection (4)(a). Interest rates on taxes not paid when due for a calendar year are as follows:

(i) For individual income taxes not paid when due, including delinquent taxes and deficiency assessments, the interest rate is equal to the underpayment rate for individual taxpayers established by the secretary of the United States department of the treasury pursuant to section 6621 of the Internal Revenue Code, 26 U.S.C. 6621, for the fourth quarter of the preceding year or 8%, whichever is greater.

(ii) For all taxes other than individual income taxes not paid when due, including delinquent taxes and deficiency assessments, the interest rate is 12%.

(b) Interest on delinquent taxes and on deficiency assessments is computed from the original due date of the return until the tax is paid. Except as provided in 15-30-2604~~(2)(c)~~*(3)(c)*, interest accrues daily on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing the return.

(5) (a) Except as provided in subsection (5)(b), this section applies to taxes, fees, and other assessments imposed under Titles 15 and 16 [and the former 85-2-276].

(b) This section does not apply to:

(i) property taxes; or

(ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15, chapter 70.

(6) Any changes to interest rates apply to any current outstanding tax balance, regardless of the rate in effect at the time the tax accrued.

(7) Except as provided in 15-30-2604, penalty and interest must be calculated and assessed commencing with the due date of the return.

(8) Deficiency assessments are due and payable 30 days from the date of the deficiency assessment.

(9) Interest allowed for the overpayment of taxes or fees is the same rate as is charged for unpaid or delinquent taxes. For the purposes of this subsection, interest charged for unpaid or delinquent taxes is the interest rate determined in subsection (4)(a)(i). (Bracketed language in subsection (5)(a) terminates June 30, 2020—sec. 18, Ch. 288, L. 2005.)"

**Section 7.** Section 15-30-2604, MCA, is amended to read:

**"15-30-2604. Time for filing — extensions of time.** (1) (a) Except as provided in subsection (1)(b), a return must be made to the department on or before the 15th day of the 4th month following the close of the taxpayer's fiscal year, or if the return is made on the basis of the calendar year, then the return must be made on or before April 15 following the close of the calendar year.

(b) (i) If the due date of the return falls on a holiday that defers a filing date as recognized by the Internal Revenue Service and that is not observed in Montana, the return may be made on the first business day after the holiday.

(ii) The department may extend filing dates and defer or waive interest, penalties, and other effects of late filing for a period not exceeding 1 year for taxpayers affected by a federally declared disaster or a terroristic or military action recognized for federal tax purposes under 26 U.S.C. 7508A.

(2) The return must set forth those facts that the department considers necessary for the proper enforcement of this chapter. An affidavit or affirmation must be attached to the return from the persons making the return verifying that the statements contained in the return are true. Blank forms of return must be furnished by the department upon application, but failure to secure the form does not relieve the taxpayer of the obligation to make a return required under this chapter. A taxpayer liable for a tax under this chapter shall pay a minimum tax of $1.

(3) (a) Subject to ~~subsection (3)(b)~~ *subsections (3)(b) and (3)(c)*, a taxpayer is allowed an automatic extension of time for filing the taxpayer's return of up to 6 months following the date prescribed for filing of the tax return.

(b) (i) Except as provided in subsection (3)(c), on or before the due date of the return, the taxpayer shall pay by estimated tax payments, withholding tax, or a combination of estimated tax payments and withholding tax 90% of the current year's tax liability or 100% of the previous year's tax liability.

(ii) The remaining tax, penalty, and interest of the current year's tax liability not paid under subsection (3)(b)(ii) must be paid when the return is filed. Penalty and interest must be added to the tax due as provided in 15-1-216.

(c) A taxpayer that has a tax liability of $200 or less for the current year may pay the entire amount of the tax, without penalty or interest under 15-1-216, on or before the due date of the return under subsection (3)(a). If the tax is not paid on or before the due date of the return under subsection (3)(a), penalty and interest must be added to the tax due as provided in 15-1-216 from the original due date of the return.

(4) The department may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists.

(5) Except as provided in subsection (3)(c), the extension of time for filing a return is not an extension of time for the payment of taxes."

**Section 8.** Section 23-2-601, MCA, is amended to read:

**"23-2-601. Definition of terms.** As used in 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ *23-2-617*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644, unless the context requires otherwise, the following definitions apply:

(1) "Certificate of registration" means the owner's receipt evidencing payment of fees due in order for the snowmobile to be validly registered.

(2) "Certificate of title" means the document issued by the department of justice as prima facie evidence of ownership.

(3) "dbA" means sound pressure level measured on the "A" weight scale in decibels.

(4) "Department" means the department of fish, wildlife, and parks of the state of Montana.

(5) "New snowmobile" means a snowmobile that has not been previously sold to an owner.

(6) "Operator" includes each person who operates or is in actual physical control of the operation of a snowmobile.

(7) "Owner" includes each person, other than a lienholder or person having a security interest in a snowmobile, that holds a certificate of title to a snowmobile and is entitled to the use or possession of the snowmobile.

(8) "Person" means an individual, partnership, association, corporation, and any other body or group of persons, regardless of the degree of formal organization.

(9) "Registration decal" means an adhesive sticker produced and issued by the department of justice, its authorized agent, or a county treasurer to the owner of a snowmobile as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department of justice under 61-3-101.

(10) "Roadway" means only those portions of a highway, road, or street improved, designed, or ordinarily used for travel or parking of motor vehicles.

(11) "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, designed primarily for travel on snow or

ice, that may be steered by skis or runners and that is not otherwise registered or licensed under the laws of the state of Montana."

**Section 9.** Section 23-2-614, MCA, is amended to read:

**"23-2-614. Exemptions.** (1) (a) The provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ *23-2-617*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 with respect to registration, registration decals, certificates of title, and certificates of ownership do not apply to snowmobiles owned or used by the United States or another state or any agency or political subdivision of the United States or another state.

(b) Snowmobiles owned by the state of Montana or any agency or political subdivision of this state are exempt only from the payment of fees and must otherwise comply with all the requirements of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ *23-2-617*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644.

(2) The provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ *23-2-617*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 with respect to registration, registration decals, certificates of title, and certificates of ownership do not apply to unregistered snowmobiles owned by nonresidents of Montana who either:

(a) display visual proof that a nonresident temporary-use snowmobile permit has been purchased; or

(b) use the snowmobile only in races and for not more than 30 days in the state. "Race" means an organized competition on a predetermined course that is run according to accepted rules."

**Section 10.** Section 23-2-631, MCA, is amended to read:

**"23-2-631. Operation on public roads, streets, and highways.** (1) A person may not operate a snowmobile upon a controlled-access highway or facility at any time. Snowmobile operation is permitted on the roadway or shoulder of any public road or highway, state highway, county road, or city street located within the boundaries of any municipality only in the event that:

(a) the street, road, or highway is drifted or covered by snow to the extent that travel on the street, road, or highway by other motor vehicles is impractical or impossible;

(b) the operator has received permission or is otherwise authorized for that travel by the municipality in the case of town or city streets, the board of county commissioners for county roads, or the state highway patrol for all other highways; or

(c) operation has been authorized on municipal streets by a municipal ordinance.

(2) A snowmobile may make a direct crossing of a street or highway whenever the crossing is necessary to get to another authorized area of operation. The crossing must be made at an angle of approximately 90 degrees to the direction of traffic at a place where no obstruction prevents a quick and safe crossing. The snowmobile must make a complete stop before entering upon any part of the traffic way, and the operator shall yield the right-of-way to all oncoming traffic.

(3) A snowmobile may not be operated upon a public street or highway when permitted to do so by 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ *23-2-617*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 unless equipped with at least one headlamp and one taillamp, which

must be lighted at all times during operation, and unless equipped with a suitable braking device operable by either hand or foot.

(4) (a) Unless operation is otherwise allowed under subsection (4)(b) or (4)(c), the operator of a snowmobile who operates the snowmobile upon a public roadway, street, or highway when allowed to do so under the provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ *23-2-617*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 must have in possession a license to drive a motor vehicle as required by the laws of the state of Montana.

(b) The operator of a snowmobile may operate the snowmobile upon a public roadway, street, or highway when allowed to do so under the provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ *23-2-617*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 if the operator:

(i) has in possession a certificate showing the successful completion of a Montana-approved snowmobile safety education course; and

(ii) is in the physical presence and under the supervision of a person who is 18 years of age or older.

(c) An operator who crosses a street, road, or highway, who operates a snowmobile upon a street, road, or highway that is drifted or covered with snow to the extent that travel on the street, road, or highway by other motor vehicles is impractical or impossible, or who operates a snowmobile in any other areas of the state where operation is lawfully permitted is not required to apply for or possess a driver's license under the laws of the state of Montana."

**Section 11.** Section 23-2-634, MCA, is amended to read:

**"23-2-634. Regulation of snowmobile noise.** (1) Except as provided in this section, each snowmobile must be equipped at all times with noise-suppression devices, including an exhaust muffler in good working order and in constant operation. A snowmobile may not be modified by any person in any manner that will amplify or otherwise increase total noise emissions to a level greater than that emitted by the snowmobile as originally constructed, regardless of date of manufacture.

(2) Each person who owns or operates a snowmobile manufactured after June 30, 1972, but prior to June 30, 1975, shall maintain the machine in such a manner that it will not exceed a sound level limitation of 82 dbA measured at 50 feet.

(3) A snowmobile manufactured after June 30, 1975, except snowmobiles designated for competition purposes only, may not be sold or offered for sale unless that machine has been certified by the manufacturer as being able to conform to a sound level limitation of not more than 78 dbA measured at 50 feet. Each person who owns or operates a snowmobile manufactured after June 30, 1975, shall maintain the machine in a manner so that it will not exceed a sound level limitation of 78 dbA measured at 50 feet.

(4) A manufacturer who certifies that a new snowmobile can comply with the noise limitation requirements of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ *23-2-617*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 shall affix a permanent notice of that certification to every snowmobile offered for sale in the state of Montana.

(5) In certifying that a new snowmobile can comply with the noise limitation requirements of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ *23-2-617*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through

23-2-644, a manufacturer shall make the certification based upon measurements made in accordance with SAE recommended practice J192, as amended. The department, in enforcing the provisions of this section, shall make measurements of snowmobile noise in accordance with applicable practices ~~outlined in the "Procedure for Sound Level Measurements of Snowmobiles" (January, 1969), as amended,~~ used by the international snowmobile ~~industry~~ *manufacturers* association or with other standards for measurement of sound level that the department may adopt.

(6) This section does not apply to organized races or similar competitive events held on:

(a) private lands or waters, with the permission of the owner, lessee, or custodian of the land or waters; or

(b) public lands or waters, with the consent of the public agency having the authority to grant consent."

**Section 12.** Section 23-2-641, MCA, is amended to read:

**"23-2-641. Enforcement.** (1) With respect to the sale of any new snowmobile that is subject to the provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ *23-2-617*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644, the attorney general shall, upon the request of the department, sue for the recovery of the penalties provided in 23-2-642 and bring an action for a restraining order or temporary or permanent injunction against a person who sells or offers to sell a new snowmobile that does not satisfy the sound level limitations imposed by 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ *23-2-617*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644.

(2) (a) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(i) of search, seizure, and arrest;

(ii) to investigate activities in this state regulated by this part and rules of the department and the fish, wildlife, and parks commission; and

(iii) to report violations to the county attorney of the county in which they occur.

(b) Sheriffs and their deputies of the various counties of the state, the Montana highway patrol, authorized officers of the department, and the police of each municipality shall enforce the provisions of this part."

**Section 13.** Section 23-2-642, MCA, is amended to read:

**"23-2-642. Penalties.** (1) The failure to display a current registration decal on a snowmobile is a misdemeanor, punishable by a fine in an amount equal to five times the applicable registration fee payable under 61-3-321.

(2) A person who violates any other provision of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ *23-2-617*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 or a rule adopted pursuant to those sections shall pay a civil penalty of not less than $15 or more than $500 for each separate violation. If the violation is willful, the person shall pay a civil penalty of not less than $50 or more than $1,000 for each separate violation.

(3) A manufacturer who certifies that a new snowmobile meets the sound level limitations imposed by 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ *23-2-617*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641

through 23-2-644 is subject to the penalty provisions of subsection (2) if the machine so certified does not meet the appropriate sound level limitation. For the purposes of this section, each sale of a new snowmobile that does not meet the sound level limitations imposed by 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ *23-2-617*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 constitutes a separate violation."

**Section 14.** Section 23-2-644, MCA, is amended to read:

**"23-2-644. Deposit of funds from fines and forfeitures.** All fines and forfeitures collected under 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-618~~ *23-2-617*, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 relating to snowmobiles, except those collected by a justice's court, must be transmitted to the state, as provided in 15-1-504, for deposit in the state general fund."

**Section 15.** Section 30-18-117, MCA, is amended to read:

**"30-18-117. Acceptance and distribution of electronic records by governmental agencies.** (1) Except as otherwise provided in 30-18-111~~(5)~~*(6)*, each governmental agency shall determine whether, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

(2) To the extent that a governmental agency uses electronic records and electronic signatures under subsection (1), the secretary of state, giving due consideration to security, may specify:

(a) the manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes;

(b) if electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;

(c) control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and

(d) any other required attributes for electronic records that are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

(3) Except as otherwise provided in 30-18-111~~(5)~~*(6)*, this part does not require a governmental agency of this state to use or permit the use of electronic records or electronic signatures."

**Section 16.** Section 31-1-202, MCA, is amended to read:

**"31-1-202. Definitions — scope.** (1) Unless the context requires otherwise, in this part, the following definitions apply:

(a) "Cash sale price" means the price stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge account agreement for which the seller would have sold or furnished to the buyer and the buyer would have bought or obtained from the seller the goods or services that are the subject matter of the retail installment transaction~~,~~ if the sale had been a sale for cash. The cash sale price may include any taxes, registration, certificate of title, license, and official fees and cash sale prices for services, if any, and for

accessories and their installation and for delivering, servicing, repairing, or improving the goods.

(b) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(c) "Finance charge" means the amount, as limited by 31-1-241, in addition to the principal balance, agreed upon between the buyer and the seller, to be paid by the buyer for the privilege of purchasing goods or services to be paid for by the buyer in one or more deferred installments.

(d) "Goods" means all chattels personal, including motor vehicles and merchandise certificates or coupons exchangeable for chattels personal but not including money, things in action, or dwellings as defined in 15 U.S.C. ~~1602(v)~~ *1602(w)*.

(e) "Holder" means:

(i) the retail seller of the goods or services under the retail installment contract or retail charge account agreement or a person who establishes and administers retail charge account agreements with retail buyers;

(ii) the assignee~~,~~ if the retail installment contract or the retail charge account agreement or the balance in the account under either has been sold or otherwise transferred; or

(iii) any other person entitled to the rights of the retail seller under any retail installment contract or any retail charge account agreement.

(f) "Manufactured structure" means any structure, transportable in one or more sections, designed to be used as a single-family dwelling or commercial building with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure.

(g) (i) "Motor vehicle" means any new or used automobile, motorcycle, quadricycle, truck, trailer, semitrailer, truck tractor, and all vehicles with any power, other than muscular power, primarily designed or used to transport persons or property on a public highway.

(ii) The term does not include any vehicle that runs only on rails or tracks or in the air.

(iii) The term does not include a dwelling as defined in 15 U.S.C. ~~1602(v)~~ *1602(w)*.

(h) "Official fees" means:

(i) the fees prescribed by law for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction; or

(ii) the premium for insurance in lieu of filing, recording, or otherwise perfecting any title or lien retained or taken by a seller in connection with a retail installment transaction to the extent that the premium does not exceed the fees that would otherwise be payable for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction.

(i) "Person" means an individual, partnership, corporation, association, and any other group, however organized.

(j) "Principal balance" means the cash sale price of the goods or services that are the subject matter of a retail installment transaction plus the amounts, if any, included in the sale, if a separate identified charge is made and stated in the

contract, for insurance and other benefits and official fees, minus the amount of the buyer's downpayment in money or goods.

(k) "Recreational vehicle" means a vehicular type unit that either has its own motor power or is mounted on or drawn by another vehicle~~,~~ *and that is* primarily designed as temporary living quarters for recreational, camping, or travel use.

(l) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller in a retail installment transaction and not for the purpose of resale.

(m) "Retail charge account agreement" means an instrument in writing prescribing the terms of retail installment transactions that may be made under it from time to time under which a retail seller gives to a retail buyer the privilege of using a credit card issued by the retail seller or any other person or other credit confirmation or identification for the purpose of purchasing goods or services from the retail seller, from the retail seller and any other person, or from a person licensed or franchised by the retail seller and under the terms of which a finance charge may be computed in relation to the buyer's average daily balance in the account during the billing cycle or the buyer's balance from time to time.

(n) "Retail installment contract" or "contract" means an agreement evidencing a retail installment transaction entered into in this state under which a buyer promises to pay in one or more deferred installments the time sale price of goods or services, or both. The term includes a chattel mortgage, a conditional sales contract, and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no further or a merely nominal consideration has the option of becoming, the owner of the goods upon full compliance with the provisions of the contract.

(o) "Retail installment transaction" means a written contract to sell or furnish, or the sale or furnishing of, goods or services by a retail seller to a retail buyer pursuant to a retail charge account agreement or under a retail installment contract.

(p) "Retail seller" or "seller" means a person who sells goods or furnishes services to a retail buyer in a written retail installment contract or written retail installment transaction.

(q) (i) "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more sellers. The term includes but is not limited to a bank, trust company, investment company, or savings and loan association~~,~~ if engaged in purchasing retail installment contracts.

(ii) The term does not include a person who makes only isolated purchases of retail installment contracts that are not being made in the course of repeated and successive purchases of retail installment contracts from the same seller.

(r) "Services" means work, labor, and services furnished in the delivery, installation, servicing, repair, or improvement of goods.

(s) "Time sale price" means the total of the cash sale price of the goods or services and the amount, if any, included for insurance and other benefits~~,~~ if a separate identified charge is made for insurance and benefits~~,~~ and *includes* the amounts of the official fees and the finance charge.

(2) (a) This part does not apply to the lending of money by banks or other lending institutions and securing loans by chattel mortgages of goods in the ordinary course of lending by those banks or other lending institutions.

(b) This part applies to the extension of credit by those banks or other lending institutions under retail installment contracts or credit cards issued by those banks or other lending institutions.

(c) This part does not apply to a transaction governed by Title 32, chapter 9, part 1."

**Section 17.** Section 32-1-402, MCA, is amended to read:

**"32-1-402. When advertising as bank prohibited — trade names restricted.** (1) Except as provided in subsection (4), a person, firm, company, partnership, or corporation, either domestic or foreign, that is not subject to the supervision of the department and not required by the provisions of this chapter to report to it and that has not received a certificate to do a banking business from the department, may not:

(a) except for a student financial institution, as defined in 32-1-115, advertise that the person or entity is receiving or accepting money or savings for deposit, investment, or otherwise and issuing ~~notices~~ *notes* or certificates of deposit; or

(b) use an office sign at the place where the business is transacted having on it an artificial or corporate name or other words indicating that:

(i) the place or office is the place or office of a bank or trust company;

(ii) deposits are received there or payments made on checks; or

(iii) any other form of banking business is transacted there.

(2) The person, firm, company, partnership, or corporation, domestic or foreign, may not use or circulate letterheads, billheads, blank notes, blank receipts, certificates, circulars, or any written or printed or partly written and partly printed papers that contain an artificial or corporate name or other word or words indicating that the business is the business of a bank, savings bank, or trust or investment company.

(3) The person, firm, company, partnership, or corporation or any agent of a foreign corporation not having an established place of business in the state may not solicit or receive deposits or transact business in the way or manner of a bank, savings bank, *or* trust~~,~~ or investment company or in a manner that leads the public to believe that its business is that of a bank, savings bank, *or* trust~~,~~ or investment company.

(4) (a) A person, firm, company, partnership, or corporation, domestic or foreign, except for a student financial institution, as defined in 32-1-115, that is not subject to the supervision of the department and not required by the provisions of this chapter to report to it and that has not received from the department a certificate to do a banking business may not transact business under a name or title that contains the word "bank", "banker", "banking", "savings bank", "saving", "trust company", or "investment company" unless the department has granted a waiver. This section does not prohibit the use of the word "bank" in the name or title of any bank holding company registered with the board of governors of the federal reserve system pursuant to 12 U.S.C. 1844.

(b) The department may grant a waiver to allow the use of a restricted word listed in subsection (4)(a) to a nonprofit organization if:

(i) the organization is not acting as a financial institution; and

(ii) the name used is not likely to mislead a reasonable individual into thinking that the organization is acting as a financial institution.

(5) A person, firm, company, partnership, or corporation, domestic or foreign, violating a provision of this section shall forfeit to the state $100 a day for every day or part of a day during which the violation continues.

(6) Upon suit by the department, the court may issue an injunction restraining the person, firm, company, partnership, or corporation during pendency of the action and permanently from further using those words in violation of the provisions of this section or from further transacting business in a manner that leads the public to believe that its business is that of a bank, savings bank, *or* trust~~,~~ or investment company and may enter any other order or decree as equity and justice require."

**Section 18.** Section 32-1-425, MCA, is amended to read:

**"32-1-425. Definitions.** For the purposes of 32-1-426 and 32-1-427, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Fiduciary" means a trustee under any trust, expressed, implied, resulting ~~in~~, or constructive; executor; administrator; guardian; committee; conservator; curator; tutor; custodian; nominee; receiver; trustee in bankruptcy; assignee for the benefit of creditors; partner; agent; officer of any corporation, public or private; public officer; or any other person acting in a fiduciary capacity for any person, trust, or estate.

(2) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity."

**Section 19.** Section 32-9-103, MCA, is amended to read:

**"32-9-103. Definitions.** As used in this part, the following definitions apply:

(1) "Administrative or clerical tasks" mean the receipt, collection, and distribution of information common for the processing or underwriting of a residential mortgage loan and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

(2) "Approved education course" means any course approved by the nationwide mortgage licensing system and registry.

(3) "Approved test provider" means any test provider approved by the nationwide mortgage licensing system and registry.

(4) "Bona fide third party" means a person that provides services relative to the origination of a residential mortgage loan. The term includes but is not limited to real estate appraisers and credit reporting agencies.

(5) "Borrower" means a person seeking a residential mortgage loan or an obligor on a residential mortgage loan.

(6) "Branch office" means a location at which a licensee conducts business other than a licensee's principal place of business. The location is considered a branch office if:

(a) the address of the location appears on business cards, stationery, or advertising used by the entity;

(b) the entity's name or advertising suggests that mortgages are made at the location;

(c) the location is held out to the public as a licensee's place of business due to the actions of an employee or independent contractor of the entity; or

(d) the location is controlled directly or indirectly by the entity.

(7) (a) "Control" means the power, directly or indirectly, to direct the management or policies of an entity, whether through ownership of securities, by contract, or otherwise.

(b) A person is presumed to control an entity if that person:

(i) is a director, general partner, or executive officer;

(ii) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;

(iii) in the case of a limited liability company, is a managing member; or

(iv) in the case of a partnership, has the right to receive upon dissolution or has contributed 10% or more of the capital.

(8) "Department" means the department of administration provided for in 2-15-1001, acting through its division of banking and financial institutions.

(9) "Depository institution" has the meaning provided in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c), and includes any credit union.

(10) "Designated manager" means a mortgage loan originator with at least 3 years of experience as a mortgage loan originator or registered mortgage loan originator who is designated by an entity as the individual responsible for the operation of a particular location that is under the designated manager's full management, supervision, and control.

(11) "Dwelling" has the meaning provided in 15 U.S.C. ~~1602(v)~~ *1602(w)*.

(12) "Entity" means a business organization, including a sole proprietorship.

(13) "Escrow account" means a depository account with a financial institution that provides deposit insurance and that is separate and distinct from any personal, business, or other account of the mortgage lender or mortgage servicer and is maintained solely for the holding and payment of escrow funds.

(14) "Escrow funds" means funds entrusted to a mortgage lender or mortgage servicer by a borrower for payment of taxes, insurance, or other payments to be made in connection with the servicing of a loan.

(15) "Federal banking agency" means the board of governors of the federal reserve system, the comptroller of the currency, ~~the director of the office of thrift supervision,~~ the national credit union administration, or the federal deposit insurance corporation.

(16) "Immediate family member" means a spouse, child, sibling, parent, grandparent, grandchild, stepchild, stepbrother, or stepsister and includes parent, grandparent, child, grandchild, and sibling relationships based upon adoptive relationships.

(17) "Individual" means a natural person.

(18) "Licensee" means a person authorized pursuant to this part to engage in activities regulated by this part. The term does not include an individual who is a registered mortgage loan originator.

(19) "Loan commitment" means a statement transmitted in writing or electronically by a mortgage lender setting forth the terms and conditions upon

which the mortgage lender is willing to make a particular residential mortgage loan to a particular borrower.

(20) "Loan processor or underwriter" means an individual who performs administrative or clerical tasks as an employee, subsequent to the receipt of a residential mortgage loan application, at the direction of and subject to the supervision of a licensed mortgage loan originator or registered mortgage loan originator.

(21) "Mortgage" means a consensual interest in real property located in Montana, including improvements, securing a debt evidenced by a mortgage, trust indenture, deed of trust, or other lien on real property.

(22) (a) "Mortgage broker" means an entity that obtains, attempts to obtain, or assists in obtaining a mortgage loan for a borrower from a mortgage lender in return for consideration or in anticipation of consideration.

(b) For purposes of this subsection (22), attempting to or assisting in obtaining a mortgage loan includes referring a borrower to a mortgage lender or mortgage broker, soliciting or offering to solicit a mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a mortgage loan with a mortgage lender on behalf of a borrower.

(23) "Mortgage lender" means an entity that closes a residential mortgage loan, advances funds, offers to advance funds, or commits to advancing funds for a mortgage loan applicant.

(24) (a) "Mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain:

(i) takes a residential mortgage loan application; or

(ii) offers or negotiates terms of a residential mortgage loan.

(b) The term does not include an individual:

(i) engaged solely as a loan processor or underwriter, except as provided in 32-9-129; or

(ii) involved solely in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 101(53D).

(25) "Mortgage servicer" means an entity that:

(a) engages, for compensation or gain from another or on its own behalf, in the business of receiving any scheduled periodic payment from a borrower pursuant to the terms of a residential mortgage loan, residential mortgage servicing documents, or a residential mortgage servicing contract; or

(b) meets the definition of ~~"servicer"~~ *servicer* in 12 U.S.C. 2605(i)(2) with respect to residential mortgage loans.

(26) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the registration of state-licensed mortgage brokers, state-licensed mortgage lenders, state-licensed mortgage servicers, state-licensed mortgage loan originators, and registered mortgage loan originators.

(27) "Nontraditional mortgage product" means any mortgage product other than a 30-year, fixed-rate mortgage.

(28) "Person" means an individual, sole proprietorship, corporation, company, limited liability company, partnership, limited liability partnership, trust, or association.

(29) "Real estate brokerage activities" means activities that involve offering or providing real estate brokerage services to the public, including:

(a) acting as a real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of real property;

(b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(c) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property other than in connection with providing financing with respect to the transaction;

(d) engaging in any activity for which a person is required to be licensed as a real estate salesperson or real estate broker under Montana law; or

(e) offering to engage in any activity or act in any capacity described in subsections (29)(a) through (29)(d).

(30) "Registered mortgage loan originator" means an individual who:

(a) meets the definition of mortgage loan originator and is an employee of:

(i) a depository institution;

(ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

(iii) an institution regulated by the farm credit administration; and

(b) is registered with and maintains a unique identifier through the nationwide mortgage licensing system and registry.

(31) "Residential mortgage loan" means a loan primarily for personal, family, or household use secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real estate located in Montana.

(32) "Residential real estate" means any real property located in the state of Montana upon which is constructed a dwelling or upon which a dwelling is intended to be built within a 2-year period, subject to 24 CFR 3500.5(b)(4). The borrower's intent to construct a dwelling is presumed unless the borrower has submitted a written, signed statement to the contrary.

(33) "Trust account" means a depository account with a financial institution that provides deposit insurance that is separate and distinct from any personal, business, or other account of the mortgage broker or the mortgage lender and that is maintained solely for the holding and payment of bona fide third-party fees.

(34) "Trust account funds" means money entrusted to a mortgage lender or mortgage broker during the origination of a mortgage loan for the payment of services provided by a bona fide third party, which does not include the services of a mortgage broker, mortgage lender, or mortgage loan originator. The term includes appraisal fees, credit report fees, and other fees required for the mortgage loan origination.

(35) "Ultimate equity owner" means an individual who, directly or indirectly, owns or controls an ownership interest in a corporation, a foreign corporation, an alien business organization, or any other form of business organization, regardless of whether the individual owns or controls an ownership interest, individually or in any combination, through one or more persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint-stock companies, or other entities or devices.

(36) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry. (See compiler's comment regarding contingent suspension.)"

**Section 20.** Section 32-9-104, MCA, is amended to read:

**"32-9-104. Exemptions — proof of exemption.** (1) The provisions of this part do not apply to:

(a) an entity that is an agency of the federal, state, or municipal government;

(b) an entity described in 32-9-103(30)(a)(i) through (30)(a)(iii);

(c) a registered mortgage loan originator when acting for an entity described in 32-9-103(30)(a)(i) through (30)(a)(iii);

(d) an individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of that individual;

(e) a person who offers, negotiates, or provides financing in conjunction with the sale of real property owned by that person and that is secured by a contract for deed, mortgage, deed of trust, or other equivalent security interest on the real property sold;

(f) a loan that is made by an entity to an employee of the entity if the proceeds of the loan are used to assist the employee in meeting the employee's housing needs;

(g) an entity engaged solely in commercial real estate lending;

(h) an entity qualified as a pension plan under 26 U.S.C. 401 if the plan makes residential mortgages only to the plan's participants;

(i) the federal national mortgage association, the federal home loan mortgage corporation, and the government national mortgage association;

(j) a 501(c)(3) corporation, which is not otherwise engaged in or holding itself out to the public as being engaged in the mortgage loan business, that makes mortgage loans to promote home ownership or improvements for bona fide low-income individuals;

(k) a person that performs only real estate brokerage activities and is licensed or registered pursuant to 37-51-301 unless the person is compensated by a mortgage lender, a mortgage broker, or a mortgage loan originator or an agent of the mortgage lender, mortgage broker, or mortgage loan originator;

(l) a Montana-licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client unless the attorney is compensated by a mortgage lender, mortgage broker, or mortgage loan originator or any agent of the mortgage lender, mortgage broker, or mortgage loan originator; or

(m) a Montana-licensed certified public accountant or a Montana-licensed public accountant who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to providing public accounting services to the client unless the accountant is compensated by a mortgage lender, a mortgage broker, or a mortgage loan originator or an agent of the mortgage lender, mortgage broker, or mortgage loan originator.

(2) The burden of proving an exemption under this section is on the person claiming the exemption. A person seeking an exemption under subsection (1)(a), (1)(b), (1)(c), (1)(f), (1)(h), (1)(j), (1)(l), or (1)(m) is required to obtain a written exemption from the department before the exemption applies. The department shall create a form for requesting an exemption.

(3) A person who is exempt from licensure under subsection (1) may register on the nationwide mortgage licensing system *and registry* as an exempt registrant for purposes of sponsoring a mortgage loan originator and for purposes of satisfying the mortgage loan originator bonding requirements. (See compiler's comment regarding contingent suspension.)"

**Section 21.** Section 50-40-103, MCA, is amended to read:

**"50-40-103. Definitions.** As used in this part, the following definitions apply:

(1) "Bar" means an establishment with a license issued pursuant to Title 16, chapter 4, that is devoted to serving alcoholic beverages for consumption by guests or patrons on the premises and in which the serving of food is only incidental to the service of alcoholic beverages or gambling operations.~~,~~ ~~including~~ *The term includes* but *is* not limited to taverns, night clubs, cocktail lounges, and casinos.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Enclosed public place" means an indoor area, room, or vehicle that the general public is allowed to enter or that serves as a place of work, including but not limited to the following:

(a) restaurants;

(b) stores;

(c) public and private office buildings and offices, including all office buildings and offices of political subdivisions, as provided for in 50-40-201, and state government;

(d) trains, buses, and other forms of public transportation;

(e) health care facilities;

(f) auditoriums, arenas, and assembly facilities;

(g) meeting rooms open to the public;

(h) bars;

(i) community college facilities;

(j) facilities of the Montana university system; and

(k) public schools, as provided for in 20-1-220 and 50-40-104.

(4) "Establishment" means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.

(5) "Incidental to the service of alcoholic beverages or gambling operations" means that at least 60% of the business's annual gross income comes from the sale of alcoholic beverages or gambling receipts, or both.

(6) "Person" means an individual, partnership, corporation, association, political subdivision, or other entity.

(7) "Place of work" means an enclosed room where one or more individuals work.

(8) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product~~, including marijuana intended for medical use~~ *and includes the use of marijuana for a debilitating medical condition* as provided for in Title 50, chapter 46."

**Section 22.** Section 50-46-327, MCA, is amended to read:

**"50-46-327. Prohibitions on physician affiliation with providers and marijuana-infused products providers — sanctions.** (1) (a) A physician who provides written certifications may not:

(i) accept or solicit anything of value, including monetary remuneration, from a provider or marijuana-infused products provider;

(ii) offer a discount or any other thing of value to a person who uses or agrees to use a particular provider or marijuana-infused products provider; or

(iii) examine a patient for the purposes of diagnosing a debilitating medical condition at a location where ~~medical~~ marijuana *to be used for a debilitating medical condition* is cultivated or manufactured or where marijuana-infused products are made.

(b) Subsection (1)(a) does not prevent a physician from accepting a fee for providing medical care to a provider or marijuana-infused products provider if the physician charges the person the same fee that the physician charges other patients for providing a similar level of medical care.

(2) If the department has cause to believe that a physician has violated this section, has violated a provision of rules adopted pursuant to this chapter, or has not met the standard of care required under this chapter, the department may refer the matter to the board of medical examiners provided for in 2-15-1731 for review pursuant to 37-1-308.

(3) A violation of this section constitutes unprofessional conduct under 37-1-316. If the board of medical examiners finds that a physician has violated this section, the board shall restrict the physician's authority to provide written certification for the use of marijuana. The board of medical examiners shall notify the department of the sanction.

(4) If the board of medical examiners believes a physician's practices may harm the public health, safety, or welfare, the board may summarily restrict a physician's authority to provide written certification for the ~~medical~~ use of marijuana *for a debilitating medical condition*."

**Section 23.** Section 61-11-102, MCA, is amended to read:

**"61-11-102. Records to be kept by department.** (1) Except as provided in subsection (8), the department shall create and maintain a central database of electronic files that includes an individual Montana driving record for each person:

(a) who has been issued a Montana driver's license;

(b) who does not have a driver's license from, or active driving record in, another jurisdiction and for whom the department receives a report of conviction of a traffic violation or an offense requiring suspension or revocation of the person's driver's license; and

(c) whose driver's license or driving privileges have been suspended, revoked, canceled, or otherwise withdrawn by the department.

(2) An individual Montana driving record maintained under this section must include:

(a) personal information obtained from the application for a driver's license or a report of conviction;

(b) the person's driver's license number, license type, status, endorsements, restrictions, issue and expiration dates, and any suspensions, revocations, disqualifications, or cancellations that have been imposed against the person;

(c) all convictions reported to the department for the person; and

(d) traffic accidents in which the person was involved, except that a record of involvement in a traffic accident may not be entered on a licensee's record unless the licensee was convicted, as defined in 61-11-203, for an act causally related to the accident.

(3) (a) The department shall create and maintain a CDLIS driver record for each person who has been issued a Montana commercial driver's license or for whom a record of conviction, disqualification, or other licensure action has been taken for violations of any state or local law relating to motor vehicle traffic

regulation, other than a parking violation, committed while operating a commercial motor vehicle.

(b) A CDLIS driver record maintained by the department must meet the requirements of 49 CFR 384.225.

(c) If the department receives notice that a person has been disqualified by the federal motor carrier safety administration as an imminent hazard under 49 CFR 383.52, the department shall record the disqualification on the CDLIS driver record.

(4) The department shall retain records created under this section for a period of time that meets or exceeds the standards established under 49 CFR, part 384.

(5) The department is further authorized, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, to forward, by electronic or other means, a report of the conviction to the motor vehicle administrator in the state in which the person is a resident or licensed.

(6) The department may place on a computer storage device the information contained on original records or reproductions of original records made pursuant to this section. Signatures on records are not required to be placed on a computer storage device.

(7) (a) Except as provided in subsection (7)(b), a reproduction of the information placed on a computer storage device is an original of the record for all purposes and is admissible in evidence without further foundation in all courts or administrative agencies when the reproduction of the information is signed by a named custodian of the record and the following certification appears on each page:

The individual named below, being a designated custodian of the driver records of the department of justice, motor vehicle division, certifies this document as a true reproduction, in accordance with 61-11-102~~(5)~~*(7)*, of the information contained in a computer storage device of the department of justice, motor vehicle division.

Signed:.....
(Print Full Name)

(b) An order, record, or paper generated from the department's central database of electronic files of individual Montana driving records may be certified electronically by the generating computer. The certification must be a certification of the order, record, or paper as it appeared on a specific date.

(c) A court, an office of a clerk of court, or an attorney licensed to practice law in this state may receive and use a computer-generated individual Montana driving record as evidence without further foundation when:

(i) the individual Montana driving record is electronically transmitted from the department's central database of electronic individual Montana driving records to a department-authorized terminal device maintained by the court, the office of the clerk of court, or the attorney; and

(ii) the judge, an officer of the court, or the attorney certifies that the record was not altered in any way.

(8) The department may remove any individual Montana driving record from the active database of electronic files maintained under this section if there has been no change in license status on or additional reports of conviction to the record in the immediately preceding 16 years. Any individual driving record

removed must be retained elsewhere by the department as an inactive record in an electronic storage device that is searchable and retrievable."

**Section 24.** Section 70-24-430, MCA, is amended to read:

**"70-24-430. Disposition of personal property abandoned by tenant after termination.** (1) If a tenancy terminates in any manner except by court order and the landlord reasonably believes that the tenant has abandoned all personal property that the tenant has left on the premises and a period of time of at least 5 days has elapsed since the occurrence of events upon which the landlord formed that belief, the landlord may remove the property from the premises.

(2) The landlord shall inventory and store all goods, chattels, and personal property of the tenant in a place of safekeeping and shall exercise reasonable care for the property. The landlord may charge a reasonable storage and labor charge if the property is stored by the landlord, plus the cost of removal of the property to the place of storage. The landlord may store the property in a commercial storage company, in which case the storage cost includes the actual storage charge plus the cost of removal of the property to the place of storage.

(3) After complying with subsections (1) and (2), the landlord shall:

(a) make a reasonable attempt to notify the tenant in writing that the property must be removed from the place of safekeeping;

(b) notify the local law enforcement office of the property held by the landlord;

(c) make a reasonable effort to determine if the property is secured or otherwise encumbered; and

(d) send a notice by certified mail to the last-known address of the tenant, stating that at a specified time, not less than 15 days after mailing the notice, the property will be disposed of if not removed.

(4) The landlord may dispose of the property after complying with subsection (3) by:

(a) selling all or part of the property at a public or private sale; or

(b) destroying or otherwise disposing of all or part of the property if the landlord reasonably believes that the value of the property is so low that the cost of storage or sale exceeds the reasonable value of the property.

(5) If the tenant, upon receipt of the notice provided in subsection (3), responds in writing to the landlord on or before the day specified in the notice that the tenant intends to remove the property and does not do so within 7 days after delivery of the tenant's response, the tenant's property is conclusively presumed to be abandoned. If the tenant removes the property, the landlord is entitled to storage costs for the period that the property remains in safekeeping, plus the cost of removal of the property to the place of storage. Reasonable storage costs are allowed a landlord who stores the property, and actual storage costs are allowed a landlord who stores the property in a commercial storage company. A landlord is entitled to payment of the storage costs allowed under this subsection before the tenant may remove the property.

(6) The landlord is not responsible for any loss to the tenant resulting from storage unless the loss is caused by the landlord's purposeful or negligent act. On the event of purposeful violation, the landlord is liable for actual damages.

(7) A public or private sale authorized by this section must be conducted under the provisions of ~~30-9A-601~~ *30-9A-610* or the sheriff's sale provisions of Title 25, chapter 13, part 7.

(8) The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage, labor, and sale and any delinquent rent or damages owing on the premises and shall remit to the tenant the remaining proceeds, if any, together with an itemized accounting. If the tenant cannot after due diligence be found, the remaining proceeds must be deposited with the county treasurer of the county in which the sale occurred and, if not claimed within 3 years, must revert to the general fund of the county available for general purposes."

**Section 25.** Section 76-4-125, MCA, is amended to read:

**"76-4-125. Review of subdivision application — land divisions excluded from review.** (1) Except as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing authority. The review by the reviewing authority must be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must include preliminary plans and specifications for the proposed development, whatever information the developer feels necessary for its subsequent review, any public comments or summaries of public comments collected as provided in 76-3-604(7), and information required by the reviewing authority. Subdivision fees assessed by the reviewing authority must accompany the application. If the proposed development includes onsite sewage disposal facilities, the developer shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

(b) Within 5 working days after receipt of an application that is not subject to review by a local reviewing authority under 76-4-104, the department shall provide a written notice for informational purposes to the applicant if the application does not include a copy of the certification from the local health department required by 76-4-104~~(6)(j)~~*(6)(k)* or, if applicable, contain an approval from the local governing body under Title 76, chapter 3, together with any public comments or summaries of public comments collected as provided in 76-3-604(7)(a).

(c) If the reviewing authority denies an application and the applicant resubmits a corrected application within 30 days after the date of the denial letter, the reviewing authority shall complete review of the resubmitted application within 30 days after receipt of the resubmitted application. If the review of the resubmitted application is conducted by a local department or board of health that is certified under 76-4-104, the department shall make a final decision on the application within 10 days after the local reviewing authority completes its review.

(d) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall make a final decision on the proposed subdivision within 55 days after the submission of a complete application and payment of fees to the reviewing authority unless an environmental impact statement is required, at which time this deadline may be increased to 120 days. The reviewing authority may not request additional information for the purpose of extending the time allowed for a review and final decision on the proposed subdivision. If the department approves the subdivision, the department shall issue a certificate of subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

(2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(a) the exclusions cited in 76-3-201 and 76-3-204;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule;

(d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127, that adequate storm water drainage and adequate municipal facilities will be provided; and

(e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:

(i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system serving a discharge source that was in existence prior to April 29, 1993, and, if required when installed, the system was approved pursuant to local regulations or this chapter.

(3) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield."

**Section 26.** Section 82-11-182, MCA, is amended to read:

**"82-11-182. (Effective on occurrence of contingency) Liability for carbon dioxide during injection.** (1) Until the certificate of project completion is issued pursuant to 82-11-183(1) and title to the stored carbon dioxide and geologic storage reservoir is transferred to the state pursuant to 82-11-183~~(8)~~*(7)*, the geologic storage operator is liable for the operation and management of the carbon dioxide injection well, the geologic storage reservoir, and the injected or stored carbon dioxide.

(2) Bond or other surety furnished pursuant to 82-11-123(1)(f) must be adequate to meet the requirements of subsection (1).

(3) For the purposes of 82-11-183 and this section, "title" includes title to the geologic storage reservoir and the stored carbon dioxide."

**Section 27.** Section 90-3-1001, MCA, is amended to read:

**"90-3-1001. Purpose — definition.** (1) The purpose of establishing a research and commercialization special revenue account in 90-3-1002 and 90-3-1003 is to:

(a) provide a predictable and stable source of funding for research and commercialization projects conducted in the state that demonstrates to both private and public sources, including federal research granting agencies, that Montana recognizes the important contributions that research and commercialization endeavors offer to the state's basic industries;

(b) expand and strengthen research efforts for the state's basic industries to increase their economic impact on the state's economy;

(c) expand research efforts into areas beyond the scope of the state's basic industries to diversify and strengthen the state's economic security through the creation of technology-based operations and long-term quality jobs; and

(d) pay costs of administering this part pursuant to 90-3-1003.

(2) As used in 90-3-1002 and 90-3-1003, "research and commercialization center" means the campuses of the university of Montana or Montana state university, tribal colleges, ~~colleges of technology,~~ community colleges, agricultural research centers, or a private laboratory or research center."

**Section 28. Directions to code commissioner.** The code commissioner is directed to implement 1-11-101(2)(g)(ii) by correcting any clearly inaccurate references to other sections of the Montana Code Annotated contained in material enacted by the 63rd legislature.

Approved March 29, 2013

# CHAPTER NO. 124

[SB 86]

AN ACT DISTINGUISHING AGISTERS' LIENS FROM MECHANICS LIENS AND OTHER LIENS FOR SERVICE; AND AMENDING SECTION 71-3-1201, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Agister's lien — finding — who may hold lien.** (1) The legislature finds that agisters' liens require expeditious action to protect the welfare of the stock and to ensure that the cost to feed and care for the stock covered by the lien does not exceed the market value of the stock.

(2) (a) If there is an express or implied contract for keeping, feeding, herding, pasturing, or ranching stock, a rancher, farmer, agister, herder, hotelkeeper, livery, stablekeeper, or reproductive technology business to whom any horses, mules, cattle, sheep, hogs, or other stock are entrusted has an agister's lien upon the stock for the amount due for keeping, feeding, herding, pasturing, or ranching the stock.

(b) A person holding an agister's lien pursuant to subsection (2)(a) may retain possession of the stock until the amount due is paid.

**Section 2. Priority**. (1) An agister's lien created under [section 1] does not take precedence over perfected security interests under the Uniform Commercial Code—Secured Transactions or other recorded liens on the stock involved unless, within 30 days from the time of receiving the stock, the person desiring to assert a lien upon the stock gives notice in writing to the secured party or other lienholder stating the intention to assert a lien on the stock under the terms of [sections 1 through 4] and stating the nature and approximate amount of the work performed or feed furnished or other services furnished or intended to be performed or furnished.

(2) A new notice is not required for the offspring of the stock covered in the initial notice, but all other additional stock must be noticed separately.

(3) Service may be made either by personal service or by mailing a copy of the notice by certified mail to the secured party or other lienholder at the last-known post-office address. Service is considered complete upon the deposit of the notice in the post office.

(4) Within 20 days after the date of mailing or 10 days after personal service, the secured party or other lienholder or the secured party's or other lienholder's representative has the right to take possession of the stock upon payment of the amount of the lien. A failure on the part of the secured party or other lienholder to take possession of the stock constitutes a waiver of the priority of the security interest or other lien over the lien created by [sections 1 through 4].

**Section 3. Enforcement of agister's lien — sale**. If payment for keeping, feeding, herding, pasturing, or ranching stock is not made within 30 days after the performance of the keeping, feeding, herding, pasturing, or ranching, the person entitled to a lien under the provisions of [sections 1 through 4] may enforce the lien in the following manner:

(1) The person shall deliver to the sheriff of the county in which the property is located an affidavit of the amount of the person's claim against the stock and the name of the owner of the stock or of the person at whose request the feed or material was furnished.

(2) Upon receipt of the affidavit, the sheriff shall advertise and sell at public auction as much of the stock covered by the lien as will satisfy the lien.

(3) Notice of the sale must be provided in the manner prescribed in 25-13-701(1)(b).

(4) (a) Before the sheriff sells the stock at public auction, the sheriff shall give notice of the sale to the owner or person at whose request the feed or material was furnished.

(b) Notice must be given at least 10 days before the sale to the owner or person at whose request the feed or material was furnished and to any other person holding a lien on the animals.

(c) The notice must state:

(i) the time and place of the sale;

(ii) the amount of the claim against the stock;

(iii) a description of the stock;

(iv) the name of the owner or person at whose request the feed or material was furnished; and

(v) the name of the person claiming the lien.

(d) The notice may be given by personal service or by mailing a copy of the notice by certified mail to the last-known post-office address of the owner or person at whose request the feed or material was furnished.

(e) If the sheriff is not able to effect personal service or service by mail because the location and mailing address of the owner or person at whose request the feed or material was furnished is unknown, the sheriff may give notice by posting notice of the sale in three public places in the county in which the property is located.

(5) The sheriff shall apply the proceeds of the sale to the discharge of the lien and the cost of the proceedings in selling the stock and enforcing the lien. The remainder, if any, or a part that is required to discharge the claims must be turned over by the sheriff to the holders, in the order of their precedence, of the chattel mortgages or other lien claimants of record against the stock, and the balance of the proceeds must be turned over to the owner of the stock.

(6) Before seizing stock under the provisions of this section, the sheriff may require an indemnity bond from the lienor. The indemnity bond may not exceed double the amount of the claim against the stock. The sheriff shall approve the bond and the surety or sureties on the bond.

**Section 4. Lien not lost by fraudulent taking of property**. (1) The forcible or fraudulent taking of stock from the person holding an agister's lien pursuant to [sections 1 through 4] does not extinguish the lien.

(2) The person holding the agister's lien may recover possession of the stock by proper action instituted in court against any person possessing the stock.

**Section 5.** Section 71-3-1201, MCA, is amended to read:

**"71-3-1201. ~~Who may have lien — agisters' lien — lien~~ *Liens* for service — towing and storage lien — extension of lien to certain personal property contained in motor vehicle that is subject to lien.** ~~(1) (a) If there is an express or implied contract for keeping, feeding, herding, pasturing, or ranching stock, a rancher, farmer, agister, herder, hotelkeeper, livery, stablekeeper, or reproductive technology business to whom any horses, mules, cattle, sheep, hogs, or other stock are entrusted has a lien upon the stock for the amount due for keeping, feeding, herding, pasturing, or ranching the stock or for providing a service listed in subsection (1)(b) and may retain possession of the stock until the sum due is paid.~~

~~(b)~~*(1)* If there is an express or implied contract for collecting, processing, packaging, or storing embryos or semen from livestock ~~provided for in this subsection (1)~~, a reproductive technology business to whom embryos or semen is entrusted and who still has possession has a lien upon the embryos or semen for the amount due for collecting, processing, packaging, or storing the embryos or semen and may retain possession of the embryos or semen until the sum due is paid.

(2) (a) ~~Every~~ *A* person who, while lawfully in possession of an article of personal property, renders any service to the owner or lawful claimant of the article by labor or skill employed for the making, repairing, protection, improvement, safekeeping, carriage, towing, or storage of the article or tows or stores the article as directed under authority of law has a special lien on the article. The lien is dependent on possession and is for the compensation, if any, that is due to the person from the owner or lawful claimant for the service and for material, if any, furnished in connection with the service. If the service is towing or storage, the lien is for the reasonable cost of the towing or storage.

(b) Any personal property that is in a motor vehicle that is subject to a lien~~,~~ as provided in subsection (2)(a)~~,~~ is also subject to the lien, except for the following:

(i) food items;

(ii) perishable goods;

(iii) prescription items;

(iv) operators' licenses and other identifying documents;

(v) cash, credit cards, debit cards, checks, or checkbooks;

(vi) personal records, legal records, and business records;

(vii) child safety items; and

(viii) wallets, purses, bags, or other containers that contain the items listed in subsections (2)(b)(iv) through (2)(b)(vi)."

**Section 6. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 71, chapter 3, and the provisions of Title 71, chapter 3, apply to [sections 1 through 4].

Approved March 29, 2013

# CHAPTER NO. 125

[SB 93]

AN ACT GENERALLY REVISING THE MONTANA MORTGAGE ACT; REVISING THE ACT TO COMPLY WITH FEDERAL RULES; PROHIBITING A MORTGAGE BROKER OR MORTGAGE LENDER FROM EMPLOYING OR CONTRACTING WITH UNLICENSED PERSONS; REVISING DEFINITIONS; REVISING PROVISIONS RELATING TO EXEMPTIONS; REVISING LICENSING REQUIREMENTS; PROVIDING FOR RESTRICTIONS AND CONDITIONS ON ADVERTISING; REVISING CONTINUING EDUCATION REQUIREMENTS; REVISING OFFICE REQUIREMENTS; PROVIDING THAT BROKERS AND MANAGERS ARE RESPONSIBLE FOR ALL EMPLOYEES; REVISING RECORDKEEPING REQUIREMENTS; PROVIDING THAT CERTAIN ELECTRONIC DOCUMENTS MUST BE TREATED AS ORIGINAL DOCUMENTS; ALLOWING MORTGAGE SERVICERS TO CHARGE FEES THAT ARE UNKNOWN AT CLOSING; REVISING SURETY BOND PROVISIONS; REVISING ENFORCEMENT RULES; PROVIDING JOINT AND SEVERAL LIABILITY FOR CONTROL PERSONS AND OFFICERS AND DIRECTORS; EXPANDING THE DEPARTMENT OF ADMINISTRATION'S RULEMAKING AUTHORITY; AMENDING SECTIONS 32-9-101, 32-9-102, 32-9-103, 32-9-104, 32-9-105, 32-9-107, 32-9-109, 32-9-110, 32-9-112, 32-9-116, 32-9-117, 32-9-118, 32-9-120, 32-9-121, 32-9-122, 32-9-123, 32-9-124, 32-9-126, 32-9-129, 32-9-130, 32-9-133, 32-9-150, 32-9-151, 32-9-155, 32-9-160, 32-9-165, 32-9-167, AND 32-9-170, MCA; AMENDING SECTION 37, CHAPTER 321, LAWS OF 2009; AND REPEALING SECTION 32-9-125, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 32-9-101, MCA, is amended to read:

**"32-9-101. Short title and purpose.** (1) This part may be cited as the "Montana Mortgage Act".

(2) The legislature recognizes that buying or financing a home is one of the largest, most complicated, and vitally important decisions facing consumers in Montana. Therefore, the legislature finds it desirable to license certain persons in the residential mortgage industry that are outside of the traditional banking industry and that have a direct involvement in consumers' financial welfare, including mortgage brokers, mortgage lenders, mortgage servicers, and mortgage loan originators, to promote honesty, education, and professionalism, to ensure the availability and diversity of residential mortgage funding, and to protect Montana consumers and the stability of Montana's economy.

(3) The legislature finds that it is necessary to implement the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 and, together with the residential mortgage industry, recognizes the importance of statewide participation in the ~~nationwide mortgage licensing system and registry~~ *NMLS*. (See compiler's comment regarding contingent suspension.)"

**Section 2.** Section 32-9-102, MCA, is amended to read:

**"32-9-102. License requirement — registration.** (1) Unless exempt under 32-9-104, a person may not ~~act as~~ *regularly engage in the business of* a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator with respect to any residential mortgage loan ~~located in Montana~~ unless licensed under the provisions of this part *or registered through the NMLS with a unique identifier assigned*.

(2) A person ~~acting as~~ *regularly engaging in the business of* a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator under this part is required to be licensed through, registered with, and maintain a valid unique identifier issued by the ~~nationwide mortgage licensing system and registry~~ *NMLS*.

*(3) A mortgage broker or mortgage lender may not employ or contract with any person required to be licensed under this part if the person is not licensed.* (See compiler's comment regarding contingent suspension.)"

**Section 3.** Section 32-9-103, MCA, is amended to read:

**"32-9-103. Definitions.** As used in this part, the following definitions apply:

(1) "Administrative or clerical tasks" mean the receipt, collection, and distribution of information common for the processing or underwriting of a ~~residential mortgage~~ loan *in the mortgage industry, without performing any analysis of the information,* and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan ~~to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms~~.

*(2) "Advertising" means a commercial message in any medium that promotes, either directly or indirectly, a residential mortgage lending transaction.*

*(3) "Application" means a request, in any form, for an offer of residential mortgage loan terms or a response to a solicitation of an offer of residential mortgage loan terms and includes the information about the borrower that is customary or necessary in a decision on whether to make such an offer.*

~~(2)~~*(4)* "Approved education course" means any course approved by the ~~nationwide mortgage licensing system and registry~~ *NMLS*.

~~(3)~~*(5)* "Approved test provider" means any test provider approved by the ~~nationwide mortgage licensing system and registry~~ *NMLS*.

*(6) "Bona fide not-for-profit entity" means an entity that:*

*(a) maintains tax-exempt status under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code, 26 U.S.C. 501(c)(3) or 501(c)(4);*

*(b) promotes affordable housing or provides homeownership education or similar services;*

*(c) conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes;*

*(d) receives funding and revenue and charges fees in a manner that does not create incentives for the entity or its employees to act other than in the best interests of its clients;*

*(e) compensates employees in a manner that does not create incentives for employees to act other than in the best interests of clients;*

*(f) provides to or identifies for the borrower residential mortgage loans with terms that are favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs. For purposes of this subsection (6)(f), for residential mortgage loans to have terms that are favorable to the borrower, the department shall determine that the terms are consistent with loan origination in a public or charitable context, rather than a commercial context.*

*(g) is either certified by the U.S. department of housing and urban development or has received a community housing development organization designation as defined in 24 CFR 92.2.*

~~(4)~~*(7)* "Bona fide third party" means a person that provides services relative to the origination of a residential mortgage loan. The term includes but is not limited to real estate appraisers and credit reporting agencies.

~~(5)~~*(8)* "Borrower" means a person seeking a residential mortgage loan or an obligor on a residential mortgage loan.

~~(6)~~*(9)* "Branch office" means a location at which a licensee conducts business other than a licensee's principal place of business. The location is considered a branch office if:

(a) the address of the location appears on business cards, stationery, or advertising used by the entity;

(b) the entity's name or advertising suggests that mortgages are made at the location;

(c) the location is held out to the public as a licensee's place of business due to the actions of an employee or independent contractor of the entity; or

(d) the location is controlled directly or indirectly by the entity.

*(10) "Commercial context" means that an individual who acts as a mortgage loan originator does so for the purpose of obtaining profit for an entity or individual for which the individual acts, including a sole proprietorship or other entity that includes only the individual, rather than exclusively for public, charitable, or family purposes.*

~~(7)~~*(11)* (a) "Control" means the power, directly or indirectly, to direct the management or policies of an entity, whether through ownership of securities, by contract, or otherwise.

(b) A person is presumed to control an entity if that person:

(i) is a director, general partner, or executive officer *or is an individual that occupies a similar position or performs a similar function*;

(ii) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;

(iii) in the case of a limited liability company, is a managing member; or

(iv) in the case of a partnership, has the right to receive upon dissolution or has contributed 10% or more of the capital.

~~(8)~~*(12)* "Department" means the department of administration provided for in 2-15-1001, acting through its division of banking and financial institutions.

~~(9)~~*(13)* "Depository institution" has the meaning provided in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c), and includes any credit union.

~~(10)~~*(14)* "Designated manager" means a mortgage loan originator with at least 3 years of experience as a mortgage loan originator or registered mortgage loan originator who is designated by an entity as the individual responsible for the operation of a particular location that is under the designated manager's full management, supervision, and control.

~~(11)~~*(15)* "Dwelling" has the meaning provided in 15 U.S.C. 1602~~(v)~~*(w)*.

~~(12)~~*(16)* "Entity" means a business organization, including a sole proprietorship.

~~(13)~~*(17)* "Escrow account" means a depository account with a financial institution that provides deposit insurance and that is separate and distinct

from any personal, business, or other account of the mortgage lender or mortgage servicer and is maintained solely for the holding and payment of escrow funds.

~~(14)~~*(18)* "Escrow funds" means funds entrusted to a mortgage lender or mortgage servicer by a borrower for payment of taxes, insurance, or other payments to be made in connection with the servicing of a loan.

*(19) "Expungement" means a court-ordered process that involves the destruction of documentation related to past arrests and convictions.*

~~(15)~~*(20)* "Federal banking agency" means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration, or the federal deposit insurance corporation.

~~(16) "Immediate family member" means a spouse, child, sibling, parent, grandparent, grandchild, stepchild, stepbrother, or stepsister and includes parent, grandparent, child, grandchild, and sibling relationships based upon adoptive relationships.~~

*(21) "Housing finance agency" includes the Montana board of housing provided for in 2-15-1814.*

*(22) "Independent contractor" means an individual who performs duties other than at the direction of and subject to the supervision and instruction of another individual who is licensed and registered in accordance with this part or who is not required to be licensed in accordance with 32-9-104(1)(b), (1)(d), or (1)(g).*

~~(17)~~*(23)* "Individual" means a natural person.

~~(18)~~*(24)* "Licensee" means a person authorized pursuant to this part to engage in activities regulated by this part. The term does not include an individual who is a registered mortgage loan originator.

~~(19)~~*(25)* "Loan commitment" means a statement transmitted in writing or electronically by a mortgage lender setting forth the terms and conditions upon which the mortgage lender is willing to make a particular residential mortgage loan to a particular borrower.

~~(20)~~*(26) (a)* "Loan processor or underwriter" means an individual who*, with respect to the origination of a residential mortgage loan,* performs administrative or clerical tasks as an employee~~, subsequent to the receipt of a residential mortgage loan application,~~ at the direction of and subject to the supervision of a licensed mortgage loan originator or registered mortgage loan originator.

*(b) For the purposes of subsection (26)(a), "origination of a residential mortgage loan" means all activities related to a residential mortgage loan from the taking of a residential mortgage loan application through the completion of all required loan closing documents and funding of the residential mortgage loan.*

~~(21)~~*(27)* "Mortgage" means a consensual interest in real property located in Montana, including improvements, securing a debt evidenced by a mortgage, trust indenture, deed of trust, or other lien on real property.

~~(22)~~*(28)* (a) "Mortgage broker" means an entity that obtains, attempts to obtain, or assists in obtaining a mortgage loan for a borrower from a mortgage lender in return for consideration or in anticipation of consideration.

(b) For purposes of this subsection ~~(22)~~ *(28)*, attempting to or assisting in obtaining a mortgage loan includes referring a borrower to a mortgage lender or

mortgage broker, soliciting or offering to solicit a mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a mortgage loan with a mortgage lender on behalf of a borrower.

~~(23)~~*(29)* "Mortgage lender" means an entity that closes a residential mortgage loan, advances funds, offers to advance funds, or commits to advancing funds for a mortgage loan applicant.

~~(24)~~*(30)* (a) "Mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain:

(i) takes a residential mortgage loan application; or

(ii) offers or negotiates terms of a residential mortgage loan.

(b) The term does not include an individual:

(i) engaged solely as a loan processor or underwriter, except as provided in 32-9-129; or

(ii) involved solely in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 101(53D).

~~(25)~~*(31)* "Mortgage servicer" means an entity that:

(a) engages, for compensation or gain from another or on its own behalf, in the business of receiving any scheduled periodic payment from a borrower pursuant to the terms of a residential mortgage loan, residential mortgage servicing documents, or a residential mortgage servicing contract; or

(b) meets the definition of "servicer" in 12 U.S.C. 2605(i)(2) with respect to residential mortgage loans.

~~(26)~~*(32)* "Nationwide mortgage licensing system ~~and registry~~ *and registry*" *or "NMLS"* means a ~~mortgage~~ licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the registration ~~of state-licensed mortgage brokers, state-licensed mortgage lenders, state-licensed mortgage servicers, state-licensed mortgage loan originators, and registered mortgage loan originators~~ *and licensing of persons providing nondepository financial services*.

~~(27)~~*(33)* "Nontraditional mortgage product" means any mortgage product other than a 30-year, fixed-rate mortgage.

~~(28)~~*(34)* "Person" means an individual, sole proprietorship, corporation, company, limited liability company, partnership, limited liability partnership, trust, or association.

~~(29)~~*(35)* "Real estate brokerage activities" means activities that involve offering or providing real estate brokerage services to the public, including:

(a) acting as a real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of real property;

(b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(c) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property other than in connection with providing financing with respect to the transaction;

(d) engaging in any activity for which a person is required to be licensed as a real estate salesperson or real estate broker under Montana law; or

(e) offering to engage in any activity or act in any capacity described in subsections ~~(29)(a)~~ *(35)(a)* through ~~(29)(d)~~ *(35)(d)*.

~~(30)~~*(36)* "Registered mortgage loan originator" means an individual who:

(a) meets the definition of mortgage loan originator and is an employee of:

(i) a depository institution;

(ii) a subsidiary that is ~~owned~~ *wholly owned* and controlled by a depository institution and regulated by a federal banking agency; or

(iii) an institution regulated by the farm credit administration; and

(b) is registered with and maintains a unique identifier through the ~~nationwide mortgage licensing system and registry~~ *NMLS*.

*(37) "Regularly engage" means that a person:*

*(a) has engaged in the business of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator on more than 12 residential mortgage loans in the previous calendar year or expects to engage in the business of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator on more than 12 residential mortgage loans in the current calendar year; or*

*(b) has served as the prospective source of financing or performed other phases of loan originations on more than 12 residential mortgage loans in the previous calendar year or expects to serve as the prospective source of financing or perform some other phases of loan origination on more than 12 residential mortgage loans in the current calendar year.*

~~(31)~~*(38)* "Residential mortgage loan" means a loan primarily for personal, family, or household use secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real estate located in Montana.

~~(32)~~*(39)* "Residential real estate" means any real property located in the state of Montana upon which is constructed a dwelling or upon which a dwelling is intended to be built within a 2-year period, subject to 24 CFR 3500.5(b)(4). The borrower's intent to construct a dwelling is presumed unless the borrower has submitted a written, signed statement to the contrary.

~~(33) "Trust account" means a depository account with a financial institution that provides deposit insurance that is separate and distinct from any personal, business, or other account of the mortgage broker or the mortgage lender and that is maintained solely for the holding and payment of bona fide third-party fees.~~

~~(34) "Trust account funds" means money entrusted to a mortgage lender or mortgage broker during the origination of a mortgage loan for the payment of services provided by a bona fide third party, which does not include the services of a mortgage broker, mortgage lender, or mortgage loan originator. The term includes appraisal fees, credit report fees, and other fees required for the mortgage loan origination.~~

~~(35)~~*(40)* "Ultimate equity owner" means an individual who, directly or indirectly, owns or controls an ownership interest in a corporation, a foreign corporation, an alien business organization, or any other form of business organization, regardless of whether the individual owns or controls an ownership interest, individually or in any combination, through one or more persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint-stock companies, or other entities or devices.

~~(36)~~*(41)* "Unique identifier" means a number or other identifier assigned by protocols established by the ~~nationwide mortgage licensing system and registry~~ *NMLS*. (See compiler's comment regarding contingent suspension.)"

**Section 4.** Section 32-9-104, MCA, is amended to read:

**"32-9-104. Exemptions — proof of exemption.** (1) The provisions of this part do not apply to:

(a) an entity that is an agency of the federal, state, *tribal,* or ~~municipal~~ *local* government;

*(b) an individual who is an employee of a federal, state, tribal, local government, or housing finance agency acting as a loan originator only pursuant to the individual's official duties as an employee of the federal, state, tribal, local government, or housing finance agency;*

~~(b)~~*(c)* an entity described in 32-9-103~~(30)(a)(i)~~*(36)(a)(i)* through ~~(30)(a)(iii)~~ *(36)(a)(iii)*;

~~(c)~~*(d)* a registered mortgage loan originator when acting for an entity described in 32-9-103~~(30)(a)(i)~~*(36)(a)(i)* through ~~(30)(a)(iii)~~ *(36)(a)(iii)*;

~~(d) an individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of that individual;~~

~~(e) a person who offers, negotiates, or provides financing in conjunction with the sale of real property owned by that person and that is secured by a contract for deed, mortgage, deed of trust, or other equivalent security interest on the real property sold;~~

~~(f) a loan that is made by an entity to an employee of the entity if the proceeds of the loan are used to assist the employee in meeting the employee's housing needs;~~

~~(g) an entity engaged solely in commercial real estate lending;~~

~~(h) an entity qualified as a pension plan under 26 U.S.C. 401 if the plan makes residential mortgages only to the plan's participants;~~

~~(i) the federal national mortgage association, the federal home loan mortgage corporation, and the government national mortgage association;~~

~~(j) a 501(c)(3) corporation, which is not otherwise engaged in or holding itself out to the public as being engaged in the mortgage loan business, that makes mortgage loans to promote home ownership or improvements for bona fide low-income individuals;~~

*(e) an individual who performs only administrative or clerical tasks at the direction of and subject to the supervision and instruction of an individual who:*

*(i) is a licensed and registered mortgage loan originator pursuant to this part; or*

*(ii) is not required to be licensed in accordance with subsections (1)(b), (1)(d), or (1)(g);*

*(f) an entity that is a bona fide not-for-profit entity;*

*(g) an employee of a bona fide not-for-profit entity who acts as a loan originator only with respect to work duties for the bona fide not-for-profit entity and who acts as a loan originator only with respect to residential mortgage loans with terms that are favorable to the borrower;*

~~(k)~~*(h)* a person that performs only real estate brokerage activities and is licensed or registered pursuant to 37-51-301 unless the person is compensated by a mortgage ~~lender~~ *broker*, a mortgage ~~broker~~ *lender*, or a mortgage loan originator or an agent of the mortgage ~~lender~~ *broker*, mortgage ~~broker~~ *lender*, or mortgage loan originator;

*(i) a person regulated by the commissioner of insurance if that person's principal business is that of preparing abstracts or making searches of titles that are used as a basis for the issuance of any title insurance policy by a company doing business under the laws of this state relating to insurance companies;*

~~(l)~~*(j)* a Montana-licensed attorney ~~who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client unless the attorney is compensated by a mortgage lender, mortgage broker, or mortgage loan originator or any agent of the mortgage lender, mortgage broker, or mortgage loan originator; or~~ *performing activities that fall within the definition of a mortgage loan originator if the activities are:*

*(i) considered by the Montana supreme court to be part of the authorized practice of law within this state;*

*(ii) carried out within an attorney-client relationship; and*

*(iii) accomplished by the attorney in compliance with all applicable laws, rules, and standards; or*

*(k) an individual who is an employee of a retailer of manufactured or modular homes if the employee is performing only administrative or clerical tasks in connection with the sale or lease of a manufactured or modular home and if the individual receives no compensation or other gain from a mortgage lender or a mortgage broker for the performance of the administrative or clerical tasks.*

~~(m) a Montana-licensed certified public accountant or a Montana-licensed public accountant who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to providing public accounting services to the client unless the accountant is compensated by a mortgage lender, a mortgage broker, or a mortgage loan originator or an agent of the mortgage lender, mortgage broker, or mortgage loan originator.~~

*(2) (a) To qualify for an exemption under subsection (1)(f), an entity shall certify, on a form prescribed by the department, that it is a bona fide not-for-profit entity and shall provide additional documentation as required by the department by rule. To maintain this exemption, the entity shall file the prescribed certification and accompanying documentation by December 31 of each year.*

*(b) In determining if an entity is a bona fide not-for-profit entity, the department may rely on its receipt and review of:*

*(i) reports filed with federal, state, tribal, local government, or housing finance agencies and authorities; or*

*(ii) reports and attestations prescribed by the department.*

~~(2)~~*(3)* The burden of proving an exemption under this section is on the person claiming the exemption. ~~A person seeking an exemption under subsection (1)(a), (1)(b), (1)(c), (1)(f), (1)(h), (1)(j), (1)(l), or (1)(m) is required to obtain a written exemption from the department before the exemption applies. The department shall create a form for requesting an exemption.~~

~~(3)~~*(4)* A person who is exempt from licensure ~~under subsection (1)~~ *or is not required to be licensed or registered under this part* may register on the ~~nationwide mortgage licensing system~~ *NMLS* as an exempt registrant for purposes of sponsoring a mortgage loan originator and for purposes of satisfying the mortgage loan originator bonding requirements. (See compiler's comment regarding contingent suspension.)"

**Section 5.** Section 32-9-105, MCA, is amended to read:

**"32-9-105. Nationwide mortgage licensing system ~~and registry~~ for mortgage brokers, mortgage lenders, mortgage servicers, and mortgage loan originators.** (1) The department may participate in the ~~nationwide mortgage licensing system and registry~~ *NMLS* and shall require

mortgage ~~lenders~~ *brokers*, mortgage ~~brokers~~ *lenders*, mortgage servicers, and mortgage loan originators to apply for state licensure on applications approved by the ~~nationwide mortgage licensing system and registry~~ *NMLS*.

(2) The department may establish requirements through rulemaking as necessary to comply with the ~~nationwide mortgage licensing system and registry~~ *NMLS*, including requirements:

(a) for payment of nonrefundable fees to apply for, maintain, and renew licenses through the ~~nationwide mortgage licensing system and registry~~ *NMLS*;

(b) for renewal or reporting dates;

(c) for procedures to amend or to surrender a license; and

(d) pertaining to any other activity necessary for participation in the ~~nationwide mortgage licensing system and registry~~ *NMLS*.

(3) The ~~state~~ *department's* portion of the licensing fees collected by the ~~nationwide mortgage licensing system and registry~~ *NMLS* under this section must be deposited ~~into~~ *in* the department's account in the state special revenue fund to be used for administering this part.

~~(4) The provisions of this part apply to the activities of retail sellers of manufactured homes and recreational vehicles to the extent determined by the United States department of housing and urban development through guidelines, regulations, or interpretive letters.~~ (See compiler's comment regarding contingent suspension.)"

**Section 6.** Section 32-9-107, MCA, is amended to read:

**"32-9-107. Prelicensing education requirements for mortgage loan originators.** (1) An individual seeking a mortgage loan originator's license shall complete at least 20 hours of approved education courses, which must include at least:

(a) 3 hours of training on federal law and regulations;

(b) 3 hours of training in ethics, including instruction on fraud, consumer protection, and fair lending issues; and

(c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

*(2) In addition to the training required in subsection (1), the department may require by rule that applicants complete additional hours of training that are specific to Montana residential mortgage statutes and rules.*

~~(2)~~*(3)* The prelicensing education courses that comply with the requirements of subsection (1) and that are approved by the ~~nationwide mortgage licensing system and registry~~ *NMLS* for any other state must be accepted with respect to the completion of prelicensing education requirements in Montana. (See compiler's comment regarding contingent suspension.)"

**Section 7.** Section 32-9-109, MCA, is amended to read:

**"32-9-109. Experience requirements.** (1) ~~(a)~~ An individual may not act as a designated manager without a minimum of 3 years of experience working as a mortgage loan originator or in a related field.

~~(b) An individual applying for a license as a mortgage loan originator must have a minimum of 6 months of experience working in a related field.~~

(2) The department shall by rule establish what constitutes work in a related field. (See compiler's comment regarding contingent suspension.)"

**Section 8.** Section 32-9-110, MCA, is amended to read:

**"32-9-110. Examination requirements for mortgage loan originators.** (1) An individual seeking a mortgage loan originator's license shall submit to an examination.

(2) In order to meet the examination requirement referred to in subsection (1), an individual shall pass, in accordance with the standards established under this section, a qualified written exam developed by the ~~nationwide mortgage licensing system and registry~~ *NMLS* that is administered by an approved test provider.

(3) A written examination may not be treated as a qualified written examination for purposes of this section unless the exam adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including but not limited to:

(a) ethics;

(b) federal and state laws and regulations pertaining to mortgage origination; and

(c) federal and state laws and regulations pertaining to fraud, consumer protection, the nontraditional mortgage product marketplace, and fair lending issues.

(4) An individual may not be considered to have passed a qualified examination unless the individual achieves an exam score of at least 75%.

(5) An individual may retake a test three consecutive times with each consecutive test being taken at least 30 days after the previous testing date.

(6) An individual who fails three consecutive tests may not take the test for at least 6 months from the date of failing the third test.

(7) A licensed mortgage loan originator who fails to maintain a valid license for a period of 5 years shall retake the test. The 5-year period may not take into account any time during which the person is a registered mortgage loan originator. (See compiler's comment regarding contingent suspension.)"

**Section 9.** Section 32-9-112, MCA, is amended to read:

**"32-9-112. Application for mortgage broker, mortgage lender, mortgage servicer, and mortgage loan originator license — renewals.** (1) An applicant under this part shall apply for a state license or renewal of a license on a form prescribed by the department that complies with the requirements of the ~~nationwide mortgage licensing system and registry~~ *NMLS*. Each form must contain content as set forth by the ~~nationwide mortgage licensing system and registry~~ *NMLS* and may be changed or updated by the department as necessary to comply with the ~~nationwide mortgage licensing system and registry~~ *NMLS*.

(2) The department may establish ~~a relationship~~ *relationships* or ~~contract~~ *contracts* with the ~~nationwide mortgage licensing system and registry~~ *NMLS* or ~~another entity~~ *other entities* designated by the ~~nationwide mortgage licensing system and registry~~ *NMLS* to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this part.

(3) An applicant for a license or license renewal shall furnish information to the ~~nationwide mortgage licensing system and registry~~ *NMLS* concerning the applicant's identity, including but not limited to:

(a) fingerprints for submission to the federal bureau of investigation and any governmental agency or entity authorized to receive information for a state, national, and international criminal history background check; and

(b) personal history and experience in a form prescribed by the ~~nationwide mortgage licensing system and registry~~ *NMLS*, including submission of authorization for the ~~nationwide mortgage licensing system and registry~~ *NMLS* and the department to obtain:

(i) an independent credit report from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p); and

(ii) information related to administrative, civil, or criminal findings by a governmental jurisdiction.

(4) ~~To~~ *For the purposes of this section and to* reduce the points of contact that the federal bureau of investigation may ~~be required~~ *have* to maintain for purposes of subsection (3), the department may use the ~~nationwide mortgage licensing system and registry~~ *NMLS* as a channeling agent for requesting information from and distributing information to the United States department of justice or other governmental agencies.

(5) ~~To~~ *For the purposes of this section and to* reduce the points of contact that the department may ~~be required~~ *have* to maintain for purposes of subsection (3), the department may use the ~~nationwide mortgage licensing system and registry~~ *NMLS* as a channeling agent for requesting and distributing information to and from any source directed by the department.

~~(6) The department shall issue a license to an applicant that has met all the requirements of this section, has paid the fee required under 32-9-117, and is not determined ineligible under 32-9-120.~~ (See compiler's comment regarding contingent suspension.)"

**Section 10.** Section 32-9-116, MCA, is amended to read:

**"32-9-116. Employment of mortgage loan originator.** (1) A mortgage loan originator may transact business for only one employing mortgage broker or one employing mortgage lender licensed in accordance with the provisions of this part.

(2) If the employment of a mortgage loan originator is terminated, the *sponsoring* mortgage broker or ~~the~~ mortgage lender shall remove sponsorship of the mortgage loan originator on the ~~nationwide mortgage licensing system and registry~~ *NMLS* within 5 business days of the termination. The mortgage loan originator's license must be placed in "Approved-Inactive" status until the license is sponsored by a mortgage broker or mortgage lender. If at the end of the next renewal period the license is not sponsored by a mortgage broker or mortgage lender, it must be automatically placed in "Terminated-Expired" status for failure to renew. The removal of sponsorship of the license of any mortgage loan originator extinguishes the right of the mortgage loan originator to engage in any residential mortgage loan origination activity until ~~nationwide mortgage licensing system and registry~~ *NMLS* procedures have been followed to sponsor the license. (See compiler's comment regarding contingent suspension.)"

**Section 11.** Section 32-9-117, MCA, is amended to read:

**"32-9-117. Fees — ~~license renewal —~~ disposition of fees — *rulemaking.*** (1) (a) ~~An entity seeking licensure as a mortgage broker shall pay through the nationwide mortgage licensing system and registry an initial nonrefundable license application fee of $500 and an additional application fee of $250 for any branch office. A mortgage loan originator shall pay through the nationwide mortgage licensing system and registry an initial nonrefundable license application fee of $400. An entity seeking licensure as a mortgage lender shall pay through the nationwide mortgage licensing system and registry an~~

~~initial nonrefundable license application fee of $750 and an additional application fee of $250 for any branch office. An entity seeking licensure as a mortgage servicer shall pay through the nationwide mortgage licensing system and registry an initial nonrefundable license application fee of $750 and an additional nonrefundable application fee of $250 for each branch office.~~ *Application fees are:*

*(i) mortgage broker, $500;*

*(ii) mortgage broker branch, $250;*

*(iii) mortgage lender or mortgage servicer, $750;*

*(iv) mortgage lender branch or mortgage servicer branch, $250; and*

*(v) mortgage loan originator, $400.*

(b) A mortgage broker entity owned by a Montana-licensed mortgage loan originator shall pay ~~through the nationwide mortgage licensing system and registry an initial nonrefundable~~ *a* license application fee of $100.

*(2) All application fees must be paid through the NMLS and are not refundable.*

*(3) The department shall by rule establish the fees for renewal applications and reinstatement of expired licenses. The fees set by the department must be commensurate with the costs of the program.*

~~(2) The license of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator is valid for up to a 1-year period and expires on December 31. A state licensee shall submit a renewal application and pay to the nationwide mortgage licensing system and registry a renewal fee in an amount set by the department by rule. The department shall establish by rule the requirements for renewal applications. The fees set by the department must be commensurate with the costs of the program. If the required information or fees are not submitted within the time prescribed, the license will automatically be placed in "Terminated-Expired" status. The department may adopt procedures for reinstatement of expired licenses that are consistent with the standards established by the nationwide mortgage licensing system and registry.~~

~~(3) An application for renewal of a mortgage loan originator license must be accompanied by evidence that the continuing education requirements provided for in 32-9-118 have been met and that there has not been a material change in the status of the licensee in the preceding 12 months. An application for renewal also must demonstrate that the licensee continues to meet the standards for licensure under this part and that the licensee has paid all fees for renewal of the license.~~

(4) The ~~state~~ *department's* portion of the fees collected under this section must be deposited in the department's state special revenue fund to be used by the department in administering the provisions of this part.

~~(5) An applicant for a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator license renewal shall apply for state licensure on an application form approved by the nationwide mortgage licensing system and registry.~~ (See compiler's comment regarding contingent suspension.)"

**Section 12. License renewal — rulemaking.** (1) All persons licensed under this part are required to renew their licenses by December 31 of each year.

(2) A renewal application for a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator must demonstrate that:

(a) the licensee continues to meet the standards for licensure under this part;

(b) a mortgage loan originator has satisfied annual continuing education requirements pursuant to 32-9-118; and

(c) the licensee has paid all required fees for renewal of the license, all outstanding examination fees and investigation fees, and any civil penalties.

(3) Any license not renewed by December 31 expires on December 31. The department may adopt rules regarding requirements for renewal applications and the procedures for the reinstatement of expired licenses consistent with the standards established by the NMLS.

**Section 13. Use of name — advertising.** (1) A licensee engaged in a business regulated by this part may not operate under a name other than the name licensed by the department.

(2) A licensee may not:

(a) advertise that an applicant has unqualified access to credit without disclosing that material limitations on the availability of credit may exist, such as the percentage required as a down payment, that a higher interest rate or points could be required, or that restrictions as to the maximum principal amount of the mortgage loan offered could apply;

(b) advertise a mortgage loan with a prevailing interest rate indicated in the advertisement unless the advertisement specifically states that the interest rate could change or not be available at the time of commitment or closing;

(c) advertise mortgage loans, including interest rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on the mortgage loans, unless the licensee is able to make or broker the offered mortgage loans to a reasonable number of qualified applicants;

(d) engage in false, deceptive, or misleading advertising; or

(e) falsely advertise or misuse names in violation of 18 U.S.C. 709.

(3) In any printed, published, e-mail, or internet advertisement for the provision of services, the following information must be included:

(a) a name and unique identifier for a mortgage loan originator advertising as an individual; or

(b) the name and unique identifier only of the licensed entity when the licensed entity is advertising on its own behalf or as an entity with one or more mortgage loan originators listed.

**Section 14.** Section 32-9-118, MCA, is amended to read:

**"32-9-118. Continuing education requirements for mortgage loan originators.** (1) All mortgage loan originators shall complete and submit to the ~~nationwide mortgage licensing system and registry~~ *NMLS* evidence of at least 8 hours of continuing education every year at the time they submit their license renewal applications. The 8 hours of continuing education must be obtained in approved education courses.

(2) The 8 hours of education must include at least:

(a) 3 hours of training on federal laws and regulations;

(b) 2 hours of training in ethics, including instruction on fraud prevention, consumer protection, and fair lending issues; and

(c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(3) A person who has successfully completed the education requirements that comply with the requirements of subsections (1) and (2) and that are approved by the ~~nationwide mortgage licensing system and registry~~ *NMLS* for

any other state must be given credit toward completion of continuing education requirements in Montana.

(4) Except as provided in subsection (6), a licensed mortgage loan originator may receive credit for a continuing education course only in the year in which the course is taken and may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(5) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of 2 hours credit for every 1 hour taught.

(6) A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license. The continuing education requirements of this subsection are not subject to the ~~provisions~~ *provision* of subsection (4) *that credit may be given only in the year a course is taken*. (See compiler's comment regarding contingent suspension.)"

**Section 15.** Section 32-9-120, MCA, is amended to read:

**"32-9-120. Denial of mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator license application or license renewal.** (1) The department may not issue or renew any mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator license if any of the following facts are found during the application procedure:

(a) the applicant has ever had a ~~mortgage broker, mortgage lender, mortgage servicer, or~~ mortgage loan originator license or an equivalent license revoked in any governmental jurisdiction. A subsequent formal vacation of a revocation means that the revocation may not be considered a revocation. The department may by order vacate a revocation of a license and enter an appropriate order.

(b) the applicant has been convicted of or pled guilty or nolo contendere to a felony in a domestic, foreign, or military court during the 7-year period preceding the date of the application for licensing or renewal or at any time preceding the date of application if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. The pardon *or expungement* of a conviction is not a conviction for the purposes of this subsection (1)(b). *When determining the eligibility of the applicant for licensure under subsection (1)(c) or this subsection (1)(b), the department may consider the underlying crime, facts, or circumstances of a pardoned or expunged felony conviction.*

(c) the applicant has failed to demonstrate financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this section;

(d) the applicant has not provided *and maintained* the surety bond as required pursuant to 32-9-123;

(e) the applicant has not completed the prelicensing education requirement described in 32-9-107;

(f) the applicant has not passed a written test that meets the test requirements described in 32-9-110;

(g) the applicant made a material misstatement of fact or material omission of fact in the application~~.~~*; or*

*(h) the applicant has been found to have violated:*

*(i) any rule of conduct for persons taking the mortgage loan originator national or state test under the federal Secure and Fair Enforcement for Mortgage Licensing Act; or*

*(ii) the nationwide multistate licensing system industry terms of use as they pertain to enrolling, scheduling, or taking the mortgage loan originator national or state test under the Secure and Fair Enforcement for Mortgage Licensing Act.*

(2) ~~The department shall determine that the applicant has demonstrated the qualities of financial responsibility, character, and general fitness referred to in subsection (1)(c) if all other requirements for licensure under this section have been satisfied and the department's investigation does not reveal a specific problem on the applicant's part with respect to subsection (1)(c).~~ *The department may consider an application abandoned if an applicant fails to provide or respond to a request for additional information within the time period specified by the department by rule.*

*(3) For purposes of subsection (1)(b), a pardoned or expunged felony conviction does not necessitate denial of the license application. The department may consider the underlying crime, facts, or circumstances of a pardoned or expunged felony conviction when determining the eligibility of an applicant for licensure under subsection (1)(b) or (1)(c). Whether a particular crime is classified as a felony must be determined by the law of the jurisdiction in which an individual is convicted.* (See compiler's comment regarding contingent suspension.)"

**Section 16.** Section 32-9-121, MCA, is amended to read:

**"32-9-121. Records maintenance ~~— advertising requirement~~.** (1) Licensees shall maintain books, accounts, records, and copies of residential mortgage loan files and ~~trust account or~~ escrow account records that are necessary to enable the department to determine whether a licensee is in compliance with the applicable laws and rules. The materials must be maintained in accordance with generally accepted accounting principles and good business practices. ~~Each office location must have at least one phone line.~~ Whenever a licensee's usual business location is outside of this state the licensee shall, at its election, either maintain its books and records at a location in this state or reimburse the department for expenses incurred, including but not limited to staff time, transportation, food, and lodging expenses, relating to an examination or investigation under this part.

(2) A mortgage broker, mortgage lender, or mortgage servicer shall maintain a residential mortgage file for a minimum of 5 years from the date of the last activity pertaining to the file. A mortgage broker, mortgage lender, or mortgage servicer shall maintain trust account or escrow account records for a minimum of 5 years.

(3) An entity that ceases operation as a licensee under the provisions of this part shall:

(a) 30 days prior to the discontinuance of business, notify the department of the physical location where required records will be preserved; and

(b) designate a custodian of records and notify the department of the name, physical address, electronic mail address, and telephone number of the custodian of records. The custodian of records shall preserve records required under this part and allow the department access for examination and investigation purposes upon request of the department.

(4) The department shall adopt rules to control the maintenance, storage, transfer, and destruction of records after a licensee ceases operation.

~~(5) (a) In any printed, published, e-mail, or internet advertisement for the provision of services, the following information must be included:~~

~~(i) a name and unique identifier for each mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator advertising as an individual; or~~

~~(ii) the name and unique identifier only of the licensed entity when the licensed entity is advertising on its own behalf or as an entity with one or more mortgage brokers, mortgage lenders, mortgage servicers, or mortgage loan originators also listed.~~

~~(b) For the purposes of this subsection (5), advertising does not include stationery or business forms but does include business cards. A business card must include a mortgage broker's, a mortgage lender's, a mortgage servicer's, or a mortgage loan originator's unique identifier but is not required to list the entity's unique identifier if the entity's name is listed.~~ (See compiler's comment regarding contingent suspension.)"

**Section 17.** Section 32-9-122, MCA, is amended to read:

**"32-9-122. Designated manager and branch office license requirements.** (1) A mortgage broker, mortgage lender, or mortgage servicer ~~entity~~ shall apply for a license for a main office and for every branch office through the ~~nationwide mortgage licensing system and registry~~ *NMLS* and maintain a unique identifier.

~~(2) A mortgage broker entity shall designate to the nationwide mortgage licensing system and registry an individual who is licensed by this state as a mortgage loan originator to serve as the designated manager of the main office and a separate designated manager to serve at each branch office.~~

~~(3)~~*(2)* A *mortgage broker or* mortgage lender ~~entity~~ shall designate to the ~~nationwide mortgage licensing system and registry~~ *NMLS* for each office that originates a residential mortgage loan an individual who is licensed as a mortgage loan originator as the designated manager of the main office and shall designate a separate designated manager to serve each branch office that originates a residential mortgage loan.

~~(4)~~*(3)* A designated manager must have 3 years of experience as either a mortgage loan originator or a registered mortgage loan originator.

~~(5)~~*(4)* A designated manager is responsible for the operation of the business at the location under the designated manager's full charge, supervision, and control.

~~(6)~~*(5)* A mortgage broker or mortgage lender ~~entity~~ is responsible for the conduct of ~~a designated manager or mortgage loan originator while the designated manager or mortgage loan originator is employed by the mortgage broker or mortgage lender entity~~ *its employees*, including for violations of federal laws and regulations that are applicable to the origination of residential mortgage loans, violations of this part, and violations of any administrative rule adopted pursuant to this part.

~~(7)~~*(6)* A designated manager is responsible for conduct that violates federal laws and regulations that are applicable to the origination of residential mortgage loans, violations of this part, and violations of any administrative rule adopted pursuant to this part. The designated manager's responsibility includes conduct by the designated manager and each ~~mortgage loan originator employed by~~ *employee of* the ~~entity while the designated manager is employed~~ *mortgage broker or mortgage lender* at the location that the designated manager manages.

~~(8)~~*(7)* If the designated manager ceases to act in that capacity, within 15 days the mortgage broker or mortgage lender shall designate another individual licensed as a mortgage loan originator as designated manager and shall submit information to the ~~nationwide mortgage licensing system and registry~~ *NMLS* establishing that the subsequent designated manager is in compliance with the provisions of this part.

~~(9)~~*(8)* If the employment of a designated manager is terminated, the mortgage broker or mortgage lender shall remove the sponsorship of the designated manager on the ~~nationwide mortgage licensing system and registry~~ *NMLS* within 5 business days of the termination.

~~(10)~~*(9)* A mortgage servicer is responsible for the acts and omissions of its employees, agents, and independent contractors acting in the course and scope of their employment, agency, or contract. (See compiler's comment regarding contingent suspension.)"

**Section 18.** Section 32-9-123, MCA, is amended to read:

**"32-9-123. Surety bond requirement — notice of legal action.** (1) (a) A mortgage loan originator must be covered by a surety bond in accordance with this section. If a mortgage loan originator is an employee of a licensed mortgage lender or mortgage broker, the surety bond of the licensed mortgage lender or mortgage broker may be used in lieu of a mortgage loan originator's surety bond.

(b) The bond must run to the state of Montana as obligee and must run first to the benefit of the borrower and then to the benefit of the state and any person who suffers loss by reason of the obligor's or its loan originator's violation of any provision of this part or rules adopted under this part. The department shall use the proceeds of the surety bonds to reimburse borrowers, the department, or bona fide third parties who successfully demonstrate a financial loss because of an act of a mortgage broker, mortgage lender, *mortgage servicer,* or mortgage loan originator that violates any provision of this part.

(2) (a) An entity licensed as a mortgage broker, mortgage lender, and mortgage servicer is required to maintain one surety bond for each entity license.

(b) The amount of the required surety bond must be calculated by combining the annual loan production amounts for all persons originating residential mortgage loans and for all business locations of the mortgage broker or mortgage lender and must be in the following amount:

(i) $25,000 for a combined annual loan production that does not exceed $50 million a year;

(ii) $50,000 for annual loan production of $50 million but not exceeding $100 million a year; or

(iii) $100,000 for annual loan production of more than $100 million a year.

(c) The amount of the required surety bond for a mortgage servicer is $100,000.

(3) A mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator shall give notice to the department by certified mail within 15 days of the mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator obtaining knowledge of the initiation of an investigation or the entry of a judgment in a criminal or civil action. The notice must be given if the investigation or the legal action is in any state and involves a mortgage broker, a mortgage lender, a mortgage servicer, a mortgage loan originator, or anyone having an ownership interest in a mortgage broker entity, mortgage lender

entity, or mortgage servicer entity. In the case of a legal action, the notice must include a copy of the criminal or civil judgment.

(4) (a) An obligor shall give written notice to the department of any action that may be brought against it by any creditor or borrower when the action:

(i) is brought under this part;

(ii) involves a claim against the bond filed with the department for the purposes of compliance with this section; or

(iii) involves a claim for damages in excess of $20,000 for a mortgage broker or mortgage loan originator or $200,000 for a mortgage lender or mortgage servicer.

(b) An obligor shall give written notice to the department of any judgment that may be entered against it by any creditor or any borrower or prospective borrower.

(c) The written notice must provide details sufficient to identify the action or judgment and must be submitted within 30 days after the commencement of any action or within 30 days after the entry of any judgment.

(5) A corporate surety shall, within 10 days after it pays any claim or judgment to any claimant, give written notice to the department of the payment with details sufficient to identify the claimant and the claim or judgment paid. Whenever the principal sum of a required bond is reduced by one or more recoveries or payments on the bond, the obligor shall furnish a new or additional bond so that the total or aggregate principal sum of the bond or bonds equals the sum required under this section or the obligor shall furnish an endorsement duly executed by the corporate surety reinstating the bond to the required principal sum.

(6) A bond filed with the department for the purpose of compliance with this section may not be canceled by the obligor or the corporate surety except upon written notice to the department. The cancellation may not take effect until 30 days after receipt by the department of the notice. The cancellation is effective only with respect to any occurrence after the effective date of the cancellation. (See compiler's comment regarding contingent suspension.)"

**Section 19. Electronic record as original document.** Any document or record that is required to be signed and that is filed in this state as an electronic record through the NMLS and any other electronic record filed through the NMLS must be considered a valid original document upon reproduction to paper form by the department.

**Section 20.** Section 32-9-124, MCA, is amended to read:

**"32-9-124. Prohibitions — required disclosure.** (1) A mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator may not do any of the following:

(a) retain original documents owned by the borrower and submitted in connection with the loan application;

(b) directly or indirectly employ any scheme to defraud or mislead a borrower, *a mortgage broker,* a mortgage lender, *a mortgage servicer,* or any other person;

(c) make any misrepresentation or deceptive statement in connection with a residential mortgage loan, including but not limited to interest rates, points, costs at closing, or other financing terms or conditions;

(d) fail to pay a bona fide third party within 30 days after recording of the loan closing documents or within 90 days after completion of the bona fide third-party service, whichever is earlier, unless otherwise agreed by the parties;

~~(e) accept any fees or compensation at closing that were not disclosed as required by state or federal law;~~

~~(f)~~*(e)* accept any fees or compensation in excess of those allowed by state or federal law;

~~(g)~~*(f)* sign a borrower's application or related documents on behalf of or in lieu of another mortgage broker, mortgage lender, or mortgage loan originator;

~~(h) (i)~~*(g)* assist or aid and abet any person in the conduct of business under this part without a valid license as required under this part; ~~or~~

~~(ii)~~*(h)* conduct any business covered by the provisions of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, without holding a valid license as required under this part;

(i) fail to comply with this part or rules promulgated under this part or fail to comply with any other state or federal laws, including the rules and regulations adopted pursuant to those laws, applicable to any business authorized by or conducted under this part;

(j) fail to account for or deliver to any person any funds, documents, or other thing of value obtained in connection with a mortgage loan that the mortgage ~~lender~~ *broker*, mortgage ~~broker~~ *lender*, mortgage servicer, or mortgage loan originator is not entitled to retain under the circumstances;

(k) refuse to permit an investigation or examination of the mortgage ~~lender's~~ *broker's*, mortgage ~~broker's~~ *lender's*, mortgage servicer's, or mortgage loan originator's books and records or refuse to comply with a department subpoena or subpoena duces tecum;

(l) knowingly withhold, abstract, remove, mutilate, destroy, alter, or keep secret any books, records, computer records, or other information from the department; or

(m) negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a government agency or the ~~nationwide mortgage licensing system and registry~~ *NMLS* or in connection with any investigation conducted by the department or another governmental agency.

(2) Within 3 business days of taking an application, the mortgage loan originator working for a mortgage broker, in addition to other disclosures required by this part and other state and federal laws, shall provide to the borrower a written disclosure as prescribed by the department by rule.

*(3) A mortgage broker or mortgage lender may not accept any fees or compensation that were not disclosed as required by state or federal law.*

*(4) A mortgage broker or mortgage lender may not charge or receive, directly or indirectly, fees for assisting a borrower in obtaining a mortgage until all of the services that the mortgage broker or mortgage lender has agreed to perform for the borrower are completed.*

*(5) A mortgage broker or mortgage lender may not charge or receive an amount in excess of the amount allowed by federal law.* (See compiler's comment regarding contingent suspension.)"

**Section 21.** Section 32-9-126, MCA, is amended to read:

**"32-9-126. Revocation, suspension, conditioning, and reinstatement of licenses.** (1) The department, upon giving a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator licensee ~~10~~ *14* days' written notice, which includes a statement of the grounds for the proposed suspension, conditioning, or revocation, and informing the licensee that the licensee has the right to be heard at an administrative hearing if requested by the licensee, may suspend, condition, or revoke a license if it finds that the licensee has violated any provision of this part *or any rule adopted under this part*.

(2) The license of a licensee that refuses to make documents and records relating to the operation of the licensee available upon request by the department must be summarily suspended.

(3) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

(4) The department may reinstate any suspended license if the suspended licensee has complied with all the reinstatement conditions set forth at the time the license was suspended and if the licensee is otherwise qualified to have the license reinstated.

(5) The department may by order vacate a revocation of a license and enter an appropriate order.

(6) The department may refuse to accept a licensee's offer to surrender a license under the following circumstances:

(a) a final order has been issued in an enforcement action and the licensee has not fully complied with the order regardless of whether compliance is yet due;

(b) the licensee has violated or is under investigation for a suspected violation of this part or any rule adopted under this part;

(c) there is an enforcement action or complaint pending against the licensee; or

(d) the licensee has not made arrangements satisfactory to the department regarding loans in process at the time of the offer of surrender.

(7) A revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a borrower.

(8) In the event of a revoked, suspended, or surrendered mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator license, fees may not be refunded by the department. (See compiler's comment regarding contingent suspension.)"

**Section 22.** Section 32-9-129, MCA, is amended to read:

**"32-9-129. Loan processors and underwriters.** (1) A person engaging ~~solely~~ in loan processor or underwriter activities may not represent to the public, through advertising or other means of communication, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the person can or will perform any of the activities ~~pertaining to originating~~ *of* a ~~residential~~ mortgage loan *originator*.

(2) ~~A loan processor or underwriter who is an~~ *An* independent contractor may not engage in ~~mortgage loan originator activities as a loan processor or underwriter unless licensed as a mortgage loan originator under this part. Each independent contractor loan processor or underwriter licensed as a mortgage~~

~~loan originator shall maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry~~ *residential mortgage loan origination activities as a loan processor or underwriter with respect to any dwelling or residential real estate in this state unless the individual first registers as a mortgage loan originator through and obtains a unique identifier from the NMLS and obtains and maintains a valid mortgage loan originator license*.

*(3) For purposes of this section, "residential mortgage loan origination activities" means all activities related to residential mortgage loans from the taking of a residential mortgage loan application through the completion of all required loan closing documents and funding of the residential mortgage loan.* (See compiler's comment regarding contingent suspension.)"

**Section 23.** Section 32-9-130, MCA, is amended to read:

**"32-9-130. Department authority — rulemaking.** (1) The department shall adopt rules necessary to carry out the intent and purposes of this part. The rules adopted are binding on all licensees and enforceable ~~through the power of suspension or revocation of licenses~~ *as provided under this part*.

(2) The rules must address:

(a) revocation or suspension of licenses for cause;

(b) investigation of applicants, licensees, and unlicensed persons alleged to have violated a provision of this part and handling of complaints made by any person in connection with any business transacted by a licensee;

(c) (i) ensuring that all persons are informed of their right to contest a decision by the department under the Montana Administrative Procedure Act; and

(ii) holding contested case hearings pursuant to the Montana Administrative Procedure Act and issuing cease and desist orders, orders of restitution, and orders for the recovery of administrative costs;

(d) prescribing forms for applications; and

(e) establishing fees for license renewals.

(3) The department may seek a writ or order restraining or enjoining, temporarily or permanently, any act or practice violating any provision of this part.

(4) (a) For the purposes of investigating violations or complaints arising under this part or for the purposes of examination, the department may review, investigate, or examine any licensee or person subject to this part as often as necessary in order to carry out the purposes of this part.

(b) The commissioner may direct, subpoena, or order the attendance of and may examine under oath any person whose testimony may be required about the subject matter of any examination or investigation and may direct, subpoena, or order the person to produce books, accounts, records, files, and any other documents the commissioner considers relevant to the inquiry.

(5) Each licensee or person subject to this part shall make available to the department upon request the documents and records relating to the operations of the licensee or person. The department may access the documents and records and may interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, or customers of the licensee or person concerning the business of the licensee or person or any other person having knowledge that the department considers relevant.

(6) (a) The department may conduct investigations and examinations for the purposes of initial licensing, license renewal, license suspension, license

conditioning, license revocation, or license termination or to determine compliance with this part.

(b) The department has the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence, including but not limited to:

(i) criminal, civil, and administrative history information, including confidential criminal justice information as defined in 44-5-103;

(ii) personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq.; and

(iii) any other documents, information, or evidence the department considers relevant to an inquiry or investigation regardless of the location, possession, control, or custody of the documents, information, or evidence.

(7) (a) The total cost for any examination or investigation must be in accordance with fees determined by the department by rule pursuant to this section and may include expenses for necessary travel outside the state for the purposes of conducting the examination or investigation. The fees set by the department must be commensurate with the cost of the examination or investigation. All fees collected under this section must be deposited in the department's account in the state special revenue fund to be used by the department to cover the department's cost of conducting examinations and investigations.

(b) The cost of an examination or investigation must be paid by the licensee or person within 30 days after the date of the invoice. Failure to pay the cost of an examination or investigation when due must result in the suspension or revocation of a licensee's license.

(8) (a) The department may:

(i) exchange information with federal and state regulatory agencies, the attorney general, the *attorney general's* consumer protection office ~~of the department~~, and the legislative auditor;

(ii) exchange information other than confidential information with the mortgage asset research institute, inc., and other similar organizations; and

(iii) refer any matter to the appropriate law enforcement agency for prosecution of a violation of this part.

(b) To carry out the purposes of this section, the department may:

(i) enter into agreements or relationships with other government officials or regulatory associations to improve efficiencies and reduce the regulatory burden by sharing resources, adopting standardized or uniform methods or procedures, and sharing documents, records, information, or evidence obtained under this part, including agreements to maintain the confidentiality of information under laws, rules, or evidentiary privileges of another state, the federal government, or this state;

(ii) retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(iii) use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee or person subject to this part;

(iv) accept and rely on examination or investigation reports by other government officials, within or outside of this state, without the loss of any

privileges or confidentiality protection afforded by state or federal laws, rules, or evidentiary privileges that cover those reports;

(v) accept audit reports made by an independent certified public accountant for the licensee or person subject to this part if the examination or investigation covers at least in part the same general subject matter as the audit report and may incorporate the audit report in the report of the examination, report of the investigation, or other writing of the department under this part; and

(vi) assess against the licensee or person subject to this part the costs incurred by the department in conducting the examination or investigation.

(c) Except as provided in 32-9-160 and subsection (8)(a)(i) of this section, the department shall treat all confidential criminal justice information as confidential unless otherwise required by law.

(9) Pursuant to section 1508(d) of the of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, the department is authorized to:

(a) supervise and enforce the provisions of this part, including the suspension, termination, revocation, or nonrenewal of a license for violation of state or federal law;

(b) participate in the ~~nationwide mortgage licensing system and registry~~ *NMLS*;

(c) ensure that all mortgage broker, mortgage lender, and mortgage loan originator applicants under this part apply for state licensure and pay any required nonrefundable fees to and maintain a valid unique identifier issued by the ~~nationwide mortgage licensing system and registry~~ *NMLS*; and

(d) regularly report violations of state or federal law and enforcement actions to the ~~nationwide mortgage licensing system and registry~~ *NMLS*.

(10) (a) The department may, if the U.S. ~~department of housing and urban development~~ *consumer financial protection bureau* determines that a provision of this part does not meet the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, or that additional persons are subject to this part, refrain from enforcing the provision that is determined to be noncompliant and shall by rule invalidate any noncompliant exemption to this part or require that additional persons be temporarily subject to this part to be compliant with federal law, including the provisions for licensure and registration with and maintenance of a valid unique identifier with the ~~nationwide mortgage licensing system and registry~~ *NMLS*.

(b) The department shall propose to the regular session of the legislature that follows the determination by the U.S. ~~department of housing and urban development~~ *consumer financial protection bureau* legislation to address the incompatibility with federal law. The provisions that the ~~United States department of housing and urban development~~ *U.S. consumer financial protection bureau* determines to not be in compliance with the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act, Public Law 110-289, must be amended in the correcting legislation.

(11) The department may be approved by the ~~nationwide mortgage licensing system and registry~~ *NMLS* as a provider of educational courses. If the department chooses to become an approved provider of educational courses, it may charge fees to attendees. The amount of the fees must be set by rule and must be commensurate with the total course costs, including the costs of becoming an approved provider. All fees collected under this section must be

deposited in the department's account in the state special revenue fund to be used by the department to cover the department's cost of presenting education courses. (See compiler's comment regarding contingent suspension.)"

**Section 24.** Section 32-9-133, MCA, is amended to read:

**"32-9-133. Penalties — restitution.** (1) If the department finds, after providing a ~~10-day~~ *14-day* written notice that includes a statement of alleged violations and a hearing or an opportunity for hearing, as provided in the Montana Administrative Procedure Act, that any person, licensee, or officer, agent, employee, or representative of the person or licensee, whether licensed or unlicensed, has violated any of the provisions of this part, has failed to comply with the rules, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, has furnished false information to the department, or has operated without a required license, the department may impose a civil penalty not to exceed $5,000 for the first violation and not to exceed $10,000 for each subsequent violation.

(2) The department may issue an order*:*

*(a)* requiring restitution*;* ~~to borrowers and~~

*(b) requiring* reimbursement of the department's cost in bringing the administrative action*.; and* ~~In addition, the department may issue an order~~

*(c)* revoking, conditioning, or suspending the right of the person or licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee or to engage in the mortgage broker, mortgage lender, mortgage servicer, or mortgage loan origination business.

(3) ~~All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or in the case of an unlicensed business to the last-known address of record.~~ *Any person who directly or indirectly controls an entity liable under subsection (1), any partner, officer, director, or person occupying a similar status or performing similar functions of the entity, and any person who participates or materially aids in the violation is liable jointly and severally with and to the same extent as the person committing the violation. In addition, each person committing the violation or aiding in the violation is jointly and severally liable if the person committing the violation or aiding in the violation knew or in the exercise of reasonable care should have known of the existence of the facts by reason of which the liability is alleged to exist. There must be contribution between or among the severally liable persons.*

(4) The fines must be deposited in the department's account in the state special revenue fund and used to administer the provisions of this part.

~~(5) In addition to the penalties in subsection (1), a person practicing as a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator without being licensed as required under subsection (1) is guilty of a misdemeanor and may be punished by a fine of not less than $250 or more than $1,000, by imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of subsection (1) constitutes a separate offense.~~ (See compiler's comment regarding contingent suspension.)"

**Section 25.** Section 32-9-150, MCA, is amended to read:

**"32-9-150. Unique identifier for mortgage brokers, mortgage lenders, mortgage servicers, mortgage loan originators, and registered mortgage loan originators.** (1) Each licensed mortgage broker, mortgage lender, mortgage servicer, and mortgage loan originator shall post the mortgage broker's, mortgage lender's, mortgage servicer's, or mortgage loan originator's

unique identifier in a conspicuous place within the office where the licensee principally transacts business.

(2) The department shall provide a link to the consumer access portion of the ~~nationwide mortgage licensing system and registry~~ *NMLS* on the department's website. (See compiler's comment regarding contingent suspension.)"

**Section 26.** Section 32-9-151, MCA, is amended to read:

**"32-9-151. Mortgage call reports.** (1) Each licensee shall submit to the ~~nationwide mortgage licensing system and registry~~ *NMLS* reports of condition, which must be in the form and must contain information that the ~~nationwide mortgage licensing system and registry~~ *NMLS* may require.

(2) Each mortgage loan originator shall ensure that all residential mortgage loans that close as a result of the mortgage loan originator's loan origination activities are included in the report of condition submitted to the ~~nationwide mortgage licensing system and registry~~ *NMLS*. (See compiler's comment regarding contingent suspension.)"

**Section 27.** Section 32-9-155, MCA, is amended to read:

**"32-9-155. Nationwide mortgage licensing system ~~and registry~~ information challenge process.** The department shall establish a process under which mortgage brokers, mortgage lenders, *mortgage servicers,* and mortgage loan originators may challenge information entered into the ~~nationwide mortgage licensing system and registry~~ *NMLS* by the department. (See compiler's comment regarding contingent suspension.)"

**Section 28.** Section 32-9-160, MCA, is amended to read:

**"32-9-160. Confidentiality.** (1) (a) Except as otherwise provided in section 1512 of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, the requirements under federal law, the Montana constitution, or Montana law regarding the privacy or confidentiality of any information or material provided to the ~~nationwide mortgage licensing system and registry~~ *NMLS* and any privilege arising under federal or state law, including the rules of a federal or state court, pertaining to the information or material continue to apply to the information or material after the information or material has been disclosed to the ~~nationwide mortgage licensing system and registry~~ *NMLS*.

(b) Information and material may be shared with all state and federal ~~regulatory officials with mortgage industry oversight authority~~ *financial services regulatory agencies* and with the board of governors of the federal reserve system without the loss of confidentiality protections or the loss of privilege provided by federal law, the Montana constitution, or Montana law.

(2) The department may enter into agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or associations representing governmental agencies as established by rule of the department.

(3) Information or material subject to confidentiality or a privilege under subsection (1) is not subject to:

(a) disclosure under a federal or state law governing disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(b) subpoena, discovery, or admission into evidence in any private civil action or administrative process unless, with respect to any privilege held by the ~~nationwide mortgage licensing system and registry~~ *NMLS* concerning the

information or material, the person to whom the information or material pertains waives, in whole or in part, that privilege.

(4) Montana law relating to the disclosure of confidential supervisory information or information or material described in subsection (1) that is inconsistent with subsection (1) is superseded by the requirements of section 1512 of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289.

(5) Examination reports, information contained in examination reports, and examiners' work papers are confidential material that retain their status as trade secrets or confidential proprietary information of the entities that are the subject of the reports despite having been compelled to be produced to the state for examination purposes. Confidential material is not subject to public inspection, subpoena, or discovery. To the extent that examination reports, work papers, and other confidential material contain personal financial information and personal identification information of individuals, those individuals retain a reasonable expectation of privacy in their personal financial or personal identification information, and although filed with the department as provided in this part, that information is not subject to public inspection, subpoena, or discovery except as directed by a court of law.

(6) This section does not apply to information or material relating to the employment history of and publicly adjudicated disciplinary and enforcement actions against *mortgage brokers,* mortgage lenders, mortgage servicers, ~~mortgage brokers,~~ and mortgage loan originators included in the ~~nationwide mortgage licensing system and registry~~ *NMLS* that is available for public access. (See compiler's comment regarding contingent suspension.)"

**Section 29.** Section 32-9-165, MCA, is amended to read:

**"32-9-165. Types of licenses.** (1) The four types of licenses under this part are mortgage broker licenses, mortgage lender licenses, mortgage servicer licenses, and mortgage loan originator licenses.

(2) A mortgage broker license may be issued to an entity that meets the requirements of 32-9-112, 32-9-113, 32-9-116, 32-9-117, 32-9-122, and 32-9-123 and employs at least one Montana-licensed mortgage loan originator.

~~(3) A licensee-owned mortgage broker license may be issued to an entity that meets the requirements of subsection (2) and is owned by a Montana-licensed mortgage loan originator.~~

~~(4)~~*(3)* A mortgage lender license may be issued to an entity that meets the requirements of 32-9-112, 32-9-113, 32-9-116, 32-9-117, 32-9-122, and 32-9-123 and employs at least one Montana-licensed mortgage loan originator.

~~(5)~~*(4)* A mortgage servicer license may be issued to an entity that meets the requirements of 32-9-112, 32-9-113, 32-9-117, and 32-9-123.

~~(6)~~*(5)* A mortgage loan originator license may be issued to an individual who meets the requirements of 32-9-107, 32-9-109, 32-9-110, 32-9-112, 32-9-116, and 32-9-117 and is sponsored by a Montana-licensed mortgage broker or mortgage lender.

*(6) A de novo inactive license may be issued to a mortgage loan originator that has met all the requirements for licensure except sponsorship.*

*(7) A de novo inactive license may be issued to an entity that has met all the requirements for licensure except employment of at least one Montana-licensed mortgage loan originator.*

*(8) Business may not be conducted under a de novo inactive license.*

~~(7)~~*(9)* A Montana-licensed entity may have one or more branch offices if the entity meets the requirements of 32-9-122 and has paid the fee required under 32-9-117.

~~(8)~~*(10)* Licenses under this part may not be assigned or transferred."

**Section 30.** Section 32-9-167, MCA, is amended to read:

**"32-9-167. Change of control.** (1) Without the prior approval of the department, it is unlawful for an action to be taken that results in a change of control of an entity licensed under this part. Prior to a change of control of a licensed entity, a person seeking to acquire control shall apply for an amendment to the license or a new license as required by the ~~nationwide mortgage licensing system~~ *NMLS* and pay all applicable fees.

(2) The department shall approve or disapprove the application for an amendment or new license in accordance with the provisions of this part."

**Section 31.** Section 32-9-170, MCA, is amended to read:

**"32-9-170. Mortgage servicer duties.** In addition to any duties imposed by ~~other statutes~~ *federal law or regulations* or the common law, a mortgage servicer shall:

(1) safeguard and account for any money handled for the borrower;

(2) follow reasonable and lawful instructions from the borrower;

(3) act with reasonable skill, care, and diligence;

(4) file with the department a complete, current schedule of the ranges of costs and fees the mortgage servicer charges borrowers for servicing-related activities with the mortgage servicer's application and renewal and with any supplemental filings made from time to time;

(5) file with the department upon request a report in a form and format ~~acceptable to~~ *set forth by* the department *by rule* detailing the mortgage servicer's activities in this state~~, including:~~

~~(a) the number of mortgage loans the mortgage servicer is servicing;~~

~~(b) the type and characteristics of the loans in this state;~~

~~(c) the number of serviced loans in default, along with the breakdown of 30-day, 60-day, and 90-day delinquencies;~~

~~(d) information on loss mitigation activities, including details on workout arrangements undertaken; and~~

~~(e) information on foreclosures in this state~~;

(6) at the time the mortgage servicer accepts assignment of servicing rights for a mortgage loan, disclose to the borrower:

(a) any notice required under federal law or regulation; *and*

(b) a schedule of the ranges and categories of the mortgage servicer's costs and fees for its servicing-related activities, which may not exceed those reported to the department; and

~~(c) a notice in the form and content acceptable to the department that the mortgage servicer is licensed in Montana and that complaints about the mortgage servicer may be submitted to the department; and~~

(7) in the event of a delinquency or other act of default on the part of the borrower, act in good faith to inform the borrower of the facts concerning the loan and the nature and extent of the delinquency or default and, if the borrower replies, negotiate with the borrower, subject to the mortgage servicer's duties and obligations under the mortgage servicing contract, if any, to attempt a resolution or workout pertaining to the delinquency or default."

**Section 32.** Section 37, Chapter 321, Laws of 2009, is amended to read:

"**Section 37. Contingent suspension.** If the ~~secretary of housing and urban development~~ *director of the consumer financial protection bureau* determines by guideline, interpretation, or rule that any part of [this act] is out of compliance with the Secure and Fair Enforcement for Mortgage Licensing Act, Public Law 110-289, the operation and effect of that part is suspended."

**Section 33. Repealer.** The following section of the Montana Code Annotated is repealed:

32-9-125. Trust accounts — bona fide third-party fees.

**Section 34. Codification instruction.** [Sections 12, 13, and 19] are intended to be codified as an integral part of Title 32, chapter 9, part 1, and the provisions of Title 32, chapter 9, part 1, apply to [sections 12, 13, and 19].

Approved March 29, 2013

# CHAPTER NO. 126

[SB 142]

AN ACT CLARIFYING THE PROCESS TO FILL A VACANCY IN A STATE SENATE SEAT; AMENDING SECTION 5-2-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 5-2-406, MCA, is amended to read:

**"5-2-406. Elections to fill vacancies in senate.** (1) Whenever a vacancy occurs 85 days or more before the general election held during the second year of the term, an individual ~~may~~ *must* be appointed~~,~~ pursuant to 5-2-402~~, if the legislature is called into special session. However, the~~. *The* appointment ~~may run only~~ *continues* until a person is elected to complete the term at the upcoming general election and *is* sworn into office. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 85 days or more prior to the primary election during the second year, the same procedure as is used for senators who will be elected to full 4-year terms at that general election must be utilized.

(b) Whenever the vacancy occurs on or after the 85th day prior to the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-10-327 and 13-38-204. A political party shall notify the secretary of state of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate must be filed with the secretary of state on or before the 85th day prior to the general election.

(2) Whenever a vacancy occurs on or after the 85th day prior to the general election held during the second year of the term, the person appointed by the board under 5-2-402 shall serve until the end of the term."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved March 29, 2013

# CHAPTER NO. 127

[SB 291]

AN ACT REVISING THE REQUIRED PROVISIONS OF A SCHOOL DISTRICT MULTIDISTRICT COOPERATIVE AGREEMENT; REQUIRING AN AGREEMENT TO INCLUDE TERMS OF DISSOLUTION OF THE COOPERATIVE; AND AMENDING SECTION 20-3-363, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-3-363, MCA, is amended to read:

**"20-3-363. Multidistrict agreements — fund transfers.** (1) The boards of trustees of any two or more school districts may enter into a multidistrict agreement to create a multidistrict cooperative to perform any services, activities, and undertakings of the participating districts and to provide for the joint funding and operation and maintenance of all participating districts upon the terms and conditions as may be mutually agreed to by the districts subject to the conditions of this section. *An agreement must include provisions for dissolution of the cooperative, including the conditions under which dissolution may occur and the disposition of any remaining funds that had been transferred to an interlocal cooperative fund in support of the cooperative.* An agreement must be approved by the boards of trustees of all participating districts by April 1 of the year in which the agreement is executed and by April 1 in any subsequent year to which the agreement applies.

(2) All expenditures in support of the multidistrict agreement may be made from the interlocal cooperative fund as specified in 20-9-703 and 20-9-704. Each participating district of the multidistrict cooperative may transfer funds into the interlocal cooperative fund from the general fund or any other budgeted fund of the district. Transfers to the interlocal cooperative fund from each participating school district's general fund are limited to an amount not to exceed the direct state aid in support of the respective school district's general fund. All transfers must be completed by April 1 of the year in which the agreement is executed and by April 1 in any subsequent year to which the agreement applies.

(3) Expenditures from the interlocal cooperative fund under this section are limited to those expenditures that are permitted by law and that are within the final budget for the budgeted fund from which the transfer was made.

(4) The intent of this section is to increase the flexibility and efficiency of school districts without an increase in local taxes. In furtherance of this intent, if transfers of funds are made from any school district fund supported by a nonvoted levy, the district may not increase its nonvoted levy for the purpose of restoring the amount of funds transferred.

(5) As used in this title, "multidistrict cooperative" means a public entity created by two or more school districts executing a multidistrict agreement under this section or any school district or other public entity participating in an interlocal cooperative agreement under the provisions of Title 20, chapter 9, part 7, as either a coordinating or a cooperating agency."

Approved March 29, 2013

# CHAPTER NO. 128

[SB 356]

AN ACT CLARIFYING THAT CERTAIN SCHOOL ASSIGNMENT DECISIONS ARE SUBJECT TO THE DISTRICT'S GRIEVANCE POLICY; AMENDING SECTION 20-5-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-5-101, MCA, is amended to read:

**"20-5-101. Admittance of child to school.** (1) The trustees shall assign and admit a child to a school in the district when the child is:

(a) 6 years of age or older on or before September 10 of the year in which the child is to enroll but is not yet 19 years of age;

(b) a resident of the district; and

(c) otherwise qualified under the provisions of this title to be admitted to the school.

(2) The trustees of a district may assign and admit any nonresident child to a school in the district under the tuition provisions of this title.

(3) The trustees may at their discretion assign and admit a child to a school in the district who is under 6 years of age or an adult who is 19 years of age or older if there are exceptional circumstances that merit waiving the age provision of this section. The trustees may also admit an individual who has graduated from high school but is not yet 19 years of age even though no special circumstances exist for waiver of the age provision of this section.

(4) The trustees shall assign and admit a child who is homeless, as defined in the Stewart B. McKinney Homeless Assistance Act (Public Law 100-77), to a school in the district regardless of residence. The trustees may not require an out-of-district attendance agreement or tuition for a homeless child.

(5) Except for the provisions of subsection (4), tuition for a nonresident child must be paid in accordance with the tuition provisions of this title.

*(6) The trustees' assignment of a child meeting the qualifications of subsection (1) to a school in the district outside of the adopted school boundaries applicable to the child is subject to the district's grievance policy. Upon completion of procedures set forth in the district's grievance policy, the trustees' decision regarding the assignment is final.*"

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved March 29, 2013

# CHAPTER NO. 129

[HB 163]

AN ACT ELIMINATING THE MOUNTAIN LION TROPHY FEE; AMENDING SECTIONS 87-2-507 AND 87-2-508, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 87-2-507, MCA, is amended to read:

**"87-2-507. Class D-1—nonresident mountain lion license.** Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before

or during the season for which the license is issued *may*, upon payment of a fee of $320, ~~may~~ receive a Class D-1 license that entitles a holder who is 12 years of age or older to hunt mountain lion and possess the carcass of the mountain lion as authorized by department rules. ~~If a holder of a valid mountain lion license under this section kills a mountain lion, the licensee shall purchase a trophy license for a fee of $50 within 10 days after the date of kill. The trophy license authorizes the holder to possess and transport the trophy.~~"

**Section 2.** Section 87-2-508, MCA, is amended to read:

**"87-2-508. Class D-2—resident mountain lion license.** Except as otherwise provided in this chapter, a person who is a resident, as defined in 87-2-102, and who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued *may*, upon payment of a fee of $19, ~~may~~ receive a Class D-2 license that entitles a holder who is 12 years of age or older to hunt mountain lion and possess the carcass of the mountain lion as authorized by department rules. ~~If a holder of a valid mountain lion license under this section kills a mountain lion, the licensee shall purchase a trophy license for a fee of $50 within 10 days after the date of kill. The trophy license authorizes the holder to possess and transport the trophy.~~"

**Section 3. Effective date.** [This act] is effective July 1, 2013.

Approved April 1, 2013

# CHAPTER NO. 130

[HB 245]

AN ACT AUTHORIZING DEDICATION OF PARK LAND BY COUNTIES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Authorization to dedicate park land.** The board of county commissioners may dedicate county land to the public use as county park land. Except as provided in 7-16-2324, a county may not sell, lease, or exchange land that is dedicated as park land under the provisions of this section.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 7, chapter 8, part 22, and the provisions of Title 7, chapter 8, part 22, apply to [section 1].

Approved April 1, 2013

# CHAPTER NO. 131

[HB 325]

AN ACT REVISING WHAT IS CONSIDERED A HOLIDAY IF A LEGAL HOLIDAY FALLS ON A SATURDAY; AND AMENDING SECTION 1-1-216, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 1-1-216, MCA, is amended to read:

**"1-1-216. Legal holidays and business days.** (1) The following are legal holidays in the state of Montana:

(a) Each Sunday;

(b) New Year's Day, January 1;

(c) Martin Luther King Jr. Day, the third Monday in January;

(d) Lincoln's and Washington's Birthdays, the third Monday in February;

(e) Memorial Day, the last Monday in May;

(f) Independence Day, July 4;

(g) Labor Day, the first Monday in September;

(h) Columbus Day, the second Monday in October;

(i) Veterans' Day, November 11;

(j) Thanksgiving Day, the fourth Thursday in November;

(k) Christmas Day, December 25;

(l) State general election day.

(2) *(a)* If any of the ~~above-enumerated holidays (except Sunday)~~ *holidays in subsection (1)(b) through (1)(l)* fall upon a Sunday, the Monday following is a holiday.

*(b) If any of the holidays in subsection (1)(b) through (1)(l) fall upon a Saturday, the Friday preceding is a holiday.*

*(c)* All other days are business days."

Approved April 1, 2013

## CHAPTER NO. 132

[HB 360]

AN ACT ALLOWING ARTIFICIALLY PROPAGATED BIRDS TO BE HELD IN TEMPORARY HOLDING PENS ON A SHOOTING PRESERVE WITHOUT A GAME BIRD FARM LICENSE; AMENDING SECTION 87-4-902, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Use of temporary holding pens.** (1) During the shooting preserve season established in 87-4-521, artificially propagated birds may be held in temporary holding pens for up to 60 days after being delivered to a shooting preserve to acclimate them to the shooting preserve environment.

(2) Any bird held in a temporary holding pen that has not been released on the shooting preserve may not be sold without obtaining a game bird farm license under Title 87, chapter 4, part 9.

**Section 2.** Section 87-4-902, MCA, is amended to read:

**"87-4-902. Exemption.** This part does not apply to:

(1) a person who owns, controls, or propagates game birds for purposes other than sale or conveyance of game birds or parts ~~thereof~~ *of game birds* and who notifies the department and receives its written authorization and exemption; ~~or~~

(2) the holder of a migratory game bird avicultural permit under 87-2-807*; or*

*(3) the holder of a shooting preserve license under Title 87, chapter 4, part 5, who uses temporary holding pens pursuant to [section 1]*."

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 87, chapter 4, part 5, and the provisions of Title 87, chapter 4, part 5, apply to [section 1].

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 1, 2013

# CHAPTER NO. 133

[SB 3]

AN ACT REPEALING THE LEGISLATIVE INTERN PROGRAM; REPEALING SECTIONS 5-6-101, 5-6-102, 5-6-103, 5-6-104, 5-6-105, 5-6-106, 5-6-107, 5-6-108, 5-6-109, 5-6-110, AND 5-6-111, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Repealer.** The following sections of the Montana Code Annotated are repealed:

5-6-101. Short title.
5-6-102. Establishment of program.
5-6-103. Term of service.
5-6-104. Number of interns — where from.
5-6-105. Selection by schools.
5-6-106. Intern qualifications.
5-6-107. Assignment of interns.
5-6-108. Legislative council to establish guidelines.
5-6-109. Interns responsible to sponsor.
5-6-110. Program not mandatory.
5-6-111. Funding not obligatory.

Approved March 31, 2013

# CHAPTER NO. 134

[SB 252]

AN ACT REVISING THE NUMBER OF ACRES THAT MUST BE OWNED BY AN ELECTOR IN ORDER TO CAST EACH VOTE FOR ELECTIONS WITHIN IRRIGATION DISTRICTS; AMENDING SECTION 85-7-1710, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 85-7-1710, MCA, is amended to read:

**"85-7-1710. Qualification of electors and nature of voting rights.** (1) At all elections held under the provisions of this part, except as otherwise expressly provided, the following holders of title or evidence of title to irrigable lands within the district, designated "electors", are entitled to vote:

(a) all individuals having the qualifications of electors under the constitution and general election laws of the state, except that registration of electors and county residency may not be required;

(b) guardians, executors, administrators, and trustees;

(c) domestic corporations, by their duly authorized agents.

(2) In all elections held under this part, each elector is permitted to cast one vote for each ~~40 acres~~ *acre* of irrigable land or major fraction of ~~40 acres~~ *an acre* owned by the elector within the district, irrespective of the location of the irrigable lands within the tracts designated by the commissioners for assessment and taxation purposes or within congressional subdivisions, platted lots or blocks ~~(~~except as otherwise provided for~~)~~, election precincts, or district divisions, but any elector owning any less than ~~40 acres~~ *1 acre* of irrigable land is entitled to one vote. Until the irrigable area under the proposed plan of

reclamation is determined, all land included within the boundaries of the district must be considered irrigable land for election purposes.

(3) Whenever land is owned by co-owners, the owners may designate one of their number or an agent to cast the vote for the owners. Whenever the land is owned by a single owner, the owner may designate an agent to cast the vote. ~~One~~ *Only one* vote ~~only for~~ *may be cast for* each ~~40 acres~~ *acre* of irrigable land or major fraction of ~~40 acres~~ *an acre* ~~may be cast~~ by the voting co-owner or by an agent. Whenever land is under contract of sale to a purchaser residing within the state, the purchaser may vote on behalf of the owner of the land. When voting, the agent of a corporation, of a single owner or co-owners, of the co-owner designated for the purpose of voting, or of the purchaser of land under contract of sale~~, as the case may be,~~ shall file with the secretary of the district or with the election officials a written instrument of the agent's authority, executed and acknowledged by the proper officers of the corporation, by the single owner or co-owners, or by the owner of land under contract of sale, ~~as the case may be,~~ and upon filing, the agent or co-owner or purchaser, ~~as the case may be,~~ is an elector within the meaning of this part. ~~Whenever the total irrigable acreage within any one district has been platted or subdivided into lots or blocks to the extent of 5% or more of the total acreage of the district or whenever the majority of the district board adopts a resolution allowing it, each elector is permitted to cast one vote for each acre of irrigable land or major fraction of an acre of irrigable land owned by the elector within the district, irrespective of the location of the irrigable lands within the tracts designated by the commissioners for assessment and taxation purposes or within the congressional subdivisions, but any elector owning any less than 1 acre of irrigable land within the district is entitled to one vote.~~

(4) The board of commissioners shall choose one of the following methods of balloting:

(a) *for* 10 votes or less, separate ballots ~~will~~ *must* be used~~;~~*, and for* more than 10 votes, the elector shall vote in blocks of 10 using one ballot for each 10 votes and separate ballots for odd votes over multiples of 10; or

(b) the elector shall submit a ballot that includes the number of acres owned and the number of votes being cast."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved March 31, 2013

## CHAPTER NO. 135

[HB 140]

AN ACT GENERALLY REVISING LAWS RELATING TO CONTROLLED SUBSTANCES; DEFINING "DANGEROUS DRUG ANALOGUES"; LISTING DANGEROUS DRUG ANALOGUES AS SCHEDULE I DANGEROUS DRUGS; REVISING PROVISIONS RELATED TO SYNTHETIC CANNABINOIDS; LISTING SUBSTITUTED CATHINONES, ALSO KNOWN AS BATH SALTS, AS SCHEDULE I DANGEROUS DRUGS; LISTING HASHISH AS A SCHEDULE I DANGEROUS DRUG; LISTING VARIOUS SUBSTANCES AS DANGEROUS DRUGS; AND AMENDING SECTIONS 45-9-101, 45-9-102, 45-9-103, 45-9-110, 50-32-101, 50-32-222, 50-32-224, 50-32-226, 50-32-229, 50-32-232, AND 50-32-314, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 45-9-101, MCA, is amended to read:

**"45-9-101. Criminal distribution of dangerous drugs.** (1) Except as provided in Title 50, chapter 46, a person commits the offense of criminal distribution of dangerous drugs if the person sells, barters, exchanges, gives away, or offers to sell, barter, exchange, or give away any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal distribution of a narcotic drug, as defined in 50-32-101~~(18)(d)~~*(19)(d)*, or an opiate, as defined in 50-32-101~~(19)~~, shall be imprisoned in the state prison for a term of not less than 2 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(3) (a) A person convicted of criminal distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction for criminal distribution of such a drug shall be imprisoned in the state prison for a term of not less than 10 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(b) Upon a third or subsequent conviction for criminal distribution of such a drug, the person shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(c) The exception for marijuana or tetrahydrocannabinol in subsection (3)(a) does not apply to synthetic cannabinoids listed as dangerous drugs in 50-32-222.

(4) A person convicted of criminal distribution of dangerous drugs not otherwise provided for in subsection (2), (3), or (5) shall be imprisoned in the state prison for a term of not less than 1 year or more than life or be fined an amount of not more than $50,000, or both.

(5) A person who was an adult at the time of distribution and who is convicted of criminal distribution of dangerous drugs to a minor shall be sentenced as follows:

(a) If convicted pursuant to subsection (2), the person shall be imprisoned in the state prison for not less than 4 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(b) If convicted of the distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of such a distribution, the person shall be imprisoned in the state prison for not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(c) If convicted of the distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of two or more such distributions, the person shall be imprisoned in the state prison for not less than 40 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(d) If convicted pursuant to subsection (4), the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(6) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

**Section 2.** Section 45-9-102, MCA, is amended to read:

**"45-9-102. Criminal possession of dangerous drugs.** (1) Except as provided in Title 50, chapter 46, a person commits the offense of criminal

possession of dangerous drugs if the person possesses any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than $100 or more than $500 and by imprisonment in the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended or deferred sentence. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed $1,000 or by imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or by both. This subsection does not apply to the possession of synthetic cannabinoids listed as dangerous drugs in 50-32-222.

(3) A person convicted of criminal possession of an anabolic steroid as listed in 50-32-226 is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than $100 or more than $500 or by imprisonment in the county jail for not more than 6 months, or both.

(4) A person convicted of criminal possession of an opiate, as defined in 50-32-101~~(19)~~, shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than $50,000, except as provided in 46-18-222.

(5) (a) A person convicted of a second or subsequent offense of criminal possession of methamphetamine shall be punished by:

(i) imprisonment for a term not to exceed 5 years or by a fine not to exceed $50,000, or both; or

(ii) commitment to the department of corrections for placement in an appropriate correctional facility or program for a term of not less than 3 years or more than 5 years. If the person successfully completes a residential methamphetamine treatment program operated or approved by the department of corrections during the first 3 years of a term, the remainder of the term must be suspended. The court may also impose a fine not to exceed $50,000.

(b) During the first 3 years of a term under subsection (5)(a)(ii), the department of corrections may place the person in a residential methamphetamine treatment program operated or approved by the department of corrections or in a correctional facility or program. The residential methamphetamine treatment program must consist of time spent in a residential methamphetamine treatment facility and time spent in a community-based prerelease center.

(c) The court shall, as conditions of probation pursuant to subsection (5)(a), order:

(i) the person to abide by the standard conditions of probation established by the department of corrections;

(ii) payment of the costs of imprisonment, probation, and any methamphetamine treatment by the person if the person is financially able to pay those costs;

(iii) that the person may not enter an establishment where alcoholic beverages are sold for consumption on the premises or where gambling takes place;

(iv) that the person may not consume alcoholic beverages;

(v) the person to enter and remain in an aftercare program as directed by the person's probation officer; and

(vi) the person to submit to random or routine drug and alcohol testing.

(6) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsections (2) through (5) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $50,000, or both.

(7) A person convicted of a first violation under this section is presumed to be entitled to a deferred imposition of sentence of imprisonment.

(8) Ultimate users and practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

**Section 3.** Section 45-9-103, MCA, is amended to read:

**"45-9-103. Criminal possession with intent to distribute.** (1) Except as provided in Title 50, chapter 46, a person commits the offense of criminal possession with intent to distribute if the person possesses with intent to distribute any dangerous drug as defined in 50-32-101.

(2) A person convicted of criminal possession of an opiate, as defined in 50-32-101~~(19)~~, with intent to distribute shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal possession with intent to distribute not otherwise provided for in subsection (2) shall be imprisoned in the state prison for a term of not more than 20 years or be fined an amount not to exceed $50,000, or both.

(4) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

**Section 4.** Section 45-9-110, MCA, is amended to read:

**"45-9-110. Criminal production or manufacture of dangerous drugs.** (1) Except as provided in Title 50, chapter 46, a person commits the offense of criminal production or manufacture of dangerous drugs if the person knowingly or purposely produces, manufactures, prepares, cultivates, compounds, or processes a dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal production or manufacture of a narcotic drug, as defined in 50-32-101~~(18)(d)~~*(19)(d)*, or an opiate, as defined in 50-32-101~~(19)~~, shall be imprisoned in the state prison for a term of not less than 5 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal production or manufacture of a dangerous drug included in Schedule I of 50-32-222 or Schedule II of 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction that has become final for criminal production or manufacture of a Schedule I or Schedule II drug shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222. Upon a third or subsequent conviction that has become final for criminal production or manufacture of a Schedule I or Schedule II drug, the person shall be imprisoned in the state prison for a term of not less than 40 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222. The penalties provided for in this subsection also apply to the criminal production or manufacture of synthetic cannabinoids listed as dangerous drugs in 50-32-222.

(4) A person convicted of criminal production or manufacture of marijuana, tetrahydrocannabinol, or a dangerous drug not referred to in subsections (2) and (3) shall be imprisoned in the state prison for a term not to exceed 10 years and may be fined not more than $50,000, except that if the dangerous drug is marijuana and the total weight is more than a pound or the number of plants is more than 30, the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than $50,000. "Weight" means the weight of the dry plant and includes the leaves and stem structure but does not include the root structure. A person convicted under this subsection who has a prior conviction that has become final for criminal production or manufacture of a drug under this subsection shall be imprisoned in the state prison for a term not to exceed twice that authorized for a first offense under this subsection and may be fined not more than $100,000.

(5) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

**Section 5.** Section 50-32-101, MCA, is amended to read:

**"50-32-101. Definitions.** As used in this chapter, the following definitions apply:

(1) "Administer" means the direct application of a dangerous drug, whether by injection, inhalation, ingestion, or other means, to the body of a patient or research subject by:

(a) a practitioner or by the practitioner's authorized agent; or

(b) the patient or research subject at the direction and in the presence of the practitioner.

(2) (a) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser.

(b) The term does not include a common or contract carrier, public warehouse operator, or employee of the carrier or warehouse operator.

(3) "Board" means the board of pharmacy provided for in 2-15-1733.

(4) "Bureau" means the drug enforcement administration, United States department of justice, or its successor agency.

(5) "Counterfeit substance" means a dangerous drug or the container or labeling of a dangerous drug without authorization that bears the trademark, trade name, or other identifying mark, imprint, number, or device or a likeness of an identifying mark, imprint, number, or device of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the drug.

(6) "Dangerous drug" means a drug, substance, or immediate precursor in Schedules I through V set forth in *Title 50, chapter 32,* part 2.

*(7) (a) "Dangerous drug analogue" means any material, compound, mixture, or preparation that is structurally related to or chemically derived from any dangerous drug in Schedules I through V set forth in Title 50, chapter 32, part 2, or that is expressly or impliedly represented to produce or does produce a physiological effect similar to or greater than the effect of a dangerous drug in Schedules I through V.*

*(b) The term does not include any material, compound, mixture, or preparation that is currently listed as a dangerous drug in Schedules I through V set forth in Title 50, chapter 32, part 2, or in an administrative rule, is approved*

*for use by the United States food and drug administration, or is otherwise specifically excepted from Title 50, chapter 32, part 2.*

~~(7)~~*(8)* "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a dangerous drug, whether or not there is an agency relationship.

~~(8)~~*(9)* "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

~~(9)~~*(10)* "Dispense" means to deliver a dangerous drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the drug for that delivery.

~~(10)~~*(11)* "Dispenser" means a practitioner who dispenses.

~~(11)~~*(12)* "Distribute" means to deliver other than by administering or dispensing a dangerous drug.

~~(12)~~*(13)* "Distributor" means a person who distributes.

~~(13)~~*(14)* "Drug" has the same meaning as provided in 37-7-101.

~~(14)~~*(15)* "Hashish", as distinguished from marijuana, means the mechanically processed or extracted plant material that contains tetrahydrocannabinol (THC) and is composed of resin from the cannabis plant.

~~(15)~~*(16)* "Immediate precursor" means a substance that the board finds to be and by rule designates as being the principal compound commonly used or produced primarily for use and that is an immediate chemical intermediary used or likely to be used in the manufacture of a dangerous drug, the control of which is necessary to prevent, curtail, or limit manufacture.

~~(16)~~*(17)* (a) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a dangerous drug either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis and includes the packaging or repackaging of the drug or labeling or relabeling of its container.

(b) Manufacture does not include the preparation or compounding of a dangerous drug by an individual for personal use or the preparation, compounding, packaging, or labeling of a dangerous drug:

(i) by a practitioner as an incident to the administering or dispensing of a dangerous drug in the course of a professional practice; or

(ii) by a practitioner or the practitioner's authorized agent under the practitioner's supervision for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale.

~~(17)~~*(18)* "Marijuana (marihuana)" means all plant material from the genus Cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

~~(18)~~*(19)* "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) opium and opiate and a salt, compound, derivative, or preparation of opium or opiate;

(b) a salt, compound, isomer, derivative, or preparation of a salt, compound, isomer, or derivative that is chemically equivalent or identical with any of the

drugs referred to in subsection ~~(18)(a)~~ *(19)(a)*, but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw; or

(d) coca leaves and a salt, compound, derivative, or preparation of coca leaves and a salt, compound, isomer, derivative, or preparation of a salt, compound, isomer, or derivative that is chemically equivalent or identical with any of these drugs, but not including decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine.

~~(19)~~*(20)* "Opiate" means a drug having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term does not include, unless specifically designated as a dangerous drug under 50-32-202, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term does include its racemic and levorotatory forms.

~~(20)~~*(21)* "Opium poppy" means the plant of the species Papaver somniferum L., except its seeds.

~~(21)~~*(22)* "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

~~(22)~~*(23)* "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing.

~~(23)~~*(24)* "Practitioner" means:

(a) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state;

(b) a pharmacy or other institution licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state; and

(c) a physician licensed to practice medicine or a dentist licensed to practice dentistry in another state.

~~(24)~~*(25)* "Prescription" means an order given individually for the person for whom prescribed, directly from the prescriber to the furnisher or indirectly to the furnisher, by means of an order signed by the prescriber and bearing the name and address of the prescriber, the prescriber's license classification, the name of the patient, the name and quantity of the drug or drugs prescribed, the directions for use, and the date of its issue. These stipulations apply to written, electronically transmitted, and telephoned prescriptions.

~~(25)~~*(26)* "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a substance or drug regulated under the provisions of this chapter.

~~(26)~~*(27)* "State", when applied to a part of the United States, includes a state, district, commonwealth, territory, insular possession of the United States, and any area subject to the legal authority of the United States of America.

~~(27)~~*(28)* "Ultimate user" means a person who lawfully possesses a dangerous drug for personal use or for the use of a member of the person's household or for administering to an animal owned by the person or by a member of the person's household."

**Section 6.** Section 50-32-222, MCA, is amended to read:

**"50-32-222. Specific dangerous drugs included in Schedule I.** Schedule I consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Opiates. Unless specifically excepted or listed in another schedule, any of the following are opiates, including isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation:

(a) acetyl-alpha-methylfentanyl*, also known as N-(1-(1-Methyl-2-phenethyl)-4-piperidinyl)-N-phenylacetamide*;

(b) acetylmethadol*, also known as 4-(dimethylamino)-1-ethyl-2, 2-diphenylpentyl acetate or methadyl acetate*;

(c) allylprodine*, also known as 1-methyl-4-phenyl-3-(prop-2-en-1-yl) piperidin-4-yl propanoate*;

(d) alphacetylmethadol, except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM;

(e) alphameprodine;

(f) alphamethadol;

(g) alpha-methylfentanyl*, also known as* (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);

(h) alpha-methylthiofentanyl, also known as N-[1-methyl-2-(2-thienyl) ethyl-4-piperidinyl]-N-phenylpropanamide ~~and~~;

(i) benzethidine;

(j) betacetylmethadol;

(k) beta-hydroxyfentanyl, also known as N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide;

(l) beta-hydroxy-3-methylfentanyl, also known as N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylprop anamide;

(m) betameprodine;

(n) betamethadol;

(o) betaprodine;

(p) clonitazene;

(q) dextromoramide;

(r) diampromide;

(s) diethylthiambutene;

(t) difenoxin;

(u) dimenoxadol;

(v) dimepheptanol;

(w) dimethylthiambutene;

(x) dioxaphetyl butyrate;

(y) dipipanone;

(z) ethylmethylthiambutene;

(aa) etonitazene;

(bb) etoxeridine;

(cc) furethidine;

(dd) hydroxypethidine;

(ee) ketobemidone;

(ff) levomoramide;

(gg) levophenacylmorphan;

(hh) 3-methylfentanyl, also known as N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide;

(ii) 3-methylthiofentanyl, also known as N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide;

(jj) morpheridine;

(kk) MPPP*, also known as desmethylprodine and* (1-methyl-4-phenyl-4-propionoxypiperidine);

(ll) noracymethadol;

(mm) norlevorphanol;

(nn) normethadone;

(oo) norpipanone;

(pp) para-fluorofentanyl, also known as N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]propanamide;

(qq) PEPAP*, also known as* (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);

(rr) phenadoxone;

(ss) phenampromide;

(tt) phenomorphan;

(uu) phenoperidine;

(vv) piritramide;

(ww) proheptazine;

(xx) properidine;

(yy) propiram;

(zz) racemoramide;

(aaa) thiofentanyl, also known as N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide;

(bbb) tilidine; and

(ccc) trimeperidine.

(2) For the purposes of subsection (1)(hh), the term "isomer" includes the optical, ~~position~~ *positional*, and geometric isomers.

(3) Opium derivatives. Unless specifically excepted or listed in another schedule, any of the following are opium derivatives, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) acetorphine;

(b) acetyldihydrocodeine;

(c) benzylmorphine;

(d) codeine methylbromide;

(e) ~~codeine-n-oxide~~ *codeine-N-oxide*;

(f) cyprenorphine;

(g) desomorphine;

(h) dihydromorphine;

(i) drotebanol;

(j) etorphine, except hydrochloride salt;

(k) heroin;

(l) hydromorphinol;

(m) methyldesorphine;

(n) methyldihydromorphine;

(o) morphine methylbromide;

(p) morphine methylsulfonate;

(q) ~~morphine-n-oxide~~ *morphine-N-oxide*;

(r) myrophine;

(s) nicocodeine;

(t) nicomorphine;

(u) normorphine;

(v) pholcodine; and

(w) thebacon.

(4) Hallucinogenic substances. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following is a hallucinogenic substance, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) alpha-ethyltryptamine~~. Trade or other names include~~*, also known as* etryptamine, monase, alpha-ethyl-1H-indole-3-ethanamine, 3-(2-aminobutyl) indole, alpha-ET, and AET~~.~~*;*

*(b) alpha-methyltryptamine, also known as AMT;*

~~(b)~~*(c)* 4-bromo-2,5-dimethoxy-amphetamine~~. Trade or other names include~~*, also known as* 4-bromo-2, 5-dimethoxy-alpha-methylphenethylamine*,* and 4-bromo-2,5-DMA~~.~~*;*

~~(c)~~*(d)* 4-bromo-2,5-dimethoxyphenethylamine~~. Trade or other names include~~*, also known as* 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane, ~~alpha-desmethylDOB~~ *alpha-desmethyl DOB*, and 2C-B, Nexus~~.~~*;*

~~(d)~~*(e)* 2,5-dimethoxyamphetamine~~. Trade or other names include~~*, also known as* 2,5-dimethoxy-alpha-~~methylphenothylamine~~ *methylphenethylamine* and 2,5-DMA~~.~~*;*

*(f) 2,5-dimethoxy-4-(N)-propylthiophenethylamine, also known as 2C-T-7;*

~~(e)~~*(g)* 3,4-methylenedioxy amphetamine;

~~(f)~~*(h)* 2,5-dimethoxy-4-ethylamphetamine~~. A trade or other name~~*, also known as* is DOET~~.~~*;*

*(i) 5-methoxy-N,N-diisopropyltryptamine, also known as 5-MeO-DIPT;*

*(j) 5-methoxy-N,N-dimethyltryptamine, also known as 5-MeO-DMT;*

~~(g)~~*(k)* 4-methoxyamphetamine~~. A trade or other name is~~*, also known as* 4-methoxy-alpha-methylphenethylamine~~.~~*;*

~~(h)~~*(l)* 5-methoxy-3,4-~~methylenedioxy amphetamine~~ *methylenedioxyamphetamine*;

~~(i)~~*(m)* 4-methyl-2,5-~~dimethoxy-amphetamine~~ *dimethoxyamphetamine*~~. Trade or other names include~~*, also known as* 4-methyl-2, 5-dimethoxy-alpha-methylphenethylamine, DOM, and STP~~.~~*;*

~~(j) 3,4-methylenedioxy amphetamine;~~

~~(k)~~*(n)* 3,4-methylenedioxymethamphetamine*, also known as MDMA* ~~(MDMA)~~;

~~(l)~~*(o)* 3,4-methylenedioxy-N-ethylamphetamine, also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, and MDEA;

~~(m)~~*(p)* N-hydroxy-3,4-methylenedioxyamphetamine, also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine and N-hydroxy MDA;

~~(n)~~*(q)* 3,4,5-~~trimethoxy amphetamine~~ *trimethoxyamphetamine*;

~~(o)~~*(r)* bufotenine~~. Trade and other names include~~*, also known as* 3-(beta-dimethylaminoethyl)-5-hydroxyindole, 3-(2-dimethylaminoethyl)-5-indolol, N,N- dimethylserotonin, 5-hydroxy-N,N-dimethyltryptamine, and mappine~~.~~*;*

~~(p)~~*(s)* diethyltryptamine~~. Trade and other names include~~*, also known as* N,N-diethyltryptamine and DET~~.~~*;*

~~(q)~~*(t)* dimethyltryptamine~~. A trade or other name is~~*, also known as* DMT~~.~~*;*

*(u) hashish;*

~~(r)~~*(v)* ibogaine~~. Trade or other names include~~*, also known as* 7-ethyl-6,6beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1', 2':1,2] azepine [5,4-b] indole and tabernanthe iboga~~.~~*;*

~~(s)~~*(w)* lysergic acid diethylamide*, also known as LSD*;

~~(t)~~*(x)* marijuana;

~~(u)~~*(y)* mescaline;

~~(v)~~*(z)* parahexyl~~. Trade or other names include~~*, also known as* 3-hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,8,9-trimethyl-6H-dibenzo[ b,d]pyran and synhexyl~~.~~*;*

~~(w)~~*(aa)* peyote, meaning all parts of the plant presently classified botanically as lophophora williamsii lemaire, whether growing or not; the seed of the plant; any extract from any part of the plant; and every compound, manufacture, ~~salts~~ *salt*, ~~derivatives~~ *derivative*, mixture, or preparation of the plant, its seed, or extracts;

~~(x)~~*(bb)* ~~n-ethyl-3-piperidyl benzilate~~ *N-ethyl-3-piperidyl benzilate*;

~~(y)~~*(cc)* ~~n-methyl-3-piperidyl benzilate~~ *N-methyl-3-piperidyl benzilate*;

~~(z)~~*(dd)* psilocybin;

~~(aa)~~*(ee)* psilocyn;

~~(bb)~~*(ff)* tetrahydrocannabinols, including synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis, ~~sp,~~ or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity, such as those listed in subsections ~~(4)(bb)(i) through (4)(bb)(iii)~~ *(4)(ff)(i) through (4)(ff)(iii)*. Because nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered, are included in the category as follows:

(i) delta 1 (delta 9) cis or trans tetrahydrocannabinol and its optical isomers;

(ii) delta 6 cis or trans tetrahydrocannabinol and its optical isomers; and

(iii) delta 3,4 cis or trans tetrahydrocannabinol and its optical isomers;

~~(cc)~~*(gg)* ethylamine analog of phencyclidine~~. Trade or others names include~~*, also known as* N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, and PCE~~.~~*;*

~~(dd)~~*(hh)* pyrrolidine analog of phencyclidine~~. Trade or other names include~~, *also known as* 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, and PHP~~.~~*;*

~~(ee)~~*(ii)* thiophene analog of phencyclidine~~. Trade or other names include~~, *also known as* 1-[1-(2-thienyl)-cyclohexyl]-piperidine, ~~2-thienylanalog~~ *2-thienyl analog* of phencyclidine, TPCP, and TCP~~.~~*;*

~~(ff)~~*(jj)* 1-[1-(2-thienyl)cyclohexyl]pyrrolidine~~. A trade or other name is~~, *also known as* TCPy~~.~~*;*

~~(gg)~~*(kk)* synthetic cannabinoids, *including*:

*(i) unless specifically excepted or listed in another schedule, any chemical compound chemically synthesized from or structurally similar to any material, compound, mixture, or preparation that contains any quantity of a synthetic cannabinoid found in any of the following chemical groups, or any of those groups that contain synthetic cannabinoid salts, isomers, or salts of isomers, whenever the existence of those salts, isomers, or salts of isomers is possible within the specific chemical designation, including all synthetic cannabinoid chemical analogs in the following groups:*

*(A) naphthoylindoles, whether or not substituted in the indole ring to any extent or the naphthyl ring to any extent;*

*(B) naphthylmethylindoles, whether or not substituted in the indole ring to any extent or the naphthyl ring to any extent;*

*(C) naphthoylpyrroles, whether or not substituted in the pyrrole ring to any extent or the naphthyl ring to any extent;*

*(D) naphthylmethylindenes, whether or not substituted in the indene ring to any extent or the naphthyl ring to any extent;*

*(E) acetylindoles, whether or not substituted in the indole ring to any extent or the acetyl group to any extent;*

*(F) cyclohexylphenols, whether or not substituted in the cyclohexyl ring to any extent or the phenyl ring to any extent;*

*(G) dibenzopyrans, whether or not substituted in the cyclohexyl ring to any extent or the phenyl ring to any extent; and*

*(H) benzoylindoles, whether or not substituted in the indole ring to any extent or the phenyl ring to any extent;*

*(ii) any compound that has been demonstrated to have agonist binding activity at one or more cannabinoid receptors or is a chemical analog or isomer of a compound that has been demonstrated to have agonist binding activity at one or more cannabinoid receptors;*

~~(i)~~*(iii)* 1-pentyl-3-(1-naphthoyl)indole (also known as JWH-018);

~~(ii)~~*(iv)* (6aR,10aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol (also known as HU-210 or 1,1-dimethylheptyl-11-hydroxy-delta8-tetrahydrocannabinol);

~~(iii)~~*(v)* 2-(3-hydroxycyclohexyl)-5-(2-methyloctan-2-yl)phenol (also known as CP-47,497), and the dimethylhexyl, dimethyloctyl, and dimethylnonyl homologues of CP-47,497;

~~(iv)~~*(vi)* 1-butyl-3-(1-naphthoyl)indole (also known as JWH-073);

~~(v)~~*(vii)* 1-(2-(4-(morpholinyl)ethyl))-3-(1-naphthoyl) indole (also known as JWH-200);

~~(vi)~~*(viii)* 1-pentyl-3-(2-methoxyphenylacetyl)indole (also known as JWH-250);

~~(vii)~~*(ix)* 1-hexyl-3-(1-naphthoyl)indole (also known as JWH-019);

~~(viii)~~*(x)* 1-pentyl-3-(4-chloro-1-naphthoyl)indole (also known as JWH-398);

~~(ix)~~*(xi)* JWH-081: 1-pentyl-3-(4-methoxy-1-naphthoyl)indole, also known as 4-methoxynaphthalen-1-yl- (1-pentylindol-3-yl)methanone;

~~(x)~~*(xii)* the following substances, except where contained in cannabis or cannabis resin, namely tetrahydro derivatives of cannabinol and 3-alkyl homologues of cannabinol or of its tetrahydro derivatives:

(A) [2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo [1,2,3-de]-1, 4-benzoxazin-6-yl]-1-napthalenylmethanone (also known as WIN-55,212-2);

(B) 3-dimethylheptyl-11-hydroxyhexahydrocannabinol (also known as HU-243); or

(C) [9-hydroxy-6-methyl-3-[5-phenylpentan-2-yl]oxy- 5,6,6a,7,8,9,10,10a-octahydrophenanthridin-1-yl]acetate;

~~(xi) any compound structurally derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent;~~

~~(xii) any compound structurally derived from 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent;~~

~~(xiii) any compound structurally derived from 1-(1-naphthylmethyl)indene by substitution at the 3-position of the indene ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent;~~

~~(xiv) any compound structurally derived from 3-phenylacetylindole by substitution at the nitrogen atom of the indole ring with alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent; or~~

~~(xv) any compound structurally derived from 2-(3-hydroxycyclohexyl)phenol by substitution at the 5-position of the phenolic ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not substituted in the cyclohexyl ring to any extent;~~

~~(hh)~~*(ll)* Salvia divinorum~~:~~*, also known as* ~~Salvinorin~~ *salvinorin* A (2S,4aR,6aR,7R,9S,10aS,10bR)-9-(acetyloxy)-2-(3-furanyl)dodechydro-6a,10b-dimethyl-4, 10-dioxo-2H-naphtho[2,1-c] pyran-7-carboxylic acid methyl ester~~.~~*;*

*(mm) substituted cathinones, including any compound, except bupropion or compounds listed in another schedule, structurally derived from 2-amino-1-phenyl-1-propanone by modification in any of the following ways:*

*(i) by substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents;*

*(ii) by substitution at the 3-position with an alkyl substituent;*

*(iii) by substitution at the nitrogen atom with alkyl or dialkyl groups, or by inclusion of the nitrogen atom in a cyclic structure; and*

*(iv) any lengthening of the propanone chain between carbons 1 and 2 to any extent with alkyl groups, whether further substituted or not;*

*(nn) any compound not listed in this code, in an administrative rule regulating controlled substances, or approved for use by the United States food and drug administration that is structurally derived from 2-amino-1-phenyl-1-propane by modification in any of the following ways:*

*(i) by substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents;*

*(ii) by substitution at the 3-position with an alkyl substituent;*

*(iii) by substitution at the nitrogen atom with alkyl or dialkyl groups, or by inclusion of the nitrogen atom in a cyclic structure; and*

*(iv) any lengthening of the propane chain between carbons 1 and 2 to any extent with alkyl groups, whether further substituted or not.*

(5) (a) For the purposes of subsection (4), the term "isomer" includes the optical, ~~position~~ *positional*, and geometric isomers.

(b) Subsection ~~(4)(gg)~~ *(4)(kk)* does not apply to synthetic cannabinoids approved by the ~~U.S.~~ *United States* food and drug administration and obtained by a lawful prescription through a licensed pharmacy. The department of public health and human services shall adopt a rule listing the approved cannabinoids and shall update the rule as necessary to keep the list current.

(6) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant having a depressant effect on the central nervous system, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

*(a) gamma-hydroxybutyric acid, also known as gamma-hydroxybutyrate, 4-hydroxybutyrate, 4-hydroxybutanoic acid, sodium oxybate, sodium oxybutyrate, and GHB;*

~~(a)~~*(b)* mecloqualone; and

~~(b)~~*(c)* methaqualone.

(7) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) aminorex~~. Trade or other names include~~, *also known as* aminoxaphen, 2-amino-5-phenyl-2-oxazoline, and 4,5-dihydro-5-phenyl-2-oxazolamine~~.~~*;*

(b) cathinone~~. Trade or other names include~~, *also known as* 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone~~.~~*;*

(c) fenethylline;

(d) methcathinone~~. Trade or other names include~~, *also known as* 2-(methylamino)-propiophenone, alpha-(methylamino)propiophenone, 2-(methylamino)-1-phenylpropan-1-one, alpha-N-methylaminopropiophenone, monomethylpropion, ephedrone, N-methylcathinone, methylcathinone, AL-464, AL-422, AL-463, and UR1432, including its salts, optical isomers, and salts of optical isomers~~.~~*;*

*(e) 4-Methylaminorex (cis isomer), also known as U4Euh, McN-422;*

~~(e)~~*(f)* (levo-dextro) cis-4-methylaminorex, also known as (levo-dextro) cis-4, 5-dihydro-4-methyl-5-phenyl-2-oxazolamine;

*(g) N-benzylpiperazine, also known as 1-benzylpiperazine or BZP;*

~~(f)~~*(h)* N-ethylamphetamine; *and*

~~(g)~~*(i)* N,N-dimethylamphetamine, also known as N,N-alpha-trimethyl-~~benzeneethamine~~ *benzeneethanamine* and N,N-alpha-trimethylphenethylamine.

(8) Substances subject to emergency scheduling. Any material, compound, mixture, or preparation that contains any quantity of the following substances is included in this category:

(a) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts, and salts of isomers); and

(b) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts, and salts of isomers).

(9) If prescription or administration is authorized by the Federal Food, Drug and Cosmetic Act, then any material, compound, mixture, or preparation containing tetrahydrocannabinols listed in subsection (4) must automatically be rescheduled from Schedule I to Schedule II.

*(10) Dangerous drug analogues. Unless specifically excepted or listed in another schedule, this designation includes any material, compound, mixture, or preparation defined in 50-32-101 as a dangerous drug analogue.*"

**Section 7.** Section 50-32-224, MCA, is amended to read:

**"50-32-224. Specific dangerous drugs included in Schedule II.** Schedule II consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or listed in another schedule, any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, are included in this category:

(a) opium and opiate and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone and their respective salts, but including the following:

(i) raw opium;

(ii) opium extracts;

(iii) opium fluid;

(iv) powdered opium;

(v) granulated opium;

(vi) tincture of opium;

(vii) codeine;

*(viii) dihydroetorphine;*

~~(viii)~~*(ix)* ethylmorphine;

~~(ix)~~*(x)* etorphine hydrochloride;

~~(x)~~*(xi)* hydrocodone;

~~(xi)~~*(xii)* hydromorphone;

~~(xii)~~*(xiii)* metopon;

~~(xiii)~~*(xiv)* morphine;

*(xv) oripavine;*

~~(xiv)~~*(xvi)* oxycodone;

~~(xv)~~*(xvii)* oxymorphone; and

~~(xvi)~~*(xviii)* thebaine;

(b) any salt, compound, derivative, or preparation of them that is chemically equivalent or identical with any of the substances referred to in subsection (1)(a), except that these substances do not include the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw;

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves, including cocaine and ecgonine and their salts, isomers, derivatives, and salts of isomers, and derivatives, and any salt, compound, derivative, or preparation of them that is chemically equivalent or identical with any of these substances, except that these substances do not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine; and

(e) concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy.

(2) Opiates. Unless specifically excepted or listed in another schedule, any of the following are opiates, including isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

(a) alfentanil;

(b) alphaprodine;

(c) anileridine;

(d) bezitramide;

(e) bulk dextropropoxyphene (nondosage forms);

(f) carfentanil;

(g) dihydrocodeine;

(h) diphenoxylate;

(i) fentanyl;

(j) isomethadone;

(k) levo-alphacetylmethadol~~. Other names include~~*, also known as* levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM~~.~~*;*

(l) levomethorphan;

(m) levorphanol;

(n) metazocine;

(o) methadone;

(p) methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

(q) moramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;

(r) pethidine, also known as meperidine;

(s) pethidine-intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

(t) pethidine-intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

(u) pethidine-intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(v) phenazocine;

(w) piminodine;

(x) racemethorphan;

(y) racemorphan; ~~and~~

*(z) remifentanil;*

~~(z)~~*(aa)* sufentanil*; and*

*(bb) tapentadol*.

(3) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system:

(a) amphetamine, its salts, optical isomers, and salts of its optical isomers;

(b) phenmetrazine and its salts;

*(c) lisdexamfetamine, its salts, isomers, and salts of its isomers;*

~~(c)~~*(d)* methamphetamine, its salts, isomers, and salts of its isomers; and

~~(d)~~*(e)* methylphenidate.

(4) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant having a depressant effect on the central nervous system, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) amobarbital;

(b) glutethimide;

(c) pentobarbital;

(d) phencyclidine; and

(e) secobarbital.

(5) Hallucinogenic substances include the following:

(a) dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a ~~federal~~ *United States* food and drug administration-approved drug product~~. Other names for dronabinol include (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b, d]pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol~~*, also known as (6-alpha-R-trans)-6-alpha,7,8,10-alpha-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b, d]pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol;*

(b) nabilone~~. Another name for nabilone is (levo-dextro)-trans-3-(1, 1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b, d] pyran-9-one~~*, also known as (levo-dextro)-trans-3-(1, 1-dimethylheptyl)-6,6-alpha,7,8,10,10-alpha-hexahydro-1-hydroxy-6, 6-dimethyl-9H-dibenzo[b, d] pyran-9-one*.

(6) Immediate precursors. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is an immediate precursor:

*(a) 4-Anilino-N-phenethyl-4-piperidine (ANPP);*

~~(a)~~*(b)* phenylacetone, an immediate precursor to amphetamine and methamphetamine~~. Trade or other names for phenylacetone include~~*, also*

*known as* phenyl-2-propanone, P2P, benzyl methyl ketone, and methyl benzyl ketone.*; and*

~~(b)~~*(c)* 1-phenylcyclohexylamine and 1-piperidinocyclohexanecarbonitrile (PCC), immediate precursors to phencyclidine (PCP)."

**Section 8.** Section 50-32-226, MCA, is amended to read:

**"50-32-226. Specific dangerous drugs included in Schedule III.** Schedule III consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system, including salts, isomers (whether optical, position, or geometric), and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) benzphetamine;

(b) chlorphentermine;

(c) clortermine; and

(d) phendimetrazine.

(2) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant having a depressant effect on the central nervous system:

(a) any compound, mixture, or preparation containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs and one or more other active medicinal ingredients that are not listed in any schedule;

(b) any suppository dosage form containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs approved by the ~~federal~~ *United States* food and drug administration for marketing only as a suppository;

(c) any substance that contains any quantity of a derivative of barbituric acid or any salt of barbituric acid;

*(d) aprobarbital;*

*(e) butabarbital, also known as secbutabarbital;*

*(f) butalbital;*

*(g) butobarbital, also known as butethal;*

~~(d)~~*(h)* chlorhexadol;

*(i) embutramide;*

*(j) gamma hydroxybutyric acid preparations;*

*(k) ketamine, its salts, isomers, and salts of its isomers, also known as (±)-2-(2-chlorophenyl)-2-(methylamino)cyclohexanone;*

~~(e)~~*(l)* lysergic acid;

~~(f)~~*(m)* lysergic acid amide;

~~(g)~~*(n)* methyprylon;

~~(h)~~*(o)* sulfondiethylmethane;

~~(i)~~*(p)* sulfonethylmethane;

~~(j)~~*(q)* sulfonmethane; ~~and~~

*(r) talbutal;*

~~(k)~~*(s)* tiletamine and zolazepam or any of their salts. A trade or other name for a tiletamine-zolazepam combination product is telazol. A trade or other name for tiletamine is 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. A trade or other name for zolazepam is 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e] [1,4]-diazepin-7(1H)-one, flupyrazapon.

*(t) thiamylal;*

*(u) thiopental; and*

*(v) vinbarbital.*

(3) Nalorphine.

(4) Narcotic drugs. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following is a narcotic drug, including its salts calculated as the free anhydrous base or alkaloid in the following limited quantities:

(a) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(b) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(c) not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(d) not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(e) not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(f) not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(g) not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(h) not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; or

(i) any material, compound, mixture, or preparation containing buprenorphine.

(5) Anabolic steroids. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids, that promotes muscle growth. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances is an anabolic steroid, including salts, isomers, and salts of isomers whenever the existence of those salts of isomers is possible within the specific chemical designation:

*(a) androstanedione, also known as 5-alpha-androstan-3,17-dione;*

*(b) 1-androstenediol, also known as 3-beta,17-beta-dihydroxy-5-alpha-androst-1-ene; or 3-alpha,17-beta-dihydroxy-5-alpha-androst-1-ene;*

*(c) 1-androstenedione, also known as 5-alpha-androst-1-en-3,17-dione;*

*(d) 3-alpha,17-beta-dihydroxy-5-alpha-androstane;*

*(e) 3-beta,17-beta-dihydroxy-5-alpha-androstane;*

*(f) 4-androstenediol, also known as 3-beta,17-beta-dihydroxy-androst-4-ene;*

*(g) 4-androstenedione, also known as androst-4-en-3,17-dione;*

*(h) 4-dihydrotestosterone, also known as 17-beta-hydroxyandrostan-3-one;*

*(i) 4-hydroxy-19-nortestosterone, also known as 4,17-beta-dihydroxy-estr-4-en-3-one;*

*(j) 4-hydroxytestosterone, 4,17-beta-dihydroxy-androst-4-en-3-one;*

*(k) 5-androstenediol, also known as 3-beta,17-beta-dihydroxy-androst-5-ene;*

*(l) 5-androstenedione, also known as androst-5-en-3,17-dione;*

*(m) 13-beta-ethyl-17-beta-hydroxygon-4-en-3-one;*

*(n) 17-alpha-methyl-3-alpha, 17-beta-dihydroxy-5-alpha-androstane;*

*(o) 17-alpha-methyl-3-beta, 17-beta-dihydroxy-5-alpha-androstane;*

*(p) 17-alpha-methyl-3-beta, 17-beta-dihydroxyandrost-4-ene;*

*(q) 17-alpha-methyl-4-hydroxynandrolone, also known as 17-alpha-methyl-4-hydroxy-17-beta-hydroxyestr-4-en-3-one;*

*(r) 17-alpha-methyl-delta, 1-dihydrotestosterone, also known as 17-beta-hydroxy-17-alpha-methyl-5-alpha-androst-1-en-3-one, 17-alpha-methyl-1 testosterone;*

*(s) 19-nor-4-androstenediol, also known as 3-beta-17-beta-dihydroxyestr-4-ene; or 3-alpha-17-beta-dihydroxyestr-4-ene;*

*(t) 19-nor-4-androstenedione, also known as estr-4-en-3,17-dione;*

*(u) 19-nor-5-androstenediol, also known as 3-beta,17-beta-dihydroxyestr-5-ene; or 3-alpha,17-beta-dihydroxyestr-5-ene;*

*(v) 19-nor-5-androstenedione, also known as estr-5-en-3,17-dione;*

*(w) calusterone, also known as 7-beta, 17-alpha-dimethyl-17-beta-hydroxyandrost-4-en-3-one);*

*(x) 19-Nor-4,9(10)-androstadienedione, also known as estra-4,9(10)-diene-3, 17-dione;*

*(y) bolasterone, also known as (7-alpha-dimethyl)-17-beta-hydroxyandrost-4-ene-3-one;*

~~(a)~~*(z)* boldenone*, also known as 17-beta-hydroxyandrost-1,4,-diene-3-one*;

*(aa) boldione, also known as androsta-1,4-diene-3,17-dione;*

~~(b)~~*(bb)* chlorotestosterone, also known as 4-chlortestosterone;

~~(c)~~*(cc)* clostebol;

*(dd) delta-1-dihydrotestosterone, also known as (17-beta-hydroxy-5-alpha-androst-1-en-3-one), 1-testosterone;*

*(ee) dehydrochloromethyltestosterone, also known as 4-chloro-17-beta-hydroxy-17-alpha-methylandrost-1,4-dien-3-one;*

*(ff) desoxymethyltestosterone, also known as 17-alpha-methyl-5-alpha-androst-2-en-17-beta-ol;*

~~(d)~~*(gg)* dihydrochlormethyltestosterone;

~~(e)~~*(hh)* dihydrotestosterone, also known as 4-dihydrotestosterone;

~~(f)~~*(ii)* drostanolone*, also known as 17-beta-hydroxy-2-alpha-methyl-5-alpha-androstan-3-one*;

~~(g)~~*(jj)* ethylestrenol*, also known as 17-alpha-ethyl-17-beta-hydroxyestr-4-ene*;

~~(h)~~*(kk)* fluoxymesterone*, also known as 9-fluoro-17-alpha-methyl-11-beta, 17-beta-dihydroxyandrost-4-en-3-one*;

~~(i)~~*(ll)* formebulone, also known as *2-formyl-17-alpha-methyl-11-alpha, 17-beta-dihydroxyandrost-1,4-dien-3-one or* formebolone;

*(mm) furazabol, also known as 17-alpha-methyl-17-beta-hydroxyandrostano-[2,3-c]-furazan;*

*(nn) mestanolone, also known as 17-alpha-methyl-17-beta-hydroxy-5-alpha-androstan-3-one;*

~~(j)~~*(oo)* mesterolone*, also known as 1-alpha-methyl-17-beta-hydroxy-(5-alpha)-androstan-3-one*;

~~(k)~~*(pp)* methandienone*, also known as 17-alpha-methyl-17-beta-hydroxyandrost-1,4-diene-3-one*;

~~(l)~~*(qq)* methandranone;

~~(m)~~*(rr)* methandriol*, also known as 17-alpha-methyl-3-beta,17-beta-dihydroxyandrost-5-one*;

~~(n)~~*(ss)* methandrostenolone*, also known as (17-beta)-17-hydroxy-17-methylandrosta-1,4-dien-3-one*;

~~(o)~~*(tt)* methenolone*, also known as 1-methyl-17-beta-hydroxy-5-alpha-androst-1-en-3-one*;

*(uu) methyldienolone, also known as 17-alpha-methyl-17-beta-hydroxyestra -4,9-(10)-dien-3-one;*

~~(p)~~*(vv)* methyltestosterone*, also known as 17-alpha-methyl-17-beta-hydroxyandrost-4-en-3-one*;

*(ww) methyltrienolone, also known as 17-alpha-methyl-17-beta-hydroxyestra-4,9,11-trien-3-one;*

~~(q)~~*(xx)* mibolerone*, also known as 17-alpha,17-alpha-dimethyl-17-beta-hydroxyestr-4-en-3-one*;

~~(r)~~*(yy)* nandrolone*, also known as 17-beta-hydroxyestr-4-en-3-one*;

*(zz) norbolethone, also known as 13-beta,17-alpha-diethyl-17-beta-hydroxygon-4-en-3-one;*

(aaa) *norclostebol, also known as 4-chloro-17-beta-hydroxyestr-4-en-3-one;*

~~(s)~~*(bbb)* norethandrolone*, also known as 17-alpha-ethyl-17-beta-hydroxyestr-4-en-3-one*;

*(ccc) normethandrolone, also known as 17-alpha-methyl-17-beta-hydroxyestr-4-en-3-one;*

~~(t)~~*(ddd)* oxandrolone*, also known as 17-alpha-methyl-17-beta-hydroxy-2-oxa-(5-alpha)-androstan-3-one*;

~~(u)~~*(eee)* oxymestrone*, also known as 17-alpha-methyl-4,17-beta-dihydroxyandrost-4-en-3-one*;

~~(v)~~*(fff)* oxymetholone*, also known as 17-alpha-methyl-2-hydroxymethylene-17-beta-hydroxy-(5-alpha)-androstan-3-one*;

~~(w)~~*(ggg)* stanolone;

~~(x)~~*(hhh)* stanozolol*, also known as 17-alpha-methyl-17-beta-hydroxy-(5-alpha)-androst-2-eno-(3,2-c)-pyrazole*;

*(iii) stenbolone, also known as 17-beta-hydroxy-2-methyl-5-alpha-androst-1-en-3-one;*

*(jjj) talbutal, also known as 5-(1-methylpropyl)-5-(2-propenyl)-2,4,6 (1H,3H,5H)-pyrimidinetrione;*

~~(y)~~*(kkk)* testolactone*, also known as 13-hydroxy-3-oxo-13,17-secoandrosta-1, 4-dien-17-oic acid lactone*;

~~(z)~~*(lll)* testosterone*, also known as 17-beta-hydroxyandrost-4-en-3-one*; ~~or~~

~~(aa)~~*(mmm)* trenbolone*, also known as 17-beta-hydroxyestr-4,9, 11-trien-3-one; or*

*(nnn) tetrahydrogestrinone, also known as 13-beta,17-alpha-diethyl-17-beta-hydroxygon-4,9,11-trien-3-one*."

**Section 9.** Section 50-32-229, MCA, is amended to read:

**"50-32-229. Specific dangerous drugs included in Schedule IV.** Schedule IV consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Narcotic drugs. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic is a drug, including its salts calculated as the free anhydrous base or alkaloid in the following limited quantities:

(a) not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit; ~~and~~

(b) butorphanol;

~~(b)~~*(c)* dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane)*;*

*(d) difenoxin 1mg/25ug AtSO4/du; and*

*(e) pentazocine*.

(2) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) alprazolam;

(b) barbital;

(c) bromazepam;

(d) camazepam;

(e) chloral betaine;

(f) chloral hydrate;

(g) chlordiazepoxide;

(h) clobazam;

(i) clonazepam;

(j) clorazepate;

(k) clotiazepam;

(l) cloxazolam;

(m) delorazepam;

(n) diazepam;

*(o) dichloralphenazone;*

~~(o)~~*(p)* estazolam;

~~(p)~~*(q)* ethchlorvynol;

~~(q)~~*(r)* ethinamate;

~~(r)~~*(s)* ethyl loflazepate;
~~(s)~~*(t)* fludiazepam;
~~(t)~~*(u)* flunitrazepam;
~~(u)~~*(v)* flurazepam;
*(w) fospropofol, also known as lusedra;*
~~(v)~~*(x)* halazepam;
~~(w)~~*(y)* haloxazolam;
~~(x)~~*(z)* ketazolam;
~~(y)~~*(aa)* loprazolam;
~~(z)~~*(bb)* lorazepam;
~~(aa)~~*(cc)* lormetazepam;
~~(bb)~~*(dd)* mebutamate;
~~(cc)~~*(ee)* medazepam;
~~(dd)~~*(ff)* meprobamate;
~~(ee)~~*(gg)* methohexital;
~~(ff)~~*(hh)* methylphenobarbital, also known as mephobarbital;
~~(gg)~~*(ii)* midazolam;
~~(hh)~~*(jj)* nimetazepam;
~~(ii)~~*(kk)* nitrazepam;
~~(jj)~~*(ll)* nordiazepam;
~~(kk)~~*(mm)* oxazepam;
~~(ll)~~*(nn)* oxazolam;
~~(mm)~~*(oo)* paraldehyde;
~~(nn)~~*(pp)* petrichloral;
~~(oo)~~*(qq)* phenobarbital;
~~(pp)~~*(rr)* pinazepam;
~~(qq)~~*(ss)* prazepam;
~~(rr)~~*(tt)* quazepam;
~~(ss)~~*(uu)* temazepam;
~~(tt)~~*(vv)* tetrazepam;
~~(uu)~~*(ww)* triazolam; ~~and~~
*(xx) zaleplon;*
~~(vv)~~*(yy)* zolpidem*; and*
*(zz) zopiclone*.

(3) Fenfluramine. Any material, compound, mixture, or preparation that contains any quantity of fenfluramine, including its salts, isomers (whether optical, position, or geometric), and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible.

(4) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) cathine*, also known as (+)-norpseudoephedrine*;

(b) diethylpropion;

(c) fencamfamin;

(d) fenproporex;

(e) mazindol;

(f) mefenorex;

*(g) modanfinil;*

~~(g)~~*(h)* pemoline, including organometallic complexes and chelates thereof;

~~(h)~~*(i)* phentermine;

~~(i)~~*(j)* pipradrol; ~~and~~

*(k) sibutramine; and*

~~(j)~~*(l)* SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(5) Ephedrine.

(a) Except as provided in subsection (5)(b), any material, compound, mixture, or preparation that contains any quantity of ephedrine having a stimulant effect on the central nervous system, including its salts, enantiomers (optical isomers), and salts of enantiomers (optical isomers) when ephedrine is the only active medicinal ingredient or is used in combination with therapeutically insignificant quantities of another active medicinal ingredient.

(b) Ephedrine does not include materials, compounds, mixtures, or preparations labeled in compliance with the Dietary Supplement Health and Education Act of 1994, 21 U.S.C. 321, et seq., that contain only natural ephedra alkaloids or extracts of natural ephedra alkaloids.

(c) Ephedrine may be immediately accessible for use by a licensed physician in a patient care area if it is under the physician's direct supervision.

(6) Other substances. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of ~~pentazocine~~ *carisoprodol*, including its salts*, isomers, and salts of isomers*."

**Section 10.** Section 50-32-232, MCA, is amended to read:

**"50-32-232. Specific dangerous drugs included in Schedule V.** Schedule V consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following is a narcotic drug, including its salts, calculated as the free anhydrous base or alkaloid in limited quantities as set forth in subsections (1)(a) through (1)(f), which include one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

(a) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(b) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(c) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(d) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(e) not more than 100 milligrams of opium per 100 milliliters or per 100 grams; and

(f) not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(2) Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of pyrovalerone is a stimulant having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers.

*(3) Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers:*

*(a) lacosamide, also known as (R)-2-acetoamido-N-benzyl-3-methoxy-propionamide or vimpat; and*

*(b) pregabalin, also known as (S)-3-(aminomethyl)-5-methylhexanoic acid or lyrica.*"

**Section 11.** Section 50-32-314, MCA, is amended to read:

**"50-32-314. Board to adopt rules for registration of outpatient center for surgical services.** (1) The board shall adopt rules to provide for the registration of any outpatient center for surgical services pursuant to this part. The rules must categorize the outpatient center for surgical services as a "distributor" pursuant to 50-32-101~~(12)~~*(13)* or other category of registrant as determined by the board.

(2) If the board determines that an outpatient center for surgical services requires the services of a pharmacist in order to be registered, the board shall allow that center to use the services of a consulting pharmacist to satisfy the obligation imposed by the board.

(3) This section does not affect any existing registration requirement pursuant to this part for persons providing dangerous drugs to an outpatient center for surgical services or persons administering dangerous drugs within or as the result of procedures performed at an outpatient center for surgical services."

Approved April 2, 2013

# CHAPTER NO. 136

[HB 371]

AN ACT INCREASING THE DOLLAR AMOUNT BELOW WHICH A COUNTY MAY PURCHASE EQUIPMENT AT PUBLIC AUCTION; AND AMENDING SECTION 7-5-2303, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-5-2303, MCA, is amended to read:

**"7-5-2303. Use of public auction to make purchase.** (1) In lieu of soliciting bids, the governing body may purchase at public auction any vehicle, road machinery or other machinery, apparatus, appliances, equipment, or materials or supplies for an amount less than ~~$60,000~~ *$150,000*.

(2) Compliance with the provisions of this section is considered as meeting the requirements of 7-5-2301."

Approved April 1, 2013

# CHAPTER NO. 137

[HB 247]

AN ACT CREATING PERMITS TO SALVAGE CERTAIN GAME ACCIDENTALLY KILLED BY VEHICLES; REVISING POWERS OF THE FISH, WILDLIFE, AND PARKS COMMISSION; REVISING RULES FOR UNLAWFUL POSSESSION, SHIPPING, AND TRANSPORTATION OF GAME; AND AMENDING SECTIONS 87-1-301 AND 87-6-202, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Permit to salvage game animals, fur-bearing animals, and game birds.** (1) A peace officer may issue permits to applicants for the purpose of salvaging antelope, deer, elk, or moose that have been accidentally killed as a result of a vehicle collision.

(2) For purposes of this section, "peace officer" means a sheriff, deputy sheriff, undersheriff, police officer, highway patrol officer, fish and game warden, park ranger, campus security officer, or airport police officer.

**Section 2.** Section 87-1-301, MCA, is amended to read:

**"87-1-301. Powers of commission.** (1) Except as provided in subsection (7), the commission:

(a) shall set the policies for the protection, preservation, management, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;

(b) shall establish the hunting, fishing, and trapping rules of the department;

(c) except as provided in 87-1-303(3), shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(d) must have the power within the department to establish wildlife refuges and bird and game preserves;

(e) shall approve all acquisitions or transfers by the department of interests in land or water, except as provided in 87-1-209(4);

(f) shall review and approve the budget of the department prior to its transmittal to the budget office;

(g) shall review and approve construction projects that have an estimated cost of more than $1,000 but less than $5,000; and

(h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In developing or implementing an elk management plan, the commission shall consider landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a particular hunting district. As used in this subsection (1)(h), "landowner tolerance" means the written or documented verbal opinion of an affected landowner regarding the impact upon the landowner's property within the particular hunting district where a restriction on elk hunting on public property is proposed.

*(i) shall set the policies for the salvage of antelope, deer, elk, or moose pursuant to [section 1].*

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into

account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's youth and persons with disabilities.

(4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

(i) separate deer licenses from nonresident elk combination licenses;

(ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;

(iii) condition the use of the deer licenses; and

(iv) limit the number of licenses sold.

(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders:

(i) for the biologically sound management of big game populations of elk, deer, and antelope;

(ii) to control the impacts of those elk, deer, and antelope populations on uses of private property; and

(iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-321 through 87-1-325.

(5) (a) Subject to the provisions of 87-2-115, the commission may adopt rules establishing license preference systems to distribute hunting licenses and permits:

(i) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and

(ii) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(a), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission.

(b) The commission shall square the number of points purchased by an applicant per species when conducting drawings for licenses and permits.

(6) (a) The commission may adopt rules to:

(i) limit the number of nonresident mountain lion hunters in designated hunting districts; and

(ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting districts.

(b) The commission shall consider, but is not limited to consideration of, the following factors:

(i) harvest of lions by resident and nonresident hunters;

(ii) history of quota overruns;

(iii) composition, including age and sex, of the lion harvest;

(iv) historical outfitter use;

(v) conflicts among hunter groups;

(vi) availability of public and private lands; and

(vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.

(7) The commission may not regulate the use or possession of firearms, firearm accessories, or ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:

(a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the establishment of special archery seasons;

(b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including bows and arrows, traditional handguns, and muzzleloading rifles;

(c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-6-401(1)(f);

(d) the regulation of migratory game bird hunting pursuant to 87-3-403; or

(e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h)."

**Section 3.** Section 87-6-202, MCA, is amended to read:

**"87-6-202. Unlawful possession, shipping, or transportation of game fish, bird, game animal, or fur-bearing animal.** (1) A person may not possess, ship, or transport all or part of any game fish, bird, game animal, or fur-bearing animal that was unlawfully killed, captured, or taken, whether killed, captured, or taken in Montana or outside of Montana.

(2) This section does not prohibit the possession, shipping, or transportation of:

(a) hides, heads, or mounts of lawfully killed, captured, or taken game fish, birds, game animals, or fur-bearing animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided by federal law;

(b) naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(c) the bones of an elk, antelope, moose, or deer that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(d) paddlefish roe as caviar under the provisions of 87-4-601; ~~or~~

(e) captive-reared migratory waterfowl~~.~~*; or*

*(f) salvaged antelope, deer, elk, or moose subject to [section 1].*

(3) A person may not possess, ship, or transport live fish away from the body of water in which the fish were taken except:

(a) as provided in Title 87, chapter 4, part 6, or as specifically permitted by the laws of this state;

(b) fish species approved by the commission for use as live bait and subject to any restrictions imposed by the commission; or

(c) within the boundaries of the eastern Montana fishing district, as established by commission regulations.

(4) The possession of all or part of a dead game fish, bird, game animal, or fur-bearing animal is prima facie evidence that the person or persons in whose possession the fish, bird, or animal is found killed, captured, or took the fish, bird, or animal.

(5) The value of a game fish, bird, game animal, or fur-bearing animal that is unlawfully possessed, shipped, or transported must be determined from the schedules of restitution values in 87-6-906 and 87-6-907. The value of game fish,

birds, game animals, or fur-bearing animals that are unlawfully possessed, shipped, or transported pursuant to a common scheme, as defined in 45-2-101, or as part of the same transaction, as defined in 46-1-202, may be aggregated in determining the value.

(6) The following penalties apply for a violation of this section:

(a) If a person is convicted or forfeits bond or bail after being charged with unlawful possession, shipping, or transportation of a game fish or bird and if the value of all or part of the game fish or bird or combination thereof does not exceed $1,000, the person shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(b) If a person is convicted or forfeits bond or bail after being charged with unlawful possession or transportation of a mountain sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear or any part of these animals and if the value of all or part of the animal or combination thereof does not exceed $1,000, the person shall be fined not less than $500 or more than $2,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture unless the court imposes a longer period.

(c) If a person is convicted or forfeits bond or bail after being charged with unlawful possession or transportation of a deer, antelope, elk, or mountain lion or any part of these animals and if the value of all or part of the animal or combination thereof does not exceed $1,000, the person shall be fined not less than $300 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period.

(d) If a person is convicted or forfeits bond or bail after being charged with unlawful shipping of a mountain sheep, moose, wild buffalo, caribou, mountain goat, black bear, grizzly bear, deer, antelope, elk, or mountain lion or any part of these animals and if the value of all or part of the animal or combination thereof does not exceed $1,000, the person shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(e) If a person is convicted or forfeits bond or bail after being charged with unlawful possession, shipping, or transportation of a fur-bearing animal or pelt of a fur-bearing animal and if the value of all or part of the animal or combination thereof does not exceed $1,000, the person shall be fined not less than $100 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of

conviction or forfeiture unless the court imposes a longer period, and any pelts possessed unlawfully must be confiscated.

(f) If a person is convicted under this section or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof exceeds $1,000, the person shall be fined not more than $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this state for not less than 3 years up to a revocation for life from the date of conviction.

(7) A person convicted of unlawful possession of more than double the legal bag limit may be subject to the additional penalties provided in 87-6-901.

(8) As used in this section:

(a) "lawfully killed, captured, or taken" means killed, captured, or taken in conformance with this title, the regulations adopted by the commission, and the rules adopted by the department under authority of this title; and

(b) "unlawfully killed, captured, or taken" means not lawfully killed, captured, or taken.

(9) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 through 87-6-907."

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 87, chapter 3, and the provisions of Title 87, chapter 3, apply to [section 1].

Approved April 3, 2013

# CHAPTER NO. 138

[SB 33]

AN ACT REVISING LAWS RELATED TO THE STATE'S SHARE FOR PAYMENTS TO INDIVIDUALS AND HOUSEHOLDS UNDER THE FEDERAL MAJOR DISASTER ASSISTANCE PROGRAMS; AMENDING SECTION 10-3-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 10-3-312, MCA, is amended to read:

**"10-3-312. Maximum expenditure by governor — appropriation.** (1) Whenever a disaster or an emergency, including an energy emergency as defined in 90-4-302 or an invasive species emergency declared under 80-7-1013, is declared by the governor, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and, subject to subsection (2), the governor is authorized to expend from the general fund an amount not to exceed $16 million in any biennium, minus any amount appropriated pursuant to 10-3-310 in the same biennium. The statutory appropriation in this subsection may be used by any state agency designated by the governor.

(2) In the event of the recovery of money expended under this section, the spending authority must be reinstated to a level reflecting the recovery.

(3) If a disaster is declared by the president of the United States, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general fund an amount not to

exceed $500,000 during the biennium to meet the state's share of the ~~individual~~ *individuals* and ~~family~~ *households* grant programs as provided in 42 U.S.C. ~~5178~~ *5174*. The statutory appropriation in this subsection may be used by any state agency designated by the governor."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 3, 2013

# CHAPTER NO. 139

[SB 57]

AN ACT ADOPTING CERTAIN UNIFORM LAWS FOR MILITARY AND OVERSEAS BALLOTS; AMENDING SECTIONS 13-2-110, 13-13-201, 13-13-211, 13-13-233, 13-15-201, 13-19-106, 13-19-306, 13-21-101, 13-21-102, 13-21-104, AND 13-21-213, MCA; REPEALING SECTIONS 13-21-103, 13-21-201, 13-21-202, 13-21-203, 13-21-205, 13-21-207, AND 13-21-210, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 13-2-110, MCA, is amended to read:

**"13-2-110. Application for voter registration — sufficiency and verification of information — identifiers assigned for voting purposes.** (1) An individual may apply for voter registration in person or by mail, postage paid, by completing and signing the standard application form for voter registration provided for in 13-1-210 and providing the application to the election administrator in the county in which the elector resides.

(2) Each application for voter registration must be accepted and processed as provided in rules adopted under 13-2-109.

(3) Except as provided in subsection (4):

(a) an applicant for voter registration shall provide the applicant's Montana driver's license number; or

(b) if the applicant does not have a Montana driver's license, the applicant shall provide the last four digits of the applicant's social security number.

(4) (a) If an applicant does not have a Montana driver's license or social security number, the applicant shall provide as an alternative form of identification:

(i) a current and valid photo identification, including but not limited to a school district or postsecondary education photo identification or a tribal photo identification, with the individual's name; or

(ii) a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address.

(b) The alternative form of identification must be:

(i) an original version presented to the election administrator if the applicant is applying in person; or

(ii) a copy of any of the required documents, which must be enclosed with the application, if the applicant is applying by mail.

(5) (a) If information provided on an application for voter registration is sufficient to be accepted and processed and is verified pursuant to rules adopted under 13-2-109, the election administrator shall register the elector as a legally registered elector.

(b) If information provided on an application for voter registration was sufficient to be accepted but the applicant failed to provide the information required in subsection (3) or (4) or if the information provided was incorrect or insufficient to verify the individual's identity or eligibility to vote, the election administrator shall register the applicant as a provisionally registered elector.

(6) Each applicant for voter registration must be notified of the elector's registration status pursuant to rules adopted under 13-2-109.

(7) The secretary of state shall assign to each elector whose application was accepted a unique identification number for voting purposes and shall establish a statewide uniform method to allow the secretary of state and local election officials to distinguish legally registered electors from provisionally registered electors.

(8) The provisions of this section may not be interpreted to conflict with voter registration accomplished under 13-2-221~~, 13-21-201, 13-21-203~~*, [section 15],* and 61-5-107 and as provided for in federal law."

**Section 2.** Section 13-13-201, MCA, is amended to read:

**"13-13-201. Voting by absentee ballot — procedures.** (1) A legally registered elector or provisionally registered elector is entitled to vote by absentee ballot as provided for in this part.

(2) The elector may vote absentee by:

(a) marking the ballot in the manner specified;

(b) placing the marked ballot in the secrecy envelope, free of any identifying marks;

(c) placing the secrecy envelope containing one ballot for each election being held in the return envelope;

(d) executing the affirmation printed on the return envelope; and

(e) returning the return envelope with all appropriate enclosures by regular mail, postage paid, or by delivering it to:

(i) the election office;

(ii) a polling place within the elector's county;

(iii) pursuant to 13-13-229, the special absentee election board; or

(iv) in a mail ballot election held pursuant to Title 13, chapter 19, a designated place of deposit within the elector's county.

(3) Except as provided in 13-21-206 ~~and 13-21-207~~ *and [section 20]*, in order for the ballot to be counted, each elector shall return it in a manner that ensures the ballot is received prior to 8 p.m. on election day.

(4) A provisionally registered elector may also enclose in the outer return envelope a copy of the elector's photo identification showing the elector's name. The photo identification may be but is not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification. If the provisionally registered elector does not enclose a photo identification, the elector may enclose a copy of a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address."

**Section 3.** Section 13-13-211, MCA, is amended to read:

**"13-13-211. Time period for application.** (1) Except as provided in 13-13-222~~, 13-21-210~~*, [section 17],* and subsection (2) of this section, an

application for an absentee ballot must be made before noon on the day before the election.

(2) A qualified elector who is prevented from voting at the polls as a result of illness or health emergency occurring between 5 p.m. of the Friday preceding the election and noon on election day may request to vote by absentee ballot as provided in 13-13-212(2)."

**Section 4.** Section 13-13-233, MCA, is amended to read:

**"13-13-233. Issuing and recording absentee ballots — certificate to election judges.** (1) Absentee ballots must be official numbered paper ballots beginning with ballot number 1 and following consecutively according to the number of applications for absentee ballots.

(2) The election administrator shall keep a record of all absentee ballots issued.

(3) When the election administrator delivers the voted absentee ballots pursuant to 13-13-232(1), the election administrator shall also provide a certificate stating:

(a) the ballot numbers of the absentee ballots mailed or transmitted pursuant to 13-13-214 ~~or 13-21-207~~, *[section 13(3)(a)], and [section 18],* delivered pursuant to 13-13-229, or marked in person pursuant to 13-13-222;

(b) the number of ballots to be reserved for late absentee voting pursuant to 13-13-211(2); and

(c) the names of the electors within the precinct to whom the ballots were provided.

(4) The chief election judge shall post in a conspicuous location at the polling place a list of the names of electors appearing on the certificate required under subsection (3)."

**Section 5.** Section 13-15-201, MCA, is amended to read:

**"13-15-201. Preparation for count — absentee ballot count procedures.** (1) Subject to 13-10-311, to prepare for a count of ballots, the counting board or, if appointed, the absentee counting board shall take ballots out of the box to determine whether each ballot is single.

(2) The board shall count all ballots to ensure that the total number of ballots corresponds with the total number of names in the pollbook.

(3) If the board cannot reconcile the total number of ballots with the pollbook, the board shall submit to the election administrator a written report stating how many ballots were missing or in excess and any reason of which they are aware for the discrepancy. Each judge on the board shall sign the report.

(4) A ballot that is not marked as official is void and may not be counted unless all judges on the board agree that the marking is missing because of an error by election officials, in which case the ballot must be marked "unmarked by error" on the back and must be initialed by all judges.

(5) If two or more ballots are folded or stuck together to look like a single ballot, they must be laid aside until the count is complete. The counting board shall compare the count with the pollbooks, and if a majority believes that the ballots folded together were voted by one elector, the ballots must be rejected and handled as provided in 13-15-108, otherwise they must be counted.

(6) Only valid absentee ballots may be counted in an election conducted under this chapter.

(7) For the purpose of this chapter, a voted absentee ballot is valid only if:

(a) the elector's signature on the affirmation on the return envelope is verified pursuant to 13-13-241; and

(b) it is received before 8 p.m. on election day, except as provided in 13-21-206 ~~and 13-21-207~~ *and [section 20]*.

(8) (a) A ballot is invalid if:

(i) problems with the ballot have not been resolved pursuant to 13-13-245;

(ii) any identifying marks are placed on the ballot by the elector; or

(iii) except as provided in subsection (8)(b), more than one ballot is enclosed in a single return or secrecy envelope.

(b) The provisions of subsection (8)(a)(iii) do not apply if:

(i) there are multiple elections being held at the same time and the envelope contains only one ballot for each election; or

(ii) the return envelope contains ballots from the same household, each ballot is in its own secrecy envelope, and the return envelope contains a valid signature for each elector who has returned a ballot."

**Section 6.** Section 13-19-106, MCA, is amended to read:

**"13-19-106. General requirements for mail ballot election.** A mail ballot election must be conducted substantially as follows:

(1) Subject to 13-12-202, official mail ballots must be prepared and all other initial procedures followed as provided by law, except that mail ballots must be paper ballots and are not required to have stubs.

(2) An official ballot must be mailed to every qualified elector of the political subdivision conducting the election.

(3) Each signature envelope must contain a form that is the same as the form for absentee ballot return envelopes and that is prescribed by the secretary of state for the elector to verify the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address and to return the corrected address with the voted ballot in the manner provided by 13-19-306.

(4) The elector shall mark the ballot and place it in a secrecy envelope.

(5) (a) The elector shall then place the secrecy envelope containing the elector's ballot in a signature envelope and mail it or deliver it in person to a place of deposit designated by the election administrator.

(b) Except as provided in 13-21-206 ~~and 13-21-207~~ *and [section 20]*, the voted ballot must be received before 8 p.m. on election day.

(6) Election officials shall first qualify the voted ballot by examining the signature envelope to determine whether it is submitted by a qualified elector who has not previously voted in the election.

(7) If the voted ballot qualifies and is otherwise valid, officials shall then open the signature envelope and remove the secrecy envelope, which must be deposited unopened in an official ballot box.

(8) Except as provided in 13-19-312, after the close of voting on election day, voted ballots must be counted and canvassed as provided in Title 13, chapter 15."

**Section 7.** Section 13-19-306, MCA, is amended to read:

**"13-19-306. Returning marked ballots — when — where.** (1) After complying with 13-19-301, an elector or the elector's agent or designee may return the elector's ballot on or before election day by either:

(a) depositing the signature envelope in the United States mail, with sufficient postage affixed; or

(b) returning it to any place of deposit designated by the election administrator pursuant to 13-19-307.

(2) Except as provided in 13-21-206 ~~and 13-21-207~~ *and [section 20]*, in order for the ballot to be counted, each elector shall return it in a manner that ensures it is received prior to 8 p.m. on election day."

**Section 8.** Section 13-21-101, MCA, is amended to read:

**"13-21-101. Short title.** This chapter may be cited as the "Montana Absent Uniformed Services and Overseas ~~Elector Voting~~ *Voter* Act"."

**Section 9.** Section 13-21-102, MCA, is amended to read:

**"13-21-102. Definitions.** As used in this chapter, the following definitions apply:

~~(1) "Absent uniformed services elector" means an absent uniformed services voter pursuant to 42 U.S.C. 1973ff-6 who is:~~

~~(a) a member of the uniformed services on active duty who, by reason of the active duty, is absent from the place of residence where the member is otherwise qualified to vote;~~

~~(b) a member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; or~~

~~(c) a spouse or dependent of a member referred to in subsection (1)(a) or (1)(b) who, by reason of the member's active duty, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.~~

*(1) "Covered voter" means:*

*(a) a uniformed-service voter or an overseas voter who is registered to vote in Montana;*

*(b) a uniformed-service voter whose voting residence is in Montana and who otherwise satisfies Montana's voter eligibility requirements;*

*(c) an overseas voter who, before leaving the United States, was last eligible to vote in Montana and, except for a state residency requirement, otherwise satisfies Montana's voter eligibility requirements;*

*(d) an overseas voter who, before leaving the United States, would have been last eligible to vote in Montana had the voter then been of voting age and, except for a state residency requirement, otherwise satisfies Montana's voter eligibility requirements.*

*(2) "Dependent" means an individual recognized as a dependent by a uniformed service.*

~~(2)~~*(3)* "Federal ~~post card~~ *postcard* application" means ~~the federal post card application prescribed pursuant to 42 U.S.C. 1973ff~~ *the application prescribed under section 101(b)(2) of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff(b)(2).*

~~(3)~~*(4)* "Federal write-in absentee ballot" means ~~the federal write-in absentee ballot prescribed pursuant to 42 U.S.C. 1973ff-2~~ *the ballot described in section 103 of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff-2.*

~~(4) "Member of the merchant marine" means, pursuant to 42 U.S.C. 1973ff-6, a person, other than a member of the uniformed services or an individual employed, enrolled, or maintained on the Great Lakes of the inland waterways, who is:~~

~~(a) employed as an officer or crew member of a vessel documented under the laws of the United States, a vessel owned by the United States, or a vessel of a foreign-flag registry under charter to or control of the United States; or~~

~~(b) enrolled as an officer or crew member with the United States for employment or for training for employment or who is maintained by the United States for emergency relief service on a vessel described in subsection (4)(a).~~

*(5) "Military-overseas ballot" means:*

*(a) a federal write-in absentee ballot;*

*(b) an absentee ballot specifically prepared or distributed for use by a covered voter in accordance with this chapter; or*

*(c) a ballot cast by a covered voter in accordance with this chapter.*

~~(5)~~*(6)* "Overseas ~~elector~~ *voter*" means ~~an overseas voter pursuant to 42 U.S.C. 1973ff-6 who is:~~

~~(a) an absent uniformed services elector who by reason of active duty or service is absent from the United States on the date of the election involved;~~

~~(b) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or~~

~~(c) a person who resides outside the United States and would otherwise be qualified to vote in the last place in which the person was domiciled before leaving the United States~~ *a United States citizen who resides outside the United States who would otherwise be qualified to vote in the last place in which the person was domiciled before leaving the United States*.

~~(6) "Regular absentee ballot" means the absentee ballot prepared by the election administrator for any election.~~

*(7) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.*

~~(7)~~*(8)* "Uniformed ~~services~~ *service*" means~~,~~*:* ~~pursuant to 42 U.S.C. 1973ff-6, the U.S. army, navy, air force, marine corps, and coast guard, the commissioned corps of the U.S. public health service, and the commissioned corps of the U.S. national oceanic and atmospheric administration~~

*(a) active and reserve components of the army, navy, air force, marine corps, or coast guard of the United States;*

*(b) the merchant marine, the commissioned corps of the public health service, or the commissioned corps of the national oceanic and atmospheric administration of the United States; or*

*(c) the national guard and state militia.*

*(9) "Uniformed-service voter" means an individual who is qualified to vote and is:*

*(a) a member of the active or reserve components of the army, navy, air force, marine corps, or coast guard of the United States who is on active duty;*

*(b) a member of the merchant marine, the commissioned corps of the public health service, or the commissioned corps of the national oceanic and atmospheric administration of the United States;*

*(c) a member of the national guard or state militia in activated status; or*

*(d) a spouse or dependent of a member referred to in this subsection (9).*

~~(8)~~*(10)* "United States", ~~as used in the context of describing a geographical area, means, pursuant to 42 U.S.C. 1973ff-6, the several states, the District of~~

~~Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa~~ *used in the territorial sense, means the several states, the District of Columbia, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States*.

~~(9) "United States elector" means an absent uniformed services elector or an overseas elector.~~

~~(10)~~*(11)* "Voter registration ~~form~~ *application*" means the form approved by the secretary of state that an elector may use to register to vote in Montana."

**Section 10.** Section 13-21-104, MCA, is amended to read:

**"13-21-104. Adoption of rules on electronic registration and voting — acceptance of funds.** (1) The secretary of state shall adopt reasonable rules under the rulemaking provisions of the Montana Administrative Procedure Act to implement ~~13-21-207~~ *this chapter*. The rules are binding upon election administrators.

(2) The rules must provide that:

(a) there are uniform statewide standards concerning electronic registration and voting;

(b) regular absentee ballots for a primary, general, or special election are available in a format that allows the ballot to be electronically transmitted to a United States elector as soon as the ballots are available pursuant to 13-13-205;

(c) a ~~United States elector~~ *covered voter* may, subject to 13-2-304, register and vote up to the time that the polls close on election day;

(d) a ~~United States elector~~ *covered voter* is allowed to cast a provisional ballot if there is a question about the elector's registration information or eligibility to vote; and

(e) a ballot cast by a ~~United States elector~~ *covered voter* and transmitted electronically will remain secret, as required by Article IV, section 1, of the Montana constitution. This subsection (2)(e) does not prohibit the adoption of rules establishing administrative procedures on how electronically transmitted votes must be transcribed to an official ballot. However, the rules must be designed to protect the accuracy, integrity, and secrecy of the process.

(3) The secretary of state may apply for and receive a grant of funds from any agency or office of the United States government or from any other public or private source and may use the money for the purpose of implementing this chapter."

**Section 11.** Section 13-21-213, MCA, is amended to read:

**"13-21-213. Report on absentee ballots.** (1) Within 60 days after the date of each regularly scheduled federal general election, each county election administrator shall report to the secretary of state:

(a) the number of ~~regular~~ absentee ballots transmitted by the election administrator to ~~United States electors~~ *covered voters* for the election; and

(b) the number of ~~regular~~ absentee ballots cast and returned to the election administrator for the election from ~~United States electors~~ *covered voters; and*

*(c) the method of transmission and the method of submission of each absentee ballot in subsections (1)(a) and (1)(b).*

(2) The secretary of state may prescribe a standardized format for the report.

(3) Within 90 days after the date of each regularly scheduled federal general election, the secretary of state shall report to the federal election assistance commission, established pursuant to the Help America Vote Act of 2002, Public

Law 107-252, or its successor a statewide report containing the information provided under subsection (1) *and any other information required by the federal election assistance commission*. The report must be made in the format prescribed by the federal election assistance commission."

**Section 12. Elections covered.** (1) The voting procedures in this chapter apply to:

(a) a general, special, presidential preference, or primary election for federal office;

(b) a general, special, recall, or primary election for statewide or state legislative office or state ballot measure.

(2) Nothing in this section prohibits the application of the voting procedures in this chapter to any other elections.

**Section 13. Role of secretary of state.** (1) The secretary of state is the state official responsible for implementing the provisions of this chapter and the state's responsibilities under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff, et seq.

(2) The secretary of state shall make available to covered voters information regarding voter registration procedures for covered voters and procedures for casting military-overseas ballots. The secretary of state may delegate the responsibility under this subsection only to the state office designated in compliance with section 102(b)(1) of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff-1(b)(1).

(3) (a) The secretary of state shall establish an electronic transmission system that must be available at least 45 days before a covered election or any other approved method through which a covered voter may apply for and receive voter registration materials, military-overseas ballots, and other information under this chapter.

(b) If required identification is included, materials submitted through the electronic transmission system are not required to be signed.

**Section 14. Covered voter's registration address.** In registering to vote, a covered voter who is eligible to vote in Montana shall use and must be assigned to the voting precinct of the address of the last place of residence of the voter in Montana. If that address is no longer a recognized residential address, the voter must be assigned an address for voting purposes.

**Section 15. Methods of registering to vote.** (1) To apply to register to vote, in addition to any other approved method, a covered voter may use a federal postcard application or the application's electronic equivalent.

(2) A covered voter may use the declaration accompanying a federal write-in absentee ballot to apply to register to vote simultaneously with the submission of the federal write-in absentee ballot.

(3) The secretary of state shall ensure that the electronic transmission system described in [section 13(3)] is capable of accepting both a federal postcard application and any other approved electronic registration application sent to the appropriate election official. The voter may use the electronic transmission system when available or any other approved method to register to vote.

**Section 16. Methods of applying for military-overseas ballot.** (1) A covered voter who is registered to vote in this state may apply for a military-overseas ballot:

(a) using either the regular absentee ballot application in use in the voter's jurisdiction under 13-13-212 or the federal postcard application or the application's electronic equivalent;

(b) by making a written request, which must include the voter's birth date and signature; or

(c) by making an electronic request that includes the voter's birth date and affirmation of the voter's eligibility to vote under the Montana Absent Uniformed Services and Overseas Voter Act.

(2) A person who holds a power of attorney from a uniformed-service voter may apply for an absentee ballot for that election on behalf of the uniformed-service voter. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(3) A covered voter who is not registered to vote in Montana may use a federal postcard application or the application's electronic equivalent to apply simultaneously to register to vote under [section 15] and for a military-overseas ballot.

(4) The secretary of state shall ensure that the electronic transmission system described in [section 13(3)] is capable of accepting the submission of a federal postcard application. The voter may use the electronic transmission system or any other approved method to apply for a military-overseas ballot.

(5) A covered voter may use the declaration accompanying a federal write-in absentee ballot as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot if the declaration is received by the appropriate election official within the time period required by this chapter.

(6) An application from a covered voter who applies for a ballot under this section is considered a request for an absentee ballot for all elections held through December 31 of the year following the calendar year of application or for a shorter period if requested by the covered voter.

(7) To receive the benefits of this chapter, a covered voter shall inform the appropriate election official that the voter is a covered voter. Methods of informing the appropriate election official that a voter is a covered voter include:

(a) the use of a federal postcard application or federal write-in absentee ballot;

(b) the use of an overseas address on an approved voter registration application or ballot application; and

(c) the inclusion on an approved voter registration application or ballot application or other information sufficient to identify the voter as a covered voter.

(8) This section does not preclude a covered voter from voting under Title 13, chapter 13, part 2.

**Section 17. Timeliness of application for military-overseas ballot.** Except as provided in [section 20], an application for a military-overseas ballot is timely if received by 8 p.m. on election day.

**Section 18. Transmission of unvoted ballots.** (1) For an election described in [section 12], not later than 45 days before the election or, if the 45th day before the election falls on a weekend or holiday, not later than the business day preceding the 45th day, the election official in each jurisdiction charged with distributing a ballot and balloting materials shall transmit a ballot and

balloting materials to all covered voters who by that date submit a valid military-overseas ballot application.

(2) A covered voter who requests that a ballot and balloting materials be sent to the voter by electronic transmission may choose facsimile transmission or electronic mail or online delivery. The election official in each jurisdiction charged with distributing a ballot and balloting materials shall transmit the ballot and balloting materials to the voter using the means of transmission chosen by the voter.

**Section 19. Use of federal write-in absentee ballot.** A covered voter may use a federal write-in absentee ballot to vote for all offices and ballot measures in an election described in [section 12].

**Section 20. Receipt of voted ballot.** (1) A valid military-overseas ballot must be counted if it is received by 8 p.m. on election day or by 5 p.m. the day after election day if transmitted electronically by 8 p.m. on election day.

(2) Voted ballots transmitted electronically by 8 p.m. on election day and received by 5 p.m. the day after election day must be counted at the same time as provisional ballots are counted.

**Section 21. Confirmation of receipt of application and voted ballot.** The secretary of state, in coordination with local election officials, shall implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or internet whether:

(1) the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted; and

(2) the voter's military-overseas ballot has been received and the current status of the ballot.

**Section 22. Use of voter's e-mail address.** (1) A local election official shall request an e-mail address from each covered voter who registers to vote after [the effective date of this act].

(2) An e-mail address provided by a covered voter may not be made available to the public or any individual or organization other than a state or local election official and is exempt from disclosure under Title 2, chapter 6.

(3) The address may be used only for official communication with the voter about the voting process, including transmitting military-overseas ballots and election materials if the voter has requested electronic transmission and verifying the voter's mailing address and physical location.

**Section 23. Repealer.** The following sections of the Montana Code Annotated are repealed:

13-21-103. Secretary of state designated as single point of contact — rulemaking.

13-21-201. Registration of United States electors — simultaneous application for absentee ballot.

13-21-202. Classification of applications for regular absentee ballots — notification of elector.

13-21-203. Registration of United States electors after return.

13-21-205. Federal write-in absentee ballot.

13-21-207. Registration and voting electronically — definition.

13-21-210. Application for absentee ballots.

**Section 24. Codification instruction.** (1) [Sections 12 and 13] are intended to be codified as an integral part of Title 13, chapter 21, part 1, and the provisions of Title 13, chapter 21, part 1, apply to [sections 12 and 13].

(2) [Sections 14 through 22] are intended to be codified as an integral part of Title 13, chapter 21, part 2, and the provisions of Title 13, chapter 21, part 2, apply to [sections 14 through 22].

**Section 25. Effective date.** [This act] is effective January 1, 2014.

Approved April 3, 2013

# CHAPTER NO. 140

[SB 63]

AN ACT CLARIFYING PAYMENT OF THE STATE DEATH BENEFIT TO BENEFICIARIES OF MEMBERS OF THE MONTANA NATIONAL GUARD WHO DIE IN THE LINE OF DUTY WHILE ON STATE DUTY FOR SPECIAL WORK; AMENDING SECTION 10-1-1201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 10-1-1201, MCA, is amended to read:

**"10-1-1201. Death while on state duty — death benefit payment — certification — rules.** (1) The department of administration shall, upon certification by the department as provided in subsection (2), make a death benefit payment by state warrant in the amount of $50,000 to the beneficiary, as provided in subsection (3), of a member of the national guard who dies in the line of duty performed pursuant to state active duty *or state duty for special work* orders.

(2) Upon the death of the member, the department shall certify to the department of administration:

(a) the name and other identifying information of the member;

(b) that the member died in the line of duty performed pursuant to Article VI, section 13, of the Montana constitution *or while on state duty for special work as provided in 10-1-505(2)*;

(c) that, at the time of the death of the member, the member was being paid or was to be paid for the member's military service from state and not federal military funds; and

(d) the name and address of the beneficiary, as provided in subsection (3), to whom payment must be made.

(3) The department of administration shall pay the death benefit to the member's surviving spouse. If there is no surviving spouse, the department of administration shall pay the death benefit to the member's surviving children in equal shares. If there are no surviving children, the department of administration shall pay the death benefit to the member's survivors pursuant to Title 72 as if the member had died intestate.

(4) The department and the department of administration may adopt rules to implement this section."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 3, 2013

# CHAPTER NO. 141

[SB 70]

AN ACT ELIMINATING DUAL REGULATION OF CERTAIN UNDERGROUND PIPING AT A PETROLEUM REFINERY THAT IS SUBJECT TO A HAZARDOUS WASTE CORRECTIVE ACTION ORDER; AMENDING SECTION 75-11-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 75-11-503, MCA, is amended to read:

**"75-11-503. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Department" means the department of environmental quality provided for in 2-15-3501.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any regulated substance into or onto the land or water so that the regulated substance or any constituent of the regulated substance may enter the environment or be emitted into the air or discharged into any waters, including ground water.

(4) "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(5) "Petroleum mixing zone" means an area where water quality standards for petroleum and petroleum constituents may be exceeded subject to the conditions of 75-11-508 and consistent with rules adopted under 75-11-318, 75-11-319, and 75-11-505.

(6) "Regulated substance":

(a) means:

(i) a hazardous substance as defined in 75-10-602; or

(ii) petroleum, including crude oil or any fraction of crude oil, that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);

(b) does not include a substance regulated as a hazardous waste under Title 75, chapter 10, part 4.

(7) "Storage" means the actual or intended containment of regulated substances, either on a temporary basis or for a period of years.

(8) "Underground storage tank" or "tank":

(a) means, except as provided in subsections (8)(b)(i) through ~~(8)(b)(xi)~~ *(8)(b)(xii)*:

(i) any one or a combination of tanks used to contain a regulated substance, the volume of which is 10% or more beneath the surface of the ground;

(ii) any underground pipes used to contain or transport a regulated substance and connected to a storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely under ground; and

(iii) ancillary equipment designed to prevent, detect, or contain a release from an underground storage tank;

(b) does not include:

(i) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons or less and that is used for storing motor fuel for noncommercial purposes;

(ii) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons or less and that is used for storing heating oil for consumptive use on the premises where it is stored;

(iii) farm or residential underground pipes that were installed as of April 27, 1995, and that are used to contain or to transport motor fuels for noncommercial purposes or heating oil for consumptive use on the premises where it is stored from an aboveground storage tank with a capacity of 1,100 gallons or less;

(iv) a septic tank;

(v) a pipeline facility, including gathering lines, regulated under:

(A) the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1671, et seq.;

(B) the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. 2001, et seq.; or

(C) state law comparable to the provisions of law referred to in subsection (8)(b)(v)(A) or (8)(b)(v)(B)~~,~~ if the facility is intrastate;

(vi) a surface impoundment, pit, pond, or lagoon;

(vii) a storm water or wastewater collection system;

(viii) a flow-through process tank;

(ix) a liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(x) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor;

(xi) any pipe connected to a tank described in subsections (8)(b)(i) through (8)(b)(ix); or

(xii) underground pipes connected to an aboveground storage tank at a petroleum refinery that is subject to*:*

*(A)* facilitywide corrective action permit provisions under 75-10-406 or the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 through 6987, as amended*; or*

*(B) a facilitywide corrective action order under 75-10-425 or the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 through 6987, as amended*."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 3, 2013

# CHAPTER NO. 142

[SB 99]

AN ACT REVISING INSURANCE VERIFICATION PROCEDURES FOR VEHICLE REGISTRATIONS; AMENDING SECTIONS 61-3-303, 61-3-312, AND 61-6-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-3-303, MCA, is amended to read:

**"61-3-303. Original registration — process — fees.** (1) Except as provided in 61-3-324, a Montana resident who owns a motor vehicle, trailer,

semitrailer, or pole trailer operated or driven upon the public highways of this state shall register the motor vehicle, trailer, semitrailer, or pole trailer in the office of the county treasurer in the county where the owner is domiciled.

(2) Except as provided in ~~subsections~~ *subsection* (3) ~~and (11)~~, the county treasurer shall register any vehicle for which:

(a) as of the date that the motor vehicle, trailer, semitrailer, or pole trailer is to be registered, the owner delivers an application for a certificate of title to the department, its authorized agent, or a county treasurer; or

(b) the county treasurer confirms that the department has an electronic record of title for the motor vehicle, trailer, semitrailer, or pole trailer as provided under 61-3-101.

(3) (a) A county treasurer may register a motor vehicle, trailer, semitrailer, or pole trailer for which a certificate of title and registration were issued in another jurisdiction and for which registration is required under 61-3-701 after the county treasurer examines the current out-of-jurisdiction registration certificate or receipt and receives payment of the fees required in 61-3-701. The county treasurer may ask the motor vehicle, trailer, semitrailer, or pole trailer owner to provide additional information, prescribed by the department, to ensure that the electronic record of registration maintained by the department is complete.

(b) A county treasurer may register a motor vehicle, trailer, semitrailer, or pole trailer for which the new owner cannot, due to circumstances beyond the new owner's control, surrender a previously assigned certificate of title. The new owner may submit an application for certificate of title, subject to the registration renewal limitations of 61-3-312.

(4) Upon registering a motor vehicle, trailer, semitrailer, or pole trailer for the first time in this state, the county treasurer shall:

(a) update the electronic record of title, if any, maintained for the vehicle by the department under 61-3-101;

(b) assign a registration period for the vehicle under 61-3-311;

(c) determine the vehicle's age, if required, under 61-3-501;

(d) determine the amount of fees, including local option taxes or fees, to be paid under subsection (5); and

(e) assign and issue license plates for the vehicle under 61-3-331.

(5) Unless otherwise provided by law, a person registering a motor vehicle shall pay to the county treasurer:

(a) the fees in lieu of tax or registration fees as required for:

(i) a light vehicle under 61-3-321 or 61-3-562, in addition to, if applicable, any local option tax or fee under 61-3-537 or 61-3-570;

(ii) a motor home under 61-3-321;

(iii) a travel trailer under 61-3-321;

(iv) a motorcycle or quadricycle under 61-3-321;

(v) a bus, a truck having a manufacturer's rated capacity of more than 1 ton, or a truck tractor under 61-3-321 and 61-3-529; or

(vi) a trailer under 61-3-321;

(b) a donation of $1 or more if the person indicates that the person wishes to donate to promote awareness and education efforts for procurement of organ and tissue donations in Montana to favorably impact anatomical gifts; and

(c) a donation of $1 or more if the person indicates that the person wishes to donate to promote education on, support for, and awareness of traumatic brain injury.

(6) The county treasurer may not issue a registration receipt or license plates for the motor vehicle, trailer, semitrailer, or pole trailer to the owner unless the owner makes the payments required by subsection (5).

(7) The department may make full and complete investigation of the registration status of the motor vehicle, trailer, semitrailer, or pole trailer. A person seeking to register a motor vehicle, trailer, semitrailer, or pole trailer under this section shall provide additional information to support the registration to the department if requested.

(8) Revenue that accrues from the voluntary donation provided in subsection (5)(b) must be forwarded by the respective county treasurer to the department for deposit in the state special revenue fund to the credit of an account established by the department of public health and human services to support activities related to awareness and education efforts for procurement of organ and tissue donations for anatomical gifts.

(9) (a) Except as provided in subsection (9)(b), the fees in lieu of tax, taxes, and fees imposed on or collected from the registration of a travel trailer, motorcycle, or quadricycle or a trailer, semitrailer, or pole trailer that has a declared weight of less than 26,000 pounds are required to be paid only once during the time that the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is owned by the same person who registered the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer. Once registered, a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is registered permanently unless ownership is transferred.

(b) Whenever ownership of a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is transferred, the new owner is required to register the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer as if it were being registered for the first time, including paying all of the required fees in lieu of tax, taxes, and fees.

(10) Revenue that accrues from the voluntary donation provided in subsection (5)(c) must be forwarded by the respective county treasurer to the department for deposit in the state special revenue fund to the credit of the account established in 2-15-2218 to support activities related to education regarding prevention of traumatic brain injury.

(11) ~~Beginning January 1, 2013, the~~ *The department, an authorized agent of the department, or a* county treasurer ~~shall~~ *shall* use the online motor vehicle liability insurance verification system provided in 61-6-157 to verify that the vehicle owner has complied with the requirements of 61-6-301."

**Section 2.** Section 61-3-312, MCA, is amended to read:

**"61-3-312. Renewal of registration — exceptions — grace period.** (1) Except as provided in 61-3-313 and 61-3-721, the registration of a motor vehicle under this chapter must be renewed on or before the last day of the month of the motor vehicle's registration period following the expiration of the motor vehicle's registration.

(2) ~~Except as provided in subsection (4), a~~ *A* person may renew a motor vehicle's registration by submitting full payment for the fees or taxes required

under 61-3-303 and 61-3-321(13) to the department, an authorized agent, or a county treasurer in any county of this state.

(3) The department, an authorized agent, or a county treasurer ~~may~~ *shall* use the online motor vehicle liability insurance verification system provided in 61-6-157 to verify proof of compliance with 61-6-301.

~~(4) Beginning January 1, 2013, and except when the verification system is temporarily unavailable, a registration may not be renewed when compliance with 61-6-301 cannot be determined using the verification system.~~

~~(5)~~*(4)* Except as provided in 61-3-315, the registration period originally assigned under 61-3-311 must be retained and the duration of the renewed registration is determined in accordance with 61-3-311. A registration receipt is valid for the registration period for which it is issued.

~~(6)~~*(5)* The owner of a motor vehicle subject to registration renewal under the provisions of this section is considered to have renewed the motor vehicle's registration in a timely manner if the owner submits full payment for the required fees or taxes, as prescribed in the mail renewal notice from the department, to the department, an authorized agent, or a county treasurer on or before the last day of the month of the motor vehicle's registration period ~~and the department, authorized agent, or county treasurer determines the owner is in compliance with 61-6-301 using the verification system provided in 61-6-157~~.

~~(7)~~*(6)* The department, an authorized agent, or a county treasurer may not renew the registration of a motor vehicle for which ownership has been transferred and that was originally registered without being titled under the provisions of 61-3-303(3)(b) unless:

(a) the previously issued certificate of title has been surrendered to the department, an authorized agent, or the county treasurer and the process for issuing a certificate of title has been completed; or

(b) the person to whom ownership of the motor vehicle has been transferred presents an affidavit and bond in support of the application for a certificate of title as permitted in 61-3-208."

**Section 3.** Section 61-6-105, MCA, is amended to read:

**"61-6-105. Department to administer law and make rules.** (1) The department shall administer and enforce the provisions of this part and may make rules necessary for the administration of the system.

(2) The rules must:

(a) establish standards and procedures for accessing the system by authorized personnel of the department, the courts, law enforcement personnel, and any other entities authorized by the department that are consistent with specifications and standards of the insurance industry committee on motor vehicle administration and other applicable industry standards;

(b) determine a schedule for the implementation of the system, subject to the testing requirements in 61-6-157 ~~and the time requirements in 61-3-303 and 61-3-312~~;

(c) provide for the suspension of a vehicle's registration when:

(i) a person fails to respond to a written inquiry from the department or its designee concerning the insurance status of a vehicle;

(ii) a person misrepresents or provides false information to the department or its designee regarding the operational status or use of a vehicle for which liability insurance is mandatory;

(iii) the department has reason to believe that a vehicle owner is not complying with the mandatory liability insurance requirements of 61-6-301; or

(iv) the department receives a report from a court that a person has been convicted of a violation of 61-6-301 or 61-6-302 and the surrender of the vehicle registration receipt and license plates under 61-6-304 has been ordered;

(d) prohibit the reinstatement of a vehicle's registration and the new registration of a vehicle unless the applicable reinstatement fees have been paid;

(e) set a fee for the reinstatement of a vehicle's registration following a suspension imposed by the department. The fee may not exceed $100 and is in addition to any other fine or penalty prescribed by the law.

(f) provide for periodic insurance data file transfers from insurers under specifications and standards set forth in 61-6-157 to identify vehicles that are not covered by an insurance policy and to monitor ongoing compliance with mandatory vehicle liability insurance requirements;

(g) provide for ~~random~~ *random* checks to identify vehicles that are not covered by an insurance policy *or specific checks to determine whether a vehicle that has previously been shown as uninsured is now insured*; and

(h) provide for a hearing for a person aggrieved by a suspension order issued by the department under the provisions of this part.

(3) The department may adopt additional rules to:

(a) assist authorized users in interpreting responses received from the system and determining the appropriate action to be taken as a result of a response; and

(b) otherwise clarify system operations and business rules."

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 3, 2013

# CHAPTER NO. 143

[SB 132]

AN ACT REVISING DATES FOR FILLING VACANCIES IN COUNTY ELECTED OFFICES; REQUIRING NOTIFICATION OF THE COUNTY ELECTION ADMINISTRATOR RATHER THAN THE CLERK AND RECORDER; AND AMENDING SECTIONS 3-10-201, 3-10-206, 7-4-2106, AND 7-4-2206, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 3-10-201, MCA, is amended to read:

**"3-10-201. Election.** (1) ~~Each~~ *Except as provided in 3-10-206, each* justice of the peace must be elected by the qualified electors of the county at the general state election immediately preceding the expiration of the term of office of the justice of the peace's predecessor.

(2) A justice of the peace must be nominated and elected on the nonpartisan judicial ballot in the same manner as judges of the district court.

(3) Each judicial office must be a separate and independent office for election purposes, each office must be numbered by the county commissioners, and each candidate for justice of the peace shall specify the number of the office for which the candidate seeks to be elected. A candidate may not file for more than one office.

(4) Section 13-35-231, prohibiting political party endorsement for judicial officers, applies to justices of the peace."

**Section 2.** Section 3-10-206, MCA, is amended to read:

**"3-10-206. Vacancies.** ~~If~~ *Subject to the residency requirements provided in 3-10-204 and the election requirements provided in 3-10-201(2) through (4),* a vacancy ~~occurs~~ in the office of a justice of the peace~~, the county commissioners of the county must appoint an eligible person to hold the office until the next general election and~~ *must be filled pursuant to 7-4-2206* until a successor is elected and qualified."

**Section 3.** Section 7-4-2106, MCA, is amended to read:

**"7-4-2106. Vacancy on board of county commissioners — resigning member not to participate in filling pending vacancy.** (1) For the purposes of this part, "vacancy" has the same meaning as prescribed in 2-16-501.

(2) Whenever a vacancy occurs in the board of county commissioners from a failure to elect or otherwise, the remaining county commissioners shall fill the vacancy and the appointee shall hold office until the next general election unless otherwise provided in subsection (3) or (4). The procedure to be used to fill the vacancy is as follows:

(a) If the former incumbent represented a party eligible for a primary election under 13-10-601, the county central committee of that party shall submit to the remaining commissioners three names of people who have lived in the unrepresented district for at least 2 years preceding the day the vacancy occurs. The remaining commissioners shall appoint one of these three to fill the vacancy. Whenever the remaining commissioners are unable to elect an appointee from the submitted list, they shall request a second list of three names from the county central committee. The second list may not contain any of the names submitted on the first list. The remaining commissioners shall then select an appointee from the individuals named on both lists.

(b) If the former incumbent was independent or was originally nominated by a party that does not meet the requirements of 13-10-601 or if the vacancy occurs from a failure to elect, the remaining commissioners shall invite applications for the vacancy in a notice published as provided in 13-1-108 and shall accept an application from any person who has lived in the unrepresented district for at least 2 years preceding the day the vacancy occurs. The remaining commissioners shall appoint one of these applicants to fill the vacancy.

(3) Whenever a vacancy occurs ~~75 days or more~~ *prior to August 1* before the general election held during the second or fourth year of the term, an individual must be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs ~~75 days or more~~ *prior to March 1* before the primary election during the second or fourth year of the term, the same procedure must be used as is used to elect county commissioners to full 6-year terms.

(b) Whenever the vacancy occurs *on or* after ~~the 75th day~~ *March 1* preceding the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-38-204. A political party shall notify the ~~clerk and recorder~~ *county election administrator* of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate must be filed with the ~~clerk and recorder on or before the~~

~~75th day~~ *county election administrator* prior to *August 1 before* the general election. A candidate for a nonpartisan office shall file as provided in Title 13, chapter 14.

(4) Whenever a vacancy occurs after ~~the 75th day~~ *July 31* preceding the general election held during the fourth year of the term, the person appointed by the remaining county commissioners under subsection (2) shall serve until the end of the term.

(5) (a) If multiple vacancies occur simultaneously so that a quorum cannot be established, the county compensation board provided for in 7-4-2503 shall, subject to subsection (5)(c) of this section, appoint enough commissioners to allow for a quorum to be established. The vacancies must be filled in the order in which the commissioners' terms would have expired.

(b) If vacancies occur at different times but, because appointments have not yet been made, a quorum cannot be established, the county compensation board shall, subject to subsection (5)(c), appoint enough commissioners to allow for a quorum to be established. The county compensation board shall appoint each commissioner in the order that the vacancy occurred.

(c) (i) A commissioner appointed under this subsection (5) must meet the residency requirement in 7-4-2104(2) and must be from the same district as the commissioner being replaced.

(ii) If a commissioner being replaced represented a party eligible for a primary election under 13-10-601, the county central committee of that party shall, within 30 days of the occurrence of the vacancy, submit to the county compensation board three names of people who have lived in the unrepresented district for at least 2 years prior to the occurrence of the vacancy. The county compensation board shall appoint each commissioner from the list of names provided by the county central committee.

(d) Once a quorum can be established, the county commissioners forming the quorum shall appoint the remaining commissioners as provided in this section.

(e) If a county compensation board does not exist, appointments under this subsection (5) must be made by a district judge having jurisdiction in the county.

(6) If a member of the board of county commissioners has submitted the member's resignation as provided in 2-16-502 or if proceedings have begun to remove the member from office under 2-16-501, that member may not be considered to be a remaining member of the commission as provided in this section and may not participate in filling the vacancy to be created when the resignation becomes effective."

**Section 4.** Section 7-4-2206, MCA, is amended to read:

**"7-4-2206. Vacancies.** (1) For the purposes of this part, "vacancy" has the same meaning as prescribed in 2-16-501.

(2) Vacancies in all county offices, except that of county commissioner, must be filled by appointment by the board of county commissioners. Except as provided in subsections (3) through (5), the appointee holds the office, if elective, until the person elected at the next general election is certified pursuant to 13-15-406. If the office is not elective, the appointee serves at the pleasure of the commissioners.

(3) Whenever a vacancy occurs ~~75 days or more~~ *prior to August 1* before the general election held during the second year of the term, an individual must be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs ~~75 days or more~~ *prior to March 1* before the primary election during the second year of the term, the same procedure must be used as is used to elect a person to that office for a full 4-year term.

(b) Whenever the vacancy occurs *on or* after ~~the 75th day~~ *March 1* before the primary election, any political party desiring to enter a candidate *in a partisan election* in the general election shall select a candidate as provided in 13-38-204. A political party shall notify the ~~clerk and recorder~~ *county election administrator* of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate must be filed with the ~~clerk and recorder~~ *county election administrator* ~~on or before the 75th day~~ *prior to August 1* before the general election. A candidate for a nonpartisan office shall file as provided in Title 13, chapter 14.

(4) Whenever a vacancy occurs *on or* after ~~the 75th day~~ *July 31* before the general election held during the second year of the term, the person appointed by the commissioners under subsection (2) shall serve until the end of the term.

~~(5) Vacancies occurring in the office of justice of the peace must be filled as provided in Title 3, chapter 10, part 2.~~"

Approved April 3, 2013

# CHAPTER NO. 144

[SB 267]

AN ACT CLARIFYING THAT PLEAS OF NOLO CONTENDERE MAY BE ACCEPTED WITH THE CONSENT OF THE COURT AND THE PROSECUTOR; AMENDING SECTIONS 46-16-105 AND 46-17-203, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 46-16-105, MCA, is amended to read:

**"46-16-105. Plea of guilty — use of two-way electronic audio-video communication.** (1) Before or during trial, a plea of guilty *must be accepted, and a plea of* ~~or~~ nolo contendere ~~must~~ *may* be accepted *with the consent of the court and the prosecutor,* when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

(2) At any time before judgment or, except when a claim of innocence is supported by evidence of a fundamental miscarriage of justice, within 1 year after judgment becomes final, the court may, for good cause shown, permit the plea of guilty or nolo contendere to be withdrawn and a plea of not guilty substituted. A judgment becomes final for purposes of this subsection (2):

(a) when the time for appeal to the Montana supreme court expires;

(b) if an appeal is taken to the Montana supreme court, when the time for petitioning the United States supreme court for review expires; or

(c) if review is sought in the United States supreme court, on the date that that court issues its final order in the case.

(3) For purposes of this section, an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video communication, allowing all of the participants to be heard in the courtroom by all present and allowing the party speaking to be seen, is considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video communication may be used if neither party objects and the court agrees to its use and has informed the defendant that the defendant has the right to object to its use. The audio-video communication must operate as provided in 46-12-201."

**Section 2.** Section 46-17-203, MCA, is amended to read:

**"46-17-203. Plea of guilty — use of two-way electronic audio-video communication.** (1) Before or during trial, a plea of guilty *must be accepted, and a plea of* ~~or~~ nolo contendere may be accepted *with the consent of the court and the prosecutor,* when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

(2) (a) Subject to subsection (2)(b), a plea of guilty or nolo contendere in a justice's court, city court, or other court of limited jurisdiction waives the right of trial de novo in district court. A defendant must be informed of the waiver before the plea is accepted, and the justice or judge shall question the defendant to ensure that the plea and waiver are entered voluntarily.

(b) A defendant who claims that a plea of guilty or nolo contendere was not entered voluntarily may move to withdraw the plea. If the motion to withdraw is denied, the defendant may, within 90 days of the denial of the motion, appeal the denial of a motion to withdraw the plea to district court. The district court may order the office of state public defender, provided for in 47-1-201, to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, hold a hearing, and enter appropriate findings of fact, conclusions of law, and a decision affirming or reversing the denial of the defendant's motion to withdraw the plea by the court of limited jurisdiction. The district court may remand the case, or the defendant may appeal the decision of the district court.

(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201."

**Section 3. Applicability.** [This act] applies to proceedings begun on or after [the effective date of this act].

Approved April 3, 2013

# CHAPTER NO. 145

[HB 91]

AN ACT MODIFYING AND EXPANDING 457 DEFERRED COMPENSATION PROGRAMS FOR THE STATE AND POLITICAL SUBDIVISIONS TO

INCLUDE ROTH ACCOUNTS; AMENDING SECTIONS 19-50-101 AND 19-50-103, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 19-50-101, MCA, is amended to read:

**"19-50-101. Definitions.** For the purposes of this chapter, unless a different meaning is plainly implied by the context, the following definitions apply:

(1) "Administrator" or "board" means the public employees' retirement board created in 2-15-1009 or an appropriate officer of a political subdivision.

(2) "Deferred compensation" means ~~that~~ *the* income ~~which~~ *that* an employee may legally defer in a deferred compensation plan established under this chapter pursuant to the rulings of the internal revenue service and ~~which~~ *that*, while invested, is exempt from state and federal income tax on the employee's contribution and on the interest, dividends, and capital gains until ultimately distributed to the employee.

(3) "Eligible deferred compensation plan" means a plan meeting the requirements of section 457 of the Internal Revenue Code.

(4) "Employee" means any person, including independent contractors and elected officials, receiving compensation from the state or a political subdivision for performing services.

(5) "Fund" means the state deferred compensation investment account.

(6) "Participant" means an employee enrolled in ~~the~~ *an eligible deferred compensation* plan *established under this chapter*.

(7) "Political subdivision" means any city, town, county, or other political subdivision of the state of Montana*, including the Montana university system*.

*(8) "Roth account" means a separate account within a deferred compensation plan established under this chapter that is composed of after-tax contributions made pursuant to section 402A of the Internal Revenue Code, 26 U.S.C. 402A.*

*(9) "Roth deferral" means an after-tax contribution by a participant to the participant's deferred compensation account.*"

**Section 2.** Section 19-50-103, MCA, is amended to read:

**"19-50-103. No effect on other retirement programs — taxes deferred — *Roth deferral exception.*** *(1)* The deferred compensation program established by this chapter is in addition to retirement, pension, or benefit systems, including plans qualifying under section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b), as amended, established by the state or a political subdivision, and ~~no~~ *a* deferral of income under the deferred compensation program may *not* affect a reduction of any retirement, pension, or other benefit provided by law.

*(2)* ~~However~~ *Except as provided in subsection (3)*, any sum deferred under the deferred compensation program is not subject to taxation until distribution is actually made to the participant or the participant's beneficiary because of severance from employment, retirement, or unforeseeable emergency.

*(3) Effective July 1, 2013, any deferred compensation program established under this chapter may include Roth accounts and accept Roth deferrals pursuant to section 402A of the Internal Revenue Code, 26 U.S.C. 402A. A participant's Roth deferral into a deferred compensation account and any associated earnings, known as the participant's Roth assets, may be withdrawn tax-free if the requirements for a qualified distribution under 402A(d)(2) of the Internal Revenue Code, 26 U.S.C. 402A(d)(2), are met.*

*(4)* For purposes of this chapter, any qualified private pension plans ~~now~~ in existence *in 1974* qualify."

**Section 3. Effective date.** [This act] is effective July 1, 2013.

Approved April 4, 2013

## CHAPTER NO. 146

[HB 110]

AN ACT REQUIRING A STATE AGENCY TO DOCUMENT THAT IT HAS CONSIDERED STATUTORY GUIDING PRINCIPLES WHEN FORMULATING OR IMPLEMENTING POLICIES OR ADMINISTRATIVE RULES THAT HAVE DIRECT TRIBAL IMPLICATIONS; AND AMENDING SECTION 2-15-142, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-15-142, MCA, is amended to read:

**"2-15-142. Guiding principles.** In formulating or implementing policies or administrative rules that have direct tribal implications, a state agency ~~should consider~~ *shall document its consideration of* the following principles:

(1) a commitment to cooperation and collaboration;

(2) mutual understanding and respect;

(3) regular and early communication;

(4) a process of accountability for addressing issues; and

(5) preservation of the tribal-state relationship."

**Section 2. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Approved April 4, 2013

## CHAPTER NO. 147

[HB 125]

AN ACT CLARIFYING WHEN A CANDIDATE'S NAME MAY NOT APPEAR ON THE BALLOT; AND AMENDING SECTION 13-37-126, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 13-37-126, MCA, is amended to read:

**"13-37-126. Names not to appear on ballot.** (1) The name of a candidate may not appear on the official ballot for an election if the candidate or a treasurer for a candidate fails to file any statement or report as required by *2-2-106 or* this chapter.

(2) A vacancy on an official ballot under this section may be filled in the manner provided by law, but not by the name of the same candidate.

(3) (a) In carrying out the mandate of this section, the commissioner shall, by a written statement, notify the secretary of state or the election administrator that a candidate or a candidate's treasurer has not complied with the provisions of this chapter, as described in subsection (1), and that a candidate's name may not appear on the official ballot.

(b) The commissioner shall provide the notification:

(i) within 8 calendar days after the close of the certification deadline provided in 13-10-208(1) for primary elections held pursuant to 13-1-107(1); or

(ii) by the earliest date specified under 13-10-208(2) for the county election administrator to certify the ballot for primary elections held pursuant to 13-1-107(2) or (3); and

(iii) by no later than 7 days before the ballot certification deadline provided in 13-12-201 for general elections."

Approved April 4, 2013

# CHAPTER NO. 148

[HB 232]

AN ACT SPECIFYING A HIGHER STANDARD OF PROOF FOR CLAIMS AGAINST AN EMPLOYER OR FELLOW EMPLOYEE FOR INTENTIONAL AND DELIBERATE ACTS OUTSIDE THE EXCLUSIVE REMEDY OF THE WORKERS' COMPENSATION ACT; AMENDING SECTION 39-71-413, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 39-71-413, MCA, is amended to read:

**"39-71-413. Liability of employer or fellow employee for intentional and deliberate acts — additional cause of action — intentional injury defined.** (1) *(a)* If an employee is intentionally injured by an intentional and deliberate act of the employee's employer or by the intentional and deliberate act of a fellow employee while performing the duties of employment, the employee or in case of death the employee's heirs or personal representatives, in addition to the right to receive compensation under the Workers' Compensation Act, have a cause of action for damages against the person whose intentional and deliberate act caused the intentional injury.

*(b) For the purposes of this section, the standard of proof for an act to be determined to be intentional and deliberate is clear and convincing evidence.*

(2) An employer is not vicariously liable under this section for the intentional and deliberate acts of an employee.

(3) As used in this section, "intentional injury" means an injury caused by an intentional and deliberate act that is specifically and actually intended to cause injury to the employee injured and there is actual knowledge that an injury is certain to occur."

**Section 2. Effective date.** [This act] is effective July 1, 2013.

Approved April 4, 2013

# CHAPTER NO. 149

[SB 326]

AN ACT PROVIDING THAT A PERSON CONVICTED OF SEXUAL INTERCOURSE WITHOUT CONSENT WHO IS THE BIOLOGICAL PARENT OF A CHILD RESULTING FROM THE ACT FORFEITS ALL PARENTAL RIGHTS UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTION 45-5-503, MCA.

WHEREAS, sexual assault is a deviant, criminal act punishable under the laws of the state of Montana; and

WHEREAS, the most vicious form of sexual assault is sexual intercourse without consent; and

WHEREAS, sexual intercourse without consent may result in an unwanted pregnancy and the mother may choose to carry the child to term; and

WHEREAS, the mother may choose to allow adoption of the child or retain custody and raise the child; and

WHEREAS, under current Montana law there is no provision to prevent a person convicted of sexual intercourse without consent who is also the biological father of the child from claiming parental rights related to the child; and

WHEREAS, other states in the United States of America have enacted laws to prevent a person convicted of sexual intercourse without consent who is also the biological parent of a child resulting from the act of sexual intercourse without consent from claiming any parental rights to the child; and

WHEREAS, a claim for custody or other type of parental rights by a person convicted of sexual intercourse without consent may cause serious emotional trauma to the child and the mother who is also a crime victim.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 45-5-503, MCA, is amended to read:

**"45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(a)(ii)(D).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219, 46-18-222, and subsections (3) and (4) of this section.

(3) (a) If the victim is less than 16 years old and the offender is 4 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(c) If the offender was previously convicted of an offense under this section or of an offense under the laws of another state or of the United States that if committed in this state would be an offense under this section and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the offender shall be:

(i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18 years of age at the time of the commission of the offense; or

(ii) punished as provided in 46-18-219.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(5) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(6) As used in subsections (3) and (4), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission.

*(7) If as a result of sexual intercourse without consent a child is born, the offender who has been convicted of an offense under this section, and who is the biological parent of the child resulting from the sexual intercourse without consent, forfeits all parental and custodial rights to the child if the provisions of 46-1-401 have been followed.*"

Approved April 4, 2013

# CHAPTER NO. 150

[HB 226]

AN ACT EXCLUDING COMPUTER INFORMATIONAL TECHNOLOGY PROFESSIONALS FROM OVERTIME LAWS; AND AMENDING SECTION 39-3-406, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 39-3-406, MCA, is amended to read:

**"39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, and cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) persons who are not regular employees of a nonprofit organization and who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) persons with disabilities engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) an individual employed in a bona fide executive, administrative, or professional capacity, as these terms are defined by regulations of the commissioner, *a computer systems analyst, computer programmer, software engineer, network administrator, or other similarly skilled computer employee who earns not less than $27.63 an hour pursuant to 29 CFR 541.400 or 541.402,* or *an individual employed* in an outside sales capacity pursuant to 29 CFR 541.500;

(k) an individual employed by the United States of America;

(l) resident managers employed in lodging establishments or assisted living facilities who, under the terms of their employment, live in the establishment or facility;

(m) a direct seller as defined in 26 U.S.C. 3508;

(n) a person placed as a participant in a public assistance program authorized by Title 53 into a work setting for the purpose of developing employment skills. The placement may be with either a public or private employer. The exclusion does not apply to an employment relationship formed in the work setting outside the scope of the employment skills activities authorized by Title 53.

(o) a person serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(p) an employee employed in domestic service employment to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves as provided under section 213(a)(15) of the Fair Labor Standards Act, 29 U.S.C. 213, when the person providing the service is employed directly by a family member or an individual who is a legal guardian.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States secretary of transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502;

(b) an employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles or implements to ultimate purchasers;

(e) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(f) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(g) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(h) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways that are not owned or operated for profit, that are not operated on a sharecrop basis, and that are used exclusively for supply and storing of water for agricultural purposes;

(i) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(j) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm if no more than five employees are employed by the establishment;

(k) a driver employed by an employer engaged in the business of operating taxicabs;

(l) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(m) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(n) an employee of a sheriff's office who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(o) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(p) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(q) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(r) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(s) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(t) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

(u) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter as defined in 37-47-101;

(v) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a second- or third-class city or a town;

(w) an employee of the consolidated legislative branch as provided in 5-2-503;

(x) an employee of the state or its political subdivisions employed, at the employee's option, on an occasional or sporadic basis in a capacity other than the employee's regular occupation. Only the hours that the employee was employed in a capacity other than the employee's regular occupation may be excluded from the calculation of hours to determine overtime compensation."

Approved April 5, 2013

# CHAPTER NO. 151

[HB 278]

AN ACT REDUCING THE WAITING PERIOD FOR USE OF A BEAR HUNTING LICENSE; AMENDING SECTION 87-2-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 87-2-702, MCA, is amended to read:

**"87-2-702. Restrictions on special licenses — availability of bear and mountain lion licenses.** (1) A person who has killed or taken any game animal, except a deer, an elk, or an antelope, during the current license year is not permitted to receive a special license under this chapter to hunt or kill a second game animal of the same species.

(2) The commission may require applicants for special permits authorized by this chapter to obtain a valid big game license for that species for the current year prior to applying for a special permit.

(3) A person may take only one grizzly bear in Montana with a license authorized by 87-2-701.

(4) (a) Except as provided in 87-1-271(2), a person who receives a moose, mountain goat, or limited mountain sheep license, as authorized by 87-2-701, with the exception of an antlerless moose or an adult ewe game management license issued under 87-2-104, is not eligible to receive another special license for that species for the next 7 years. For the purposes of this subsection (4)(a), "limited mountain sheep license" means a license that is valid for an area in which the number of licenses issued is restricted.

(b) Except as provided in 87-1-271(2), a person who takes a mountain sheep using an unlimited mountain sheep license, with the exception of a mountain sheep taken pursuant to an adult ewe license, as authorized by 87-2-701, is not eligible to receive another special license for that species for the next 7 years. For the purposes of this subsection (4)(b), "unlimited mountain sheep license" means a license that is valid for an area in which the number of licenses issued is not restricted.

(5) An application for a wild buffalo or bison license must be made on the same form and is subject to the same license application deadline as the special license for moose, mountain goat, and mountain sheep.

(6) (a) Licenses for spring bear hunts must be available for purchase at department offices after April 15 of any license year. However, a person who purchases a license for a spring bear hunt after April 15 of any license year may not use the license until ~~5 days~~ *24 hours* after the license is issued.

(b) Licenses for fall bear hunts must be available for purchase at department offices after August 31 of any license year. However, a person who purchases a license for a fall bear hunt after August 31 of any license year may not use the license until ~~5 days~~ *24 hours* after the license is issued.

(7) Licenses for mountain lion hunts must be available for purchase at department offices after August 31 of any license year. However, a person who purchases a license for a mountain lion hunt after August 31 of any license year may not use the license until 5 days after the license is issued."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 5, 2013

# CHAPTER NO. 152

[HB 469]

AN ACT AUTHORIZING PARTIES TO A CONSTRUCTION LIEN TO ENTER INTO ARBITRATION TO SETTLE DISPUTES RELATING TO THE CONSTRUCTION LIEN.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Arbitration of lien disputes.** (1) The parties to a construction lien created under this part may agree prior to the creation of the construction lien or at any time after the construction lien is created to enter into arbitration if a dispute arises between the parties with respect to the construction lien. Arbitration entered into pursuant to this section is subject to the Uniform Arbitration Act, Title 27, chapter 5.

(2) The provisions of subsection (1) do not prohibit a party from substituting a bond for the construction lien as provided in 71-3-551. Upon the filing of the bond, the construction lien is discharged as provided in 71-3-552. The parties may continue with arbitration if they agree to do so.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 71, chapter 3, part 5, and the provisions of Title 71, chapter 3, part 5, apply to [section 1].

Approved April 5, 2013

# CHAPTER NO. 153

[HB 168]

AN ACT REVISING LAWS RELATING TO DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS TO PROVIDE A LEGAL LIMIT FOR THE AMOUNT OF DELTA-9-TETRAHYDROCANNABINOL ALLOWED BE PRESENT IN A PERSON'S BLOOD WHILE OPERATING A MOTOR VEHICLE; AND AMENDING SECTIONS 45-5-106, 46-16-130, 46-18-201, 46-18-236, 50-46-320, 61-2-302, 61-5-205, 61-5-208, 61-5-212, 61-5-231, 61-8-401, 61-8-402, 61-8-404, 61-8-405, 61-8-408, 61-8-421, 61-8-442, 61-8-465, 61-8-722, 61-8-731, 61-8-732, 61-8-733, 61-8-734, 61-8-741, AND 61-11-101, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Operation of noncommercial vehicle or commercial vehicle by person under influence of delta-9-tetrahydrocannabinol.** (1) It is unlawful and punishable as provided in 61-8-442, 61-8-722, 61-8-723, and 61-8-731 through 61-8-734 for any person to drive or be in actual physical control of:

(a) a noncommercial vehicle upon the ways of this state open to the public while the person's delta-9-tetrahydrocannabinol level, excluding metabolites, as shown by analysis of the person's blood, is 5 ng/ml or more; or

(b) a commercial motor vehicle upon the ways of this state open to the public while the person's delta-9-tetrahydrocannabinol level, excluding metabolites, as shown by analysis of the person's blood, is 5 ng/ml or more.

(2) Absolute liability, as provided in 45-2-104, is imposed for a violation of this section.

**Section 2.** Section 45-5-106, MCA, is amended to read:

**"45-5-106. Vehicular homicide while under influence.** (1) A person commits the offense of vehicular homicide while under the influence if the person negligently causes the death of another human being while the person is operating a vehicle in violation of 61-8-401*,* ~~or~~ 61-8-406*, or [section 1]*.

(2) Vehicular homicide while under the influence is not an included offense of deliberate homicide as described in 45-5-102(1)(b).

(3) A person convicted of vehicular homicide while under the influence shall be imprisoned in a state prison for a term not to exceed 30 years or be fined an amount not to exceed $50,000, or both. Imposition of a sentence may not be deferred."

**Section 3.** Section 46-16-130, MCA, is amended to read:

**"46-16-130. Pretrial diversion.** (1) (a) Prior to the filing of a charge, the prosecutor and a defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time based on one or more of the following conditions:

(i) that the defendant may not commit any offense;

(ii) that the defendant may not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;

(iii) that the defendant shall participate in a supervised rehabilitation program, which may include treatment, counseling, training, or education;

(iv) that the defendant shall make restitution in a specified manner for harm or loss caused by the offense; or

(v) any other reasonable conditions.

(b) The agreement must be in writing, must be signed by the parties, and must state that the defendant waives the right to speedy trial for the period of deferral. The agreement may include stipulations concerning the admissibility of evidence, specified testimony, or dispositions if the deferral of the prosecution is terminated and there is a trial on the charge.

(c) The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms.

(d) The agreement must be terminated and the prosecution automatically dismissed with prejudice upon expiration and compliance with the terms of the agreement.

(2) A condition of pretrial diversion may be for the court to refer a defendant for evaluation to determine the appropriateness of proceedings pursuant to Title 53, chapter 21.

(3) After a charge has been filed, a deferral of prosecution may be entered into only with the approval of the court.

(4) A prosecution for a violation of 61-8-401, 61-8-406, ~~or~~ 61-8-410*, or [section 1]* may not be deferred."

**Section 4.** Section 46-18-201, MCA, is amended to read:

**"46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(i) a fine as provided by law for the offense;

(ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in 46-8-113;

(iii) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(iv) commitment of:

(A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), and 45-5-625(4); or

(B) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(v) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(vi) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(vii) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

(viii) any combination of subsections (2) and (3)(a)(i) through (3)(a)(vii).

(b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank program.

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred

imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of assigned counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

(n) participation in a day reporting program provided for in 53-1-203;

(o) participation in the sobriety program provided for in Title 44, chapter 4, part 12, for a second or subsequent violation of 61-8-401*,* ~~or~~ 61-8-406*, or [section 1]*;

(p) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

(q) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(p).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise."

**Section 5.** Section 46-18-236, MCA, is amended to read:

**"46-18-236. (Temporary) Imposition of charge upon conviction or forfeiture — administration.** (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a person upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

(a) $15 for each misdemeanor charge;

(b) the greater of $20 or 10% of the fine levied for each felony charge; and

(c) an additional $50 for each misdemeanor and felony charge under Title 45, 61-8-401, ~~or~~ 61-8-406*, or [section 1]*.

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the person is not able to pay the fine and costs or that the person is unable to pay within a reasonable time, the court shall waive payment of the charge imposed by this section.

(3) The charges imposed by this section are not fines and must be imposed in addition to any fine and may not be used in determining the jurisdiction of any court.

(4) When the payment of a fine is to be made in installments over a period of time, the charges imposed by this section must be collected from the first payment made and each subsequent payment as necessary if the first payment is not sufficient to cover the charges.

(5) The charges collected under subsection (1), except those collected under subsections (1)(a) and (1)(b) by a justice's court, must be deposited with the appropriate local government finance officer or treasurer. If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the city or town finance officer or treasurer. If a district court or justice's court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be deposited with the finance officer or treasurer of the consolidated government.

(6) (a) A city or town finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and deputies.

(b) Each county finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by district courts for crimes committed or alleged to have been committed within that county. The county finance officer or treasurer shall use the money for the payment of salaries of its deputy county attorneys and for the payment of other salaries in the office of the county attorney, and any funds not needed for those salaries may be used for the payment of any other county salaries.

(7) (a) Except as provided in subsection (7)(b), each county, city, or town finance officer or treasurer may retain the charges collected under subsection (1)(c) for payment of the expenses of a victim and witness advocate program, including a program operated by a private, nonprofit organization, that provides the services specified in Title 40, chapter 15, and Title 46, chapter 24, and that is operated or used by the county, city, or town.

(b) The appropriate county, city, or town finance officer or treasurer shall deposit $1 of each charge collected under subsection (1)(c) in the collecting

court's fund for mitigation of administrative costs incurred by the court in the collection of the charge. The funds deposited under this subsection (7)(b) are not subject to allocation under 46-18-251.

(c) Except as provided in subsection (7)(b), if the county, city, or town does not operate or use a victim and witness advocate program, all charges collected under subsection (1)(c) must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the account provided for in 53-9-113. (Terminates June 30, 2015—sec. 14, Ch. 374, L. 2009.)

**46-18-236. (Effective July 1, 2015) Imposition of charge upon conviction or forfeiture — administration.** (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a person upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

(a) $15 for each misdemeanor charge;

(b) the greater of $20 or 10% of the fine levied for each felony charge; and

(c) an additional $50 for each misdemeanor and felony charge under Title 45, 61-8-401, ~~or~~ 61-8-406*, or [section 1]*.

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the person is not able to pay the fine and costs or that the person is unable to pay within a reasonable time, the court shall waive payment of the charge imposed by this section.

(3) The charges imposed by this section are not fines and must be imposed in addition to any fine and may not be used in determining the jurisdiction of any court.

(4) When the payment of a fine is to be made in installments over a period of time, the charges imposed by this section must be collected from the first payment made and each subsequent payment as necessary if the first payment is not sufficient to cover the charges.

(5) The charges collected under subsection (1), except those collected under subsections (1)(a) and (1)(b) by a justice's court, must be deposited with the appropriate local government finance officer or treasurer. If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the city or town finance officer or treasurer. If a district court or justice's court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be deposited with the finance officer or treasurer of the consolidated government.

(6) (a) A city or town finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and deputies.

(b) Each county finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by district courts for crimes committed or alleged to have been committed within that county. The county finance officer or treasurer shall use the money for the payment of salaries of its deputy county attorneys and for the payment of other salaries in the office of the county attorney, and any funds not needed for those salaries may be used for the payment of any other county salaries.

(7) (a) Except as provided in subsection (7)(b), each county, city, or town finance officer or treasurer may retain the charges collected under subsection (1)(c) for payment of the expenses of a victim and witness advocate program, including a program operated by a private, nonprofit organization, that provides the services specified in Title 40, chapter 15, and Title 46, chapter 24, and that is operated or used by the county, city, or town.

(b) The appropriate county, city, or town finance officer or treasurer shall deposit $1 of each charge collected under subsection (1)(c) in the collecting court's fund for mitigation of administrative costs incurred by the court in the collection of the charge. The funds deposited under this subsection (7)(b) are not subject to allocation under 46-18-251.

(c) Except as provided in subsection (7)(b), if the county, city, or town does not operate or use a victim and witness advocate program, all charges collected under subsection (1)(c) must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the state general fund to be used to provide services to crime victims as provided in Title 53, chapter 9, part 1."

**Section 6.** Section 50-46-320, MCA, is amended to read:

**"50-46-320. Limitations of ~~the~~ act.** (1) This part does not permit:

(a) any person, including a registered cardholder, to operate, navigate, or be in actual physical control of a motor vehicle, aircraft, or motorboat while under the influence of marijuana; or

(b) except as provided in subsection (3), the use of marijuana by a registered cardholder:

(i) in a health care facility as defined in 50-5-101;

(ii) in a school or a postsecondary school as defined in 20-5-402;

(iii) on or in any property owned by a school district or a postsecondary school;

(iv) on or in any property leased by a school district or a postsecondary school when the property is being used for school-related purposes;

(v) in a school bus or other form of public transportation;

(vi) when ordered by any court of competent jurisdiction into a correctional facility or program;

(vii) if a court has imposed restrictions on the cardholder's use pursuant to 46-18-202;

(viii) at a public park, public beach, public recreation center, or youth center;

(ix) in or on the property of any church, synagogue, or other place of worship;

(x) in plain view of or in a place open to the general public; or

(xi) where exposure to the marijuana smoke significantly adversely affects the health, safety, or welfare of children.

(2) A registered cardholder, provider, or marijuana-infused products provider may not cultivate or manufacture marijuana for use by a registered cardholder in a manner that is visible from the street or other public area.

(3) A hospice or residential care facility licensed under Title 50, chapter 5, may adopt a policy that allows use of marijuana by a registered cardholder.

(4) Nothing in this part may be construed to require:

(a) a government medical assistance program, a group benefit plan that is covered by the provisions of Title 2, chapter 18, an insurer covered by the

provisions of Title 33, or an insurer as defined in 39-71-116 to reimburse a person for costs associated with the use of marijuana by a registered cardholder;

(b) an employer to accommodate the use of marijuana by a registered cardholder;

(c) a school or postsecondary school to allow a registered cardholder to participate in extracurricular activities; or

(d) a landlord to allow a tenant who is a registered cardholder, provider, or marijuana-infused products provider to cultivate or manufacture marijuana or to allow a registered cardholder to use marijuana.

(5) Nothing in this part may be construed to:

(a) prohibit an employer from including in any contract a provision prohibiting the use of marijuana for a debilitating medical condition; or

(b) permit a cause of action against an employer for wrongful discharge pursuant to 39-2-904 or discrimination pursuant to 49-1-102.

(6) Nothing in this part may be construed to allow a provider or marijuana-infused products provider to use marijuana or to prevent criminal prosecution of a provider or marijuana-infused products provider who uses marijuana or paraphernalia for personal use.

(7) (a) A law enforcement officer who has reasonable cause to believe that a person with a valid registry identification card is driving under the influence of marijuana may apply for a search warrant to require the person to provide a sample of the person's blood for testing pursuant to the provisions of 61-8-405. A person with a ~~tetrahydrocannabinol (THC)~~ *delta-9-tetrahydrocannabinol* level of 5 ng/ml may be charged with a violation of 61-8-401 *or [section 1]*.

(b) A registered cardholder, provider, or marijuana-infused products provider who violates subsection (1)(a) is subject to revocation of the person's registry identification card if the individual is convicted of or pleads guilty to any offense related to driving under the influence of alcohol or drugs when the initial offense with which the individual was charged was a violation of 61-8-401, 61-8-406, ~~or~~ 61-8-410*, or [section 1]*. A revocation under this section must be for the period of suspension or revocation set forth:

(i) in 61-5-208 for a violation of 61-8-401*,* ~~or~~ 61-8-406*, or [section 1]*; or

(ii) in 61-8-410 for a violation of 61-8-410.

(c) If a person's registry identification card is subject to renewal during the revocation period, the person may not renew the card until the full revocation period has elapsed. The card may be renewed only if the person submits all materials required for renewal."

**Section 7.** Section 61-2-302, MCA, is amended to read:

**"61-2-302. Establishment of driver rehabilitation and improvement program — participation by offending drivers.** (1) The department may establish by administrative rules a driver rehabilitation and improvement program or programs. The programs may consist of classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques and must include the requirements for obtaining a restricted probationary driver's license.

(2) Except when otherwise provided or restricted by statute, a person whose driver's license is suspended or revoked by the department, unless the suspension or revocation was for an offense under 61-8-401*,* ~~or~~ 61-8-406, *or*

*[section 1],* may participate in any driver rehabilitation and improvement program established under this section if the person's license is:

(a) suspended as a result of a violation of the traffic laws of this state, unless the suspension was imposed under the authority provided in Title 61, chapter 8, part 8; or

(b) revoked and the person has:

(i) completed at least 3 months of a 1-year revocation; or

(ii) completed 1 year of a 3-year revocation; and

(iii) met the requirements for reobtaining a Montana driver's license.

(3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order that constitutes the basis for any person's participation in the driver rehabilitation and improvement program provided for in this section may be stayed if that person complies with the requirements established for the driver rehabilitation and improvement program and meets the eligibility requirements of subsection (2).

(4) If a person's driver's license has been surrendered before the person's selection for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt of the person's agreement to participate in the program.

(5) The stay of enforcement of any suspension or revocation action must be terminated and the suspension or revocation action must be reinstated if a person declines to participate in the driver rehabilitation and improvement program or fails to meet the attendance or other requirements established for participation in the program.

(6) This part does not create a right to be included in any program established under this part.

(7) The department may establish a schedule of fees that may be charged to those persons participating in the driver improvement and rehabilitation program. The fees must be used to help defray costs of maintaining the program.

(8) A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, youth court judge, judge of a district court of the state, or hearing examiner of the department.

(9) (a) Except as provided in subsection (9)(b), the department may issue a restricted probationary license to any person who enrolls and participates in the driver rehabilitation and improvement program. Upon issuance of a probationary license under this section, the licensee is subject to the restrictions set forth on the license.

(b) The department may not issue a restricted probationary license that would permit an individual to drive a commercial motor vehicle during a period in which:

(i) the individual is disqualified from operating a commercial motor vehicle under state or federal law; or

(ii) the individual's driver's license or driving privilege is revoked, suspended, or canceled.

(10) It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the restrictions imposed on a restricted license issued to the person under this section."

**Section 8.** Section 61-5-205, MCA, is amended to read:

**"61-5-205. Mandatory revocation or suspension of license upon certain convictions — duration of action — exceptions.** (1) The department shall revoke an individual's driver's license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

(a) negligent homicide resulting from the operation of a motor vehicle;

(b) any felony in the commission of which a motor vehicle is used;

(c) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(d) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;

(e) fleeing from or eluding a peace officer; or

(f) negligent vehicular assault as defined in 45-5-205 involving a motor vehicle.

(2) The department shall suspend an individual's driver's license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

(a) a driving offense under 61-8-401, ~~or~~ 61-8-406*, or [section 1]*;

(b) three reckless driving offenses committed within a period of 12 months; or

(c) a theft offense under 45-6-301 if the theft consisted of theft of motor vehicle fuel and a motor vehicle was used in the commission of the offense.

(3) A revocation under subsections (1)(a), (1)(b), and (1)(d) through (1)(f) must be for a period of 1 year. A revocation under subsection (1)(c) must be for a period of 2 years if the offender received a felony conviction under 61-7-103.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a suspension under subsection (2) must be for a period of 1 year.

(b) A suspension under subsection (2)(a) must be for the period set forth in 61-5-208.

(c) A suspension under subsection (2)(c) must be for one of the following periods:

(i) 30 days for a first offense;

(ii) 6 months for a second offense; and

(iii) 1 year for a third or subsequent offense."

**Section 9.** Section 61-5-208, MCA, is amended to read:

**"61-5-208. Period of suspension or revocation — limitation on issuance of probationary license — notation on driver's license.** (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways, except as permitted by law.

(2) (a) Except as provided in 44-4-1205 and 61-2-302 and except as otherwise provided in this section, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) Subject to 61-5-231 and except as provided in subsection (4) of this section:

(i) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a first offense of violating 61-8-401, ~~or~~ 61-8-406, *or [section 1],* the department shall suspend the driver's license or driving privilege of the person for a period of 6 months;

(ii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a second offense of violating 61-8-401, ~~or~~ 61-8-406, *or [section 1]* within the time period specified in 61-8-734, the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 45 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of 61-8-442. If the 1-year suspension period passes and the person has not completed a chemical dependency education course, treatment, or both, as required under 61-8-732, the license suspension remains in effect until the course or treatment, or both, are completed.

(iii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a third or subsequent offense of violating 61-8-401, ~~or~~ 61-8-406, *or [section 1]* within the time period specified in 61-8-734, the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 90 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of 61-8-442. If the 1-year suspension period passes and the person has not completed a chemical dependency education course or treatment, or both, as required under 61-8-732, the license suspension remains in effect until the course or treatment, or both, are completed.

(3) (a) Except as provided in subsection (3)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

(4) If a person is convicted of a violation of 61-8-401, ~~or~~ 61-8-406, *or [section 1]* while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802.

(5) (a) A driver's license that is issued after a license revocation to a person described in subsection (5)(b) must be clearly marked with a notation that conveys the term of the person's probation restrictions.

(b) The provisions of subsection (5)(a) apply to a license issued to a person for whom a court has reported a felony conviction under 61-8-731, the judgment for which has as a condition of probation that the person may not operate a motor vehicle unless:

(i) operation is authorized by the person's probation officer; or

(ii) a motor vehicle operated by the person is equipped with an ignition interlock device."

**Section 10.** Section 61-5-212, MCA, is amended to read:

**"61-5-212. Driving while license suspended or revoked — penalty — second offense of driving without valid license or licensing exemption**

**— seizure of vehicle or rendering vehicle inoperable.** (1) (a) A person commits the offense of driving a motor vehicle without a valid license or without statutory exemption or during a suspension or revocation period if the person drives:

(i) a motor vehicle on any public highway of this state at a time when the person's privilege to drive or apply for and be issued a driver's license is suspended or revoked in this state or any other state;

(ii) a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or canceled in this state or any other state or the person is disqualified from operating a commercial motor vehicle or from obtaining a commercial driver's license; or

(iii) a motor vehicle on any public highway of this state without possessing a valid driver's license, as provided in 61-5-102, or without proof of a statutory exemption, as provided in 61-5-104.

(b) (i) Except as provided in subsection (1)(b)(ii), a person convicted of the offense of driving a motor vehicle without a valid driver's license or without proof of a statutory exemption for the second time or driving during a suspension or revocation period shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than $500.

(ii) If the reason for the suspension or revocation was that the person was convicted of a violation of 61-8-401*,* ~~or~~ 61-8-406*, or [section 1]* or a similar offense under the laws of any other state or the suspension was under 61-8-402 or 61-8-409 or a similar law of any other state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, the person shall be punished by imprisonment for a term of not less than 2 days or more than 6 months or a fine not to exceed $2,000, or both, and in addition, the court may order the person to perform up to 40 hours of community service.

(2) (a) Upon receiving a record of the conviction of any person under this section upon a charge of driving a noncommercial vehicle while the person's driver's license, privilege to drive, or privilege to apply for and be issued a driver's license was suspended or revoked, the department shall extend the period of suspension or revocation for an additional 1-year period.

(b) Upon receiving a record of the conviction of any person under this section upon a charge of driving a commercial motor vehicle while the person's commercial driver's license was revoked, suspended, or canceled or the person was disqualified from operating a commercial motor vehicle under federal regulations, the department shall suspend the person's commercial driver's license in accordance with 61-8-802.

(3) The vehicle owned and operated at the time of an offense under this section by a person whose driver's license is suspended for violating the provisions of 61-8-401, 61-8-402, 61-8-406, 61-8-409, ~~or~~ 61-8-410*, or [section 1]* must, upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the convicted person's county of residence for a period of 30 days.

(4) The sentencing court shall order the action provided for under subsection (3) and shall specify the date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered inoperable by the sheriff within 10 days after the conviction.

(5) A convicted person is responsible for all costs associated with actions taken under subsection (3). Joint ownership of the vehicle with another person

does not prohibit the actions required by subsection (3) unless the sentencing court determines that those actions would constitute an extreme hardship on a joint owner who is determined to be without fault.

(6) A court may not suspend or defer imposition of penalties provided by this section."

**Section 11.** Section 61-5-231, MCA, is amended to read:

**"61-5-231. Authorization of probationary license by DUI court — definition.** (1) If a person convicted of a second or subsequent misdemeanor offense of driving under the influence of alcohol or drugs under 61-8-401 *or [section 1]* or driving with excessive alcohol concentration under 61-8-406 is participating in a DUI court, the court may, in the court's discretion, authorize a probationary driver's license for the participant subject to 61-8-442 and any other conditions imposed within the scope of the court's authority.

(2) If the participant fails to comply with the court's conditions, the court may revoke the probationary driver's license and impose a driver's license suspension for the time period established pursuant to 61-5-208 commencing from the date of the court's revocation of the probationary license.

(3) For purposes of this section, "DUI court" means any court that has established a special docket for handling cases involving persons charged with violations under 61-8-401*,* ~~or~~ 61-8-406*, or [section 1]* and that implements a program of incentives and sanctions intended to assist a participant in completing treatment ordered pursuant to 61-8-732 and ending the participant's criminal behavior associated with driving under the influence of alcohol or drugs or with excessive alcohol concentration."

**Section 12.** Section 61-8-401, MCA, is amended to read:

**"61-8-401. Driving under influence of alcohol or drugs — definitions.** (1) It is unlawful and punishable, as provided in 61-8-442, 61-8-714, and 61-8-731 through 61-8-734, for a person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;

(b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;

(c) any other drug to drive or be in actual physical control of a vehicle within this state; or

(d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) (a) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a vehicle has been diminished.

(b) Subject to 61-8-440, as used in this part, "vehicle" has the meaning provided in 61-1-101, except that the term does not include a bicycle.

(4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person at the time of a test, as shown by analysis of a sample of the

person's blood or breath drawn or taken within a reasonable time after the alleged act, gives rise to the following inferences:

(a) If there was at that time an alcohol concentration of 0.04 or less, it may be inferred that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of 0.04 but less than 0.08, that fact may not give rise to any inference that the person was or was not under the influence of alcohol, but the fact may be considered with other competent evidence in determining the guilt or innocence of the person.

(c) If there was at that time an alcohol concentration of 0.08 or more, it may be inferred that the person was under the influence of alcohol. The inference is rebuttable.

(5) The provisions of subsection (4) do not limit the introduction of any other competent evidence bearing upon the issue of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs.

(6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-410, *[section 1],* 61-8-714, 61-8-722, 61-8-731 through 61-8-734, and subsections (1) through (5) of this section, with the word "state" in 61-8-406*, [section 1],* and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties provided in the ordinance.

(7) Absolute liability as provided in 45-2-104 ~~will be~~ *is* imposed for a violation of this section."

**Section 13.** Section 61-8-402, MCA, is amended to read:

**"61-8-402. Implied consent — blood or breath tests for alcohol, drugs, or both — refusal to submit to test — administrative license suspension.** (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the officer has reasonable grounds to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401 or 61-8-465;

(ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

(iii) the officer has probable cause to believe that the person was driving or in actual physical control of a vehicle:

(A) in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage;

(B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, or death; or

(C) in violation of 61-8-465.

(b) The arresting or investigating officer may designate which test or tests are administered.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

(4) If an arrested person refuses to submit to one or more tests requested and designated by the officer as provided in subsection (2), the refused test or tests may not be given except as provided in subsection (5), but the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection (7).

(5) If the arrested person has refused to provide a breath, blood, or urine sample under 61-8-409 or this section in a prior investigation in this state or under a substantially similar statute in another jurisdiction or the arrested person has a prior conviction or pending offense for a violation of 45-5-104, 45-5-106, 45-5-205, 61-8-401, ~~or~~ 61-8-406*, or [section 1]* or a similar statute in another jurisdiction, the officer may apply for a search warrant to be issued pursuant to 46-5-224 to collect a sample of the person's blood for testing.

(6) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing provided in 61-8-403.

(7) (a) Except as provided in subsection (7)(b), the following suspension periods are applicable upon refusal to submit to one or more tests:

(i) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

(ii) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a suspension of 1 year with no provision for a restricted probationary license.

(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges, the department shall:

(i) upon a first refusal, suspend the person's commercial driver's license for a 1-year period; and

(ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal for purposes of this subsection (7)(b).

(8) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(9) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law

or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-403.

(10) A suspension under this section is subject to review as provided in this part.

(11) This section does not apply to tests, samples, and analyses of blood or breath used for purposes of medical treatment or care of an injured motorist, related to a lawful seizure for a suspected violation of an offense not in this part, or performed pursuant to a search warrant.

(12) This section does not prohibit the release of information obtained from tests, samples, and analyses of blood or breath for law enforcement purposes as provided in 46-4-301 and 61-8-405(6)."

**Section 14.** Section 61-8-404, MCA, is amended to read:

**"61-8-404. Evidence admissible — conditions of admissibility.** (1) Upon the trial of a criminal action or other proceeding arising out of acts alleged to have been committed by a person in violation of 61-8-401, 61-8-406, 61-8-410, *[section 1],* 61-8-465, or 61-8-805:

(a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood or breath, is admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at the time the person was in control of a motor vehicle. A person may not be convicted of a violation of 61-8-401 based upon the presence of a drug or drugs in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

(b) a report of the facts and results of one or more tests of a person's blood or breath is admissible in evidence if:

(i) a breath test or preliminary alcohol screening test was performed by a person certified by the forensic sciences division of the department to administer the test;

(ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a laboratory exempt from certification under the rules of the department and the blood was withdrawn from the person by a person competent to do so under 61-8-405(1);

(c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a person is admissible in evidence if it was made by a person trained by the department or by a person who has received training recognized by the department.

(2) If the person under arrest refused to submit to one or more tests under 61-8-402, whether or not a sample was subsequently collected for any purpose, proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of alcohol and drugs. The trier of fact may infer from the refusal that the person was under the influence. The inference is rebuttable.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs."

**Section 15.** Section 61-8-405, MCA, is amended to read:

**"61-8-405. Administration of tests.** (1) Only a physician, registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse may, at the request of a peace officer, withdraw blood for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. This limitation does not apply to the sampling of breath.

(2) In addition to any test administered at the direction of a peace officer, a person may request that an independent blood sample be drawn by a physician or registered nurse for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. The peace officer may not unreasonably impede the person's right to obtain an independent blood test. The officer may but has no duty to transport the person to a medical facility or otherwise assist the person in obtaining the test. The cost of an independent blood test is the sole responsibility of the person requesting the test. The failure or inability to obtain an independent test by a person does not preclude the admissibility in evidence of any test given at the direction of a peace officer.

(3) Upon the request of the person tested, full information concerning any test given at the direction of the peace officer must be made available to the person or the person's attorney.

(4) A physician, registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse does not incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer a test.

(5) The department in cooperation with any appropriate agency shall adopt uniform rules for the giving of tests and may require certification of training to administer the tests as considered necessary.

(6) If a peace officer has probable cause to believe that a person has violated 61-8-401, 61-8-406, 61-8-410, *[section 1],* or 61-8-805 and a sample of blood, breath, urine, or other bodily substance is taken from that person for any reason, a portion of that sample sufficient for analysis must be provided to a peace officer if requested for law enforcement purposes and upon issuance of a subpoena as provided in 46-4-301."

**Section 16.** Section 61-8-408, MCA, is amended to read:

**"61-8-408. Multiple convictions prohibited.** When the same acts may establish the commission of an offense under ~~both~~ 61-8-401 and 61-8-406 *or 61-8-401 and [section 1]*, a person charged with the conduct may be prosecuted for a violation of ~~both~~ 61-8-401 and 61-8-406 *or 61-8-401 and [section 1].* However, the person may ~~only~~ be convicted of ~~an~~ *only one* offense under ~~either~~ 61-8-401*,* ~~or~~ 61-8-406*, or [section 1]*."

**Section 17.** Section 61-8-421, MCA, is amended to read:

**"61-8-421. Forfeiture procedure.** (1) A motor vehicle forfeited under 61-8-733 must be seized by the arresting agency within 10 days after the conviction and disposed of as provided in Title 44, chapter 12, part 2. Except as provided in this section, the provisions of Title 44, chapter 12, part 2, apply to the extent applicable.

(2) Forfeiture proceedings under 44-12-201(1) must be instituted by the arresting agency within 20 days after the seizure of the motor vehicle.

(3) For purposes of 44-12-203 and 44-12-204, there is a rebuttable presumption of forfeiture. The owner of the motor vehicle may rebut the

presumption by proving a defense under 61-8-733(2) or by proving that the owner was not convicted of a second or subsequent offense under 61-8-401, ~~or~~ 61-8-406, *or [section 1]*. It is not a defense that the convicted person owns the motor vehicle jointly with another person.

(4) (a) For purposes of 44-12-206, the proceeds of the sale of the motor vehicle must be distributed first to the holders of security interests who have presented proper proof of their claims, up to the amount of the interests or the amount received from the sale, whichever is less, and the remainder to the general fund of the arresting agency.

(b) A holder of a security interest may petition the sentencing court for transfer of title to the motor vehicle to the holder of the security interest if the secured interest is equal to or greater than the estimated value of the motor vehicle.

(5) Actions the court may take under 44-12-205(3) to protect the rights of innocent persons include return of the motor vehicle without a sale to an owner who is unable to present an adequate defense under this section but is found by the court to be without fault."

**Section 18.** Section 61-8-442, MCA, is amended to read:

**"61-8-442. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — ignition interlock device.** (1) In addition to the punishments provided in 61-8-714 and 61-8-722, regardless of disposition and if a probationary license is recommended by the court, the court may, for a person convicted of a first offense under 61-8-401, ~~or~~ 61-8-406, *or [section 1],* restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and require the person to pay the reasonable cost of leasing, installing, and maintaining the device.

(2) If a person is convicted of a second or subsequent violation of 61-8-401, ~~or~~ 61-8-406, *or [section 1],* in addition to the punishments provided in 61-8-714 and 61-8-722, regardless of disposition, the court shall:

(a) if recommending that a probationary license be issued to the person, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and require the person to pay the reasonable cost of leasing, installing, and maintaining the device; or

(b) order that each motor vehicle owned by the person at the time of the offense be seized and subjected to the forfeiture procedure provided under 61-8-421.

(3) Any restriction imposed under this section must be included in a report of the conviction made by the court to the department in accordance with 61-11-101 and placed upon the person's driving record maintained by the department in accordance with 61-11-102.

(4) The duration of a restriction imposed under this section must be monitored by the department."

**Section 19.** Section 61-8-465, MCA, is amended to read:

**"61-8-465. Aggravated DUI.** (1) A person commits the offense of aggravated driving under the influence if the person is in violation of 61-8-401, ~~or~~ 61-8-406, *or [section 1]* and at the time of the offense:

(a) the person's blood alcohol concentration is 0.16 or more;

(b) the person is under the order of a court or the department to equip any motor vehicle the person operates with an approved ignition interlock device;

(c) the person's driver's license or privilege to drive is suspended, canceled, or revoked as a result of a prior violation of 61-8-401, 61-8-402, ~~or~~ 61-8-406*, or [section 1]*;

(d) the person refuses to provide a breath or blood sample as required in 61-8-402 and the person's driver's license or privilege to drive was suspended, canceled, or revoked under 61-8-402 within 10 years of the commission of the present offense; or

(e) the person has one prior conviction or pending charge for a violation of 45-5-106, 45-5-205, 61-8-401, 61-8-406, *[section 1],* or this section within 3 years of the commission of the present offense~~,~~ or *has* two or more prior convictions or pending charges, or any combination thereof, for violations of 45-5-106, 45-5-205, 61-8-401, 61-8-406, *[section 1],* or this section within 7 years of the commission of the present offense.

(2) A person convicted of the offense of aggravated driving under the influence shall be punished by:

(a) a fine of $1,000; and

(b) a term of imprisonment of not more than 1 year, part of which may be suspended, except for the mandatory minimum sentences set forth in 61-8-714.

(3) During the suspended sentence imposed by the court under subsection (2)(b):

(a) the person is subject to all conditions of the suspended sentence imposed by the court, including mandatory participation in drug or DUI courts if available;

(b) the person is subject to all conditions of the 24/7 sobriety program if available and if imposed by the court; and

(c) if the person violates any condition of the suspended sentence or any treatment requirement, the court may impose the remainder of any imprisonment term that was imposed and suspended.

(4) Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section."

**Section 20.** Section 61-8-722, MCA, is amended to read:

**"61-8-722. Penalty for driving with excessive alcohol concentration *or delta-9-tetrahydrocannabinol level* — first through third offense.** (1) Except as provided in subsection (4) or (5), a person convicted of a first violation of 61-8-406 *or [section 1]* shall be punished by imprisonment for not more than 6 months and by a fine of not less than $300 or more than $1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not more than 6 months and by a fine of not less than $600 or more than $2,000.

(2) (a) Except as provided in subsection (4) or (5), a person convicted of a second violation of 61-8-406 *or [section 1]* shall be punished by imprisonment for not less than 5 days or more than 1 year and by a fine of not less than $600 or more than $1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 10 days or more than 1 year and by a fine of not less than $1,200 or more than $2,000.

(b) The mandatory minimum imprisonment sentence may not be served under home arrest and may not be suspended unless the judge finds that imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being.

(c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person's successful completion of a chemical dependency treatment program pursuant to 61-8-732.

(3) (a) Except as provided in subsection (4) or (5), a person convicted of a third violation of 61-8-406 *or [section 1]* shall be punished by imprisonment for not less than 30 days or more than 1 year and by a fine of not less than $1,000 or more than $5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 60 days or more than 1 year and by a fine of not less than $2,000 or more than $10,000.

(b) The mandatory minimum imprisonment sentence may not be served under home arrest and may not be suspended unless the judge finds that imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being.

(c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person's successful completion of a chemical dependency treatment program pursuant to 61-8-732.

(4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive alcohol concentration.

(5) If the person has a prior conviction or pending charge for a violation of 61-8-465, the person shall be punished as provided in 61-8-465."

**Section 21.** Section 61-8-731, MCA, is amended to read:

**"61-8-731. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — penalty for fourth or subsequent offense.** (1) Except as provided in subsection (3), if a person is convicted of a violation of 61-8-401*,* ~~or~~ 61-8-406, *or [section 1],* the person has either a single conviction under 45-5-106 or any combination of three or more prior convictions under 45-5-104, 45-5-205, 61-8-401, 61-8-406, or 61-8-465, and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-401(1), the person is guilty of a felony and shall be punished by:

(a) sentencing the person to the department of corrections for placement in an appropriate correctional facility or program for a term of 13 months. The court shall order that if the person successfully completes a residential alcohol treatment program operated or approved by the department of corrections, the remainder of the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence may not be deferred or suspended, and the person is not eligible for parole.

(b) sentencing the person to either the department of corrections or the Montana state prison or Montana women's prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the term imposed under subsection (1)(a); and

(c) a fine in an amount of not less than $1,000 or more than $10,000.

(2) The department of corrections may place an offender sentenced under subsection (1)(a) in a residential alcohol treatment program operated or approved by the department of corrections or in a state prison.

(3) If a person is convicted of a violation of 61-8-401*,* ~~or~~ 61-8-406, *or [section 1],* the person has either a single conviction under 45-5-106 or any combination

of four or more prior convictions under 45-5-104, 45-5-205, 61-8-401, 61-8-406, or 61-8-465, and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-401(1), and the person was, upon a prior conviction, placed in a residential alcohol treatment program under subsection (2), whether or not the person successfully completed the program, the person shall be sentenced to the department of corrections for a term of not less than 13 months or more than 5 years or be fined an amount of not less than $1,000 or more than $10,000, or both.

(4) The court shall, as a condition of probation, order:

(a) that the person abide by the standard conditions of probation promulgated by the department of corrections;

(b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment under this section;

(c) that the person may not frequent an establishment where alcoholic beverages are served;

(d) that the person may not consume alcoholic beverages;

(e) that the person may not operate a motor vehicle unless authorized by the person's probation officer;

(f) that the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;

(g) that the person submit to random or routine drug and alcohol testing; and

(h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock system.

(5) The sentencing judge may impose upon the defendant any other reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited to:

(a) payment of a fine as provided in 46-18-231;

(b) payment of costs as provided in 46-18-232 and 46-18-233;

(c) payment of costs of assigned counsel as provided in 46-8-113;

(d) community service;

(e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or

(f) any combination of the restrictions or conditions listed in subsections (5)(a) through (5)(e).

(6) Following initial placement of a defendant in a treatment facility under subsection (2), the department of corrections may, at its discretion, place the offender in another facility or program.

(7) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and 46-23-1031 apply to persons sentenced under this section."

**Section 22.** Section 61-8-732, MCA, is amended to read:

**"61-8-732. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — assessment, education, and treatment required.** (1) In addition to the punishments provided in 61-8-714, 61-8-722, and 61-8-731, regardless of disposition, a defendant convicted of a violation of 61-8-401*,* ~~or~~ 61-8-406*, or [section 1]* shall complete:

(a) a chemical dependency assessment;

(b) a chemical dependency education course; and

(c) on a second or subsequent conviction for a violation of 61-8-401*,* ~~or~~ 61-8-406, *or [section 1],* except a fourth or subsequent conviction for which the defendant completes a residential alcohol treatment program under 61-8-731(2), or as required by subsection (8) of this section, chemical dependency treatment.

(2) The sentencing judge may, in the judge's discretion, require the defendant to complete the chemical dependency assessment prior to sentencing the defendant. If the assessment is not ordered or completed before sentencing, the judge shall order the chemical dependency assessment as part of the sentence.

(3) The chemical dependency assessment and the chemical dependency education course must be completed at a treatment program approved by the department of public health and human services and must be conducted by a licensed addiction counselor. The defendant may attend a treatment program of the defendant's choice as long as the treatment services are provided by a licensed addiction counselor. The defendant shall pay the cost of the assessment, the education course, and chemical dependency treatment.

(4) The assessment must describe the defendant's level of addiction, if any, and contain a recommendation as to education, treatment, or both. A defendant who disagrees with the initial assessment may, at the defendant's cost, obtain a second assessment provided by a licensed addiction counselor or a program approved by the department of public health and human services.

(5) The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor makes a determination as provided in this subsection, the court shall order an appropriate level of treatment based upon the determination of one of the counselors.

(6) Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a chemical dependency education course or treatment program. If the defendant fails to attend the education course or treatment program, the counselor shall notify the court of the failure.

(7) A court or counselor may not require attendance at a self-help program other than at an "open meeting", as that term is defined by the self-help program. A defendant may voluntarily participate in self-help programs.

(8) Chemical dependency treatment must be ordered for a first-time offender convicted of a violation of 61-8-401*,* ~~or~~ 61-8-406*, or [section 1]* upon a finding of chemical dependency made by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services.

(9) (a) On a second or subsequent conviction, the treatment program provided for in subsection (5) must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program.

(b) If a defendant fails to comply with the monitoring program imposed under subsection (9)(a), the court shall revoke the suspended sentence, if any, impose any remaining portion of the suspended sentence, and may include additional monthly monitoring for up to an additional 1 year.

(10) Notwithstanding 46-18-201(2), whenever a judge suspends a sentence imposed under 61-8-714 and orders the person to complete chemical dependency treatment under this section, the judge retains jurisdiction to impose any suspended sentence for up to 1 year."

**Section 23.** Section 61-8-733, MCA, is amended to read:

**"61-8-733. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — forfeiture of vehicle.** (1) On the second or subsequent conviction of a violation of 61-8-401, ~~or~~ 61-8-406*, or [section 1]* or a second or subsequent conviction under 61-5-212 when the reason for the suspension or revocation was that the person was convicted of a violation of 61-8-401, ~~or~~ 61-8-406*, or [section 1]* or a similar offense under the laws of any other state or the suspension was under 61-8-402 or 61-8-409 or a similar law of any other state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, the court, in addition to the punishments provided in 61-5-212, 61-8-714, and 61-8-722 and any other penalty imposed by law, shall:

(a) if recommending that a probationary license be issued to the person, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and require the person to pay the reasonable cost of leasing, installing, and maintaining the device; or

(b) order that each motor vehicle owned by the person at the time of the offense be seized and subjected to the procedure provided under 61-8-421.

(2) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(3) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought."

**Section 24.** Section 61-8-734, MCA, is amended to read:

**"61-8-734. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — conviction defined — place of imprisonment — home arrest — exceptions — deferral of sentence not allowed.** (1) (a) For the purpose of determining the number of convictions for prior offenses referred to in 61-8-465, 61-8-714, 61-8-722, or 61-8-731, "conviction" means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute or regulation in another state or on a federally recognized Indian reservation, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state, in another state, or on a federally recognized Indian reservation, which forfeiture has not been vacated.

(b) An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction, unless the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used for sentencing purposes.

(c) A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401, ~~or~~ 61-8-406*, or [section 1]* may be counted for purposes of determining the number of a subsequent conviction for violation of ~~either~~ 61-8-401, ~~or~~ 61-8-406*, or [section 1]*.

(2) Except as provided in 61-8-731, the court may order that a term of imprisonment imposed under 61-8-714, 61-8-722, or 61-8-731 be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(3) Subject to the limitations set forth in 61-8-714 and 61-8-722 concerning minimum periods of imprisonment, the court may order that a term of imprisonment imposed under either section be served by imprisonment under home arrest, as provided in Title 46, chapter 18, part 10.

(4) A court may not defer imposition of sentence under 61-8-714, 61-8-722, or 61-8-731.

(5) The provisions of 61-2-107, 61-5-205(2), and 61-5-208(2), relating to suspension of driver's licenses and later reinstatement of driving privileges, apply to any conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401, ~~or~~ 61-8-406*, or [section 1]*."

**Section 25.** Section 61-8-741, MCA, is amended to read:

**"61-8-741. Suspension of imprisonment sentence for DUI court participation — DUI court defined.** (1) If a person participates in a DUI court, the court may, at the court's discretion, suspend all or a portion of an imprisonment sentence under 61-8-714 or 61-8-722, except for the mandatory minimum imprisonment term.

(2) If a person participating in a DUI court fails to comply with the conditions imposed by the DUI court, the court shall revoke the suspended imprisonment sentence and any sentence subsequently imposed must commence from the effective date of the revocation.

(3) For purposes of this section, "DUI court" means any court that has established a special docket for handling cases involving persons convicted under 61-8-401, ~~or~~ 61-8-406*, or [section 1]* and that implements a program of incentives and sanctions intended to assist a participant to complete treatment ordered pursuant to 61-8-732 and to end the participant's criminal behavior associated with driving under the influence of drugs or alcohol or with excessive blood alcohol concentration."

**Section 26.** Section 61-11-101, MCA, is amended to read:

**"61-11-101. Report of convictions and suspension or revocation of driver's licenses — surrender of licenses.** (1) If a person is convicted of an offense for which chapter 5 or chapter 8, part 8, makes mandatory the suspension or revocation of the driver's license or commercial driver's license of the person by the department, the court in which the conviction occurs shall require the surrender to it of all driver's licenses then held by the convicted person. The court shall, within 5 days after the conviction becomes final, forward the license and a record of the conviction to the department. If the

person does not possess a driver's license, the court shall indicate that fact in its report to the department.

(2) A court having jurisdiction over offenses committed under a statute of this state or a municipal ordinance regulating the operation of motor vehicles on highways, except for standing or parking statutes or ordinances, shall forward a record of the conviction, as defined in 61-5-213, to the department within 5 days after the conviction becomes final. The court may recommend that the department issue a restricted probationary license on the condition that the individual comply with the requirement that the person attend and complete a chemical dependency education course, treatment, or both, as ordered by the court under 61-8-732.

(3) A court or other agency of this state or of a subdivision of the state that has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report an action and the adjudication upon which it is based to the department within 5 days on forms furnished by the department.

(4) A conviction becomes final for the purposes of this part upon the later of:

(a) expiration of the time for appeal of the court's judgment or sentence to the next highest court;

(b) forfeiture of bail that is not vacated; or

(c) imposition of a fine or court cost as a condition of a deferred imposition of a sentence or a suspended execution of a sentence.

(5) (a) On a conviction referred to in subsection (1) of a person who holds a commercial driver's license or who is required to hold a commercial driver's license, a court may not take any action, including deferring imposition of judgment, that would prevent a conviction for any violation of a state or local traffic control law or ordinance, except a parking law or ordinance, in any type of motor vehicle, from appearing on the person's driving record. The provisions of this subsection (5)(a) apply only to the conviction of a person who holds a commercial driver's license or who is required to hold a commercial driver's license and do not apply to the conviction of a person who holds any other type of driver's license.

(b) For purposes of this subsection (5), "who is required to hold a commercial driver's license" refers to a person who did not have a commercial driver's license but who was operating a commercial motor vehicle at the time of a violation of a state or local traffic control law or ordinance resulting in a conviction referred to in subsection (1).

(6) (a) If a person who holds a valid registry identification card issued pursuant to 50-46-307 or 50-46-308 is convicted of or pleads guilty to any offense related to driving under the influence of alcohol or drugs when the initial offense with which the person was charged was a violation of 61-8-401, 61-8-406, ~~or~~ 61-8-410, *or [section 1],* the court in which the conviction occurs shall require the person to surrender the registry identification card.

(b) Within 5 days after the conviction becomes final, the court shall forward the registry identification card and a copy of the conviction to the department of public health and human services."

**Section 27. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 61, chapter 8, part 4, and the provisions of Title 61, chapter 8, part 4, apply to [section 1].

Approved April 5, 2013

# CHAPTER NO. 154

[HB 224]

AN ACT REVISING APPEAL BONDS IN CIVIL CASES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Appeal bonds in civil actions.** (1) Except as provided in subsection (2), in order to ensure that financial considerations do not adversely impact the right of appeal, in civil litigation under any legal theory the supersedeas bond to be furnished in order to stay the execution of the judgment during the entire course of appellate review, including review by the United States supreme court, may not exceed $50 million, regardless of the amount of the judgment.

(2) If an appellee proves by a preponderance of the evidence that an appellant is dissipating assets or is likely to dissipate assets outside the ordinary course of business to avoid the payment of a judgment, a court may require the appellant to post a bond in an amount up to the amount of the judgment.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 25, chapter 12, and the provisions of Title 25, chapter 12, apply to [section 1].

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved April 5, 2013

# CHAPTER NO. 155

[SB 67]

AN ACT REVISING STATUTORY REQUIREMENTS FOR AGENCY REPORTING TO THE STATE ADMINISTRATION AND VETERANS' AFFAIRS INTERIM COMMITTEE AND THE LEGISLATURE; REVISING REPORTING BY THE CAPITOL COMPLEX ADVISORY COUNCIL, THE DEPARTMENT OF ADMINISTRATION REGARDING THE EMPLOYEE INCENTIVE PROGRAM, THE MONTANA VETERANS' AFFAIRS DIVISION, THE SECRETARY OF STATE REGARDING SECURED TRANSACTIONS, THE PUBLIC EMPLOYEES' RETIREMENT ADMINISTRATION, THE TEACHERS' RETIREMENT SYSTEM, AND THE BOARD OF INVESTMENTS; AND AMENDING SECTIONS 2-17-804, 2-18-1103, 10-2-102, 17-6-230, 19-2-405, 19-20-201, AND 30-9A-527, MCA.

WHEREAS, House Bill No. 142 (Chapter 126, Laws of 2011) required interim committees to "review statutorily established advisory councils and required reports of assigned agencies to make recommendations to the next legislature"; and

WHEREAS, the State Administration and Veterans' Affairs Interim Committee voted to make the recommendations contained in this bill.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-17-804, MCA, is amended to read:

**"2-17-804. Council duties and responsibilities.** (1) The council shall:

(a) adopt an art and memorial plan for the placement of art and memorials in the capitol complex and on the capitol complex grounds;

(b) review proposals for long-term displays of up to 50 years, subject to renewal, in the capitol complex and on the capitol complex grounds and for the naming of state buildings, spaces, and rooms in the capitol complex;

(c) advise the legislature on the placement of busts, plaques, statues, memorials, monuments, or art displays of a long-term nature in public areas of the capitol complex and on the capitol complex grounds, including the executive residence and the original governor's mansion; and

(d) advise the department of administration on interior decoration of the capitol, grounds maintenance, and grounds displays.

(2) In advising the legislature on long-term displays, the council shall consider whether the bust, plaque, statue, memorial, monument, or art display:

(a) reasonably fits the long-range master plan for the capitol and adjacent grounds developed under 2-17-805;

(b) adversely alters the appearance of the capitol complex;

(c) unreasonably affects foot traffic on the capitol complex;

(d) adversely impacts existing maintenance programs or the utility infrastructure;

(e) recognizes a person or event of statewide significance and relevance;

(f) has artistic merit in design and construction;

(g) will be safely and aesthetically suited to the installation site; and

(h) has adequate funding for design, installation, and maintenance.

(3) By ~~November 15~~ *September 15* of each year preceding a *regular* legislative session, the council shall report to the ~~legislature~~ *state administration and veterans' affairs interim committee* on requests that the council has reviewed for naming buildings, spaces, and rooms and for placing items in the capitol complex or on the capitol complex grounds. The report must include a recommendation to the ~~legislature~~ *committee* on whether reviewed requests meet the criteria established by this part *and whether legislation is needed*. If a request meets the criteria, the council shall recommend a timeframe during which the project should be authorized."

**Section 2.** Section 2-18-1103, MCA, is amended to read:

**"2-18-1103. Powers and duties of department.** The department shall:

(1) adopt rules to implement this part;

(2) develop model guidelines and promotional materials to assist agencies in implementing this part; and

(3) prepare and submit~~,~~ *to the state administration and veterans' affairs interim committee by September 15 in the year preceding the regular legislative session and* in the manner provided in 5-11-210~~,~~ a list of awards granted under 2-18-1106 and the corresponding savings to the state and improvements in the effectiveness of state government."

**Section 3.** Section 10-2-102, MCA, is amended to read:

**"10-2-102. Duties of board — employee qualifications.** (1) The board shall establish a statewide service for veterans and their families as provided in this section. The board shall:

(a) actively cooperate with local, state, and federal agencies whose services encompass the affairs of veterans and their families;

(b) promote the general welfare of all veterans and their families;

(c) assist veterans and their families who are residents of this state in filing claims for the benefits to which they are entitled. In carrying out this duty, the

board and its accredited employees shall, upon the request of an eligible claimant, act as agents for the claimant in developing and presenting claims for benefits provided under Title 38 of the United States Code. The board shall seek to secure speedy and just action for each claimant. A board employee officially acting as an agent on behalf of a claimant must be properly accredited and recognized pursuant to 38 CFR 14.628 and 14.629.

(d) officially advocate for the fair treatment of Montana's veterans and their families by the U.S. department of veterans affairs with respect to claims processing, health care services, and other veteran-related programs and inform veterans and their family members of all available grievance procedures;

(e) develop and implement an information and communication program to keep veterans and their family members informed about available federal, state, and community-based services and benefits. The program may include but is not limited to:

(i) development and distribution of a services and benefits directory;

(ii) regular public service announcements through various media;

(iii) information to assist veterans and their family members in obtaining federal benefits and treatment services related to depleted uranium exposure, including a best practice health screening of any veteran who:

(A) has been identified pursuant to department of defense policy as having possible level I, II, or III exposure to depleted uranium;

(B) is referred for a health screening by a military physician; or

(C) may have been exposed to depleted uranium during service in a combat zone.

(iv) an internet website with information and links relevant to veterans and their families and including information about board meetings and activities related to veterans' affairs; and

(v) a quarterly newsletter, which may be printed or electronically distributed by e-mail or by posting it to an appropriate website.

(f) seek grants to help fund veterans' programs established pursuant to this section;

(g) develop a memorandum of understanding with the federal veterans' employment and training service and with other appropriate entities to facilitate interagency cooperation, such as resource sharing, cross-training, data and information sharing, and service delivery coordination;

(h) establish management tools, including but not limited to needs assessments, policy statements, program goals and objectives, performance measures, and program evaluation criteria;

(i) prepare a biennial report to the governor, the department of military affairs, the appropriate legislative interim committee, and veterans' service organizations. The report must include but is not limited to ~~the latest information about the demographics of Montana's veteran population, a needs assessment, annual summaries of the veterans' special revenue accounts established in 10-2-112 and 10-2-603, and a review of the veterans' affairs budget~~ *Montana veteran demographic information, the financial impact of division benefit claim services received by Montana veterans, and a summary of the general and special revenue budgets and expenditures for veterans' affairs*.

(j) request legislation responsive to identified needs.

(2) Employees of the board must be residents of this state. Whenever possible, all employees of the board must have served in the military forces of the

United States during World War I, World War II, the Korean war, the Vietnam conflict, or other period of conflict involving the United States military overseas and must have been honorably discharged. Preference for employment must be given to disabled veterans.

(3) The board shall hire an administrator to implement board policy and carry out the duties of the board."

**Section 4.** Section 17-6-230, MCA, is amended to read:

**"17-6-230. Reports on retirement system trust fund investments and benefits.** (1) As soon as practical after the end of each calendar year, the board of investments shall publish a report on each retirement system trust fund invested by the board. The report may be part of an annual report required pursuant to Article VIII, section 13, of the Montana constitution or 17-5-1650 but must summarize the following with respect to each retirement system trust fund:

(a) asset allocation;

(b) past and expected investment performance;

(c) investment goals and strategies; and

(d) Montana public employees' retirement system investments and performance compared with the public employees' retirement system investments and performance in other states.

(2) The board of investments shall annually at a public meeting present the report described in subsection (1) to the public employees' retirement board provided for in 2-15-1009 and the teachers' retirement board provided for in 2-15-1010. The board shall also provide the report to the legislature pursuant to 5-11-210 *and to the state administration and veterans' affairs interim committee*."

**Section 5.** Section 19-2-405, MCA, is amended to read:

**"19-2-405. Employment of actuary — annual investigation and valuation.** (1) The board shall retain a competent actuary who is an enrolled member of the American academy of actuaries and who is familiar with public systems of pensions. The actuary is the technical adviser of the board on matters regarding the operation of the retirement systems.

(2) The board shall require the actuary to make *and report on* an annual actuarial investigation into the suitability of the actuarial tables used by the retirement systems and an actuarial valuation of the assets and liabilities of each defined benefit plan that is a part of the retirement systems.

(3) The normal cost contribution rate, which is funded by required employee contributions and a portion of the required employer contributions to each defined benefit retirement plan, must be calculated as the level percentage of members' salaries that will actuarially fund benefits payable under a retirement plan as those benefits accrue in the future.

(4) (a) The unfunded liability contribution rate, which is entirely funded by a portion of the required employer contributions to the retirement plan, must be calculated as the level percentage of current and future defined benefit plan members' salaries that will amortize the unfunded actuarial liabilities of the retirement plan over a reasonable period of time, not to exceed 30 years, as determined by the board.

(b) In determining the amortization period under subsection (4)(a) for the public employees' retirement system's defined benefit plan, the actuary shall

take into account the plan choice rate contributions to be made to the defined benefit plan pursuant to 19-3-2117 and 19-21-203.

(5) The board shall require the actuary to conduct *and report on* a periodic actuarial investigation into the actuarial experience of the retirement systems and plans. ~~Copies of the report must be provided to the legislature pursuant to 5-11-210.~~

(6) The board may require the actuary to conduct any valuation necessary to administer the retirement systems and the plans subject to this chapter.

*(7) The board shall provide copies of the reports required pursuant to subsections (2) and (5) to the state administration and veterans' affairs interim committee and to the legislature pursuant to 5-11-210.*"

**Section 6.** Section 19-20-201, MCA, is amended to read:

**"19-20-201. Administration by retirement board.** (1) The retirement board shall administer and operate the retirement system within the limitations prescribed by this chapter, and it is the duty of the retirement board to:

(a) establish rules necessary for the proper administration and operation of the retirement system;

(b) approve or disapprove all expenditures necessary for the proper operation of the retirement system;

(c) keep a record of all its proceedings, which must be open to public inspection;

(d) submit a report to the office of budget and program planning detailing the fiscal transactions for the 2 fiscal years immediately preceding the report due date, the amount of the accumulated cash and securities of the retirement system, and the last fiscal year balance sheet showing the assets and liabilities of the retirement system;

(e) keep in convenient form the data that is necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the retirement system;

(f) prepare an annual valuation of the assets and liabilities of the retirement system that includes an analysis of how market performance is affecting the actuarial funding of the retirement system;

(g) *require the board's actuary to conduct and report on a periodic actuarial investigation into the actuarial experience of the retirement system;*

*(h)* prescribe a form for membership application that will provide adequate and necessary information for the proper operation of the retirement system;

~~(h)~~*(i)* annually determine the rate of regular interest as prescribed in 19-20-501;

~~(i)~~*(j)* establish and maintain the funds of the retirement system in accordance with the provisions of part 6 of this chapter; and

~~(j)~~*(k)* perform other duties and functions as are required to properly administer and operate the retirement system.

(2) In discharging its duties, the board, or an authorized representative of the board, may conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records. Subpoenas must be issued and enforced pursuant to 2-4-104.

(3) The board may send retirement-related material to employers and the campuses of the Montana university system for delivery to employees. To facilitate distribution, employers and those campuses shall each provide the board with a point of contact who is responsible for distribution of the material provided by the board.

(4) The board shall make available to the *state administration and veterans' affairs interim committee and to the* legislature pursuant to 5-11-210 copies of the annual actuarial valuation and ~~report~~ *reports* required pursuant to subsections (1)(d) ~~and~~, (1)(f)*, and (1)(g)*."

**Section 7.** Section 30-9A-527, MCA, is amended to read:

**"30-9A-527. Duty to report.** ~~The~~ *If there have been any changes affecting filing-office rules, the* secretary of state shall report to ~~each session of the legislature~~ *the state administration and veterans' affairs interim committee by September 15 in the year preceding the regular legislative session* on the operation of the filing office. The report must contain a statement of the extent to which:

(1) the filing-office rules are not in harmony with the rules of filing offices in other jurisdictions that enact substantially this part and the reasons for these variations; and

(2) the filing-office rules are not in harmony with the most recent version of the model rules promulgated by the international association of corporate administrators or any successor organization and the reasons for these variations."

Approved April 5, 2013

# CHAPTER NO. 156

[SB 76]

AN ACT AMENDING THE MONTANA WATER QUALITY ACT TO CONFORM WITH FEDERAL STANDARDS FOR COOLING WATER INTAKE STRUCTURES; GRANTING RULEMAKING AUTHORITY; AMENDING SECTION 75-5-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 75-5-304, MCA, is amended to read:

**"75-5-304. Adoption of standards — pretreatment, effluent, performance.** (1) The board shall:

(a) adopt pretreatment standards for wastewater discharged into a municipal disposal system;

(b) adopt effluent standards as defined in 75-5-103;

(c) adopt toxic effluent standards and prohibitions; ~~and~~

(d) establish standards of performance for new point source discharges*; and*~~.~~

*(e) adopt rules necessary to ensure the primacy of the department to regulate cooling water intake structures under 33 U.S.C. 1326(b).*

(2) In taking action under subsection (1), the board shall ensure that the standards are cost-effective and economically, environmentally, and technologically feasible."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 5, 2013

# CHAPTER NO. 157

[SB 103]

AN ACT RECOGNIZING HOSPITAL ACCREDITATION GRANTED BY ENTITIES OTHER THAN THE JOINT COMMISSION; AND AMENDING SECTIONS 50-5-101 AND 50-5-103, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 50-5-101, MCA, is amended to read:

**"50-5-101. Definitions.** As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Accreditation association for ambulatory health care" means the organization nationally recognized by that name that surveys outpatient centers for surgical services upon their requests and grants accreditation status to the outpatient centers for surgical services that it finds meet its standards and requirements.

(3) "Activities of daily living" means tasks usually performed in the course of a normal day in a resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.

(4) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(5) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection (5), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.

(B) The term does not include the administration of prescriptive medications.

(6) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

(7) "Assisted living facility" means a congregate residential setting that provides or coordinates personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services.

(8) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(12) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(13) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(14) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(15) "Congregate" means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.

(16) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(17) "Council on accreditation" means the organization nationally recognized by that name that surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and mental health centers upon their requests and grants accreditation status to programs and facilities that it finds meet its standards and requirements.

(18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.

(19) "Department" means the department of public health and human services provided for in 2-15-2201.

*(20) "DNV healthcare, inc." means the company nationally recognized by that name that surveys hospitals upon their requests and grants accreditation status to a hospital that it finds meets its standards and requirements.*

~~(20)~~*(21)* "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

~~(21)~~*(22)* "Federal acts" means federal statutes for the construction of health care facilities.

~~(22)~~*(23)* "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

*(24) "Healthcare facilities accreditation program" means the program nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.*

~~(23)~~*(25)* (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors.

~~(24)~~*(26)* "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

~~(25)~~*(27)* "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

~~(26)~~*(28)* "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

~~(27)~~*(29)* "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

~~(28)~~*(30)* (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Except as otherwise provided by law, services provided must include medical personnel

available to provide emergency care onsite 24 hours a day and may include any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes:

(i) hospitals specializing in providing health services for psychiatric, developmentally disabled, and tubercular patients; and

(ii) specialty hospitals.

(b) The term does not include critical access hospitals.

(c) The emergency care requirement for a hospital that specializes in providing health services for psychiatric, developmentally disabled, or tubercular patients is satisfied if the emergency care is provided within the scope of the specialized services provided by the hospital and by providing 24-hour nursing care by licensed registered nurses.

~~(29)~~*(31)* "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

~~(30)~~*(32)* (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.

(b) The term does not include community homes for persons with developmental disabilities that are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under 52-4-203.

~~(31)~~*(33)* "Intermediate developmental disability care" means the provision of intermediate nursing care services, health-related services, and social services for persons with a developmental disability, as defined in 53-20-102, or for persons with related problems.

~~(32)~~*(34)* "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

~~(33) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.~~

~~(34)~~*(35)* "Licensed health care professional" means a licensed physician, physician assistant, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the department of labor and industry.

~~(35)~~*(36)* (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who

do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

~~(36)~~*(37)* "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

~~(37)~~*(38)* "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

~~(38)~~*(39)* "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

~~(39)~~*(40)* "Offer" means the representation by a health care facility that it can provide specific health services.

~~(40)~~*(41)* (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that:

(i) serves either adjudicated or nonadjudicated youth;

(ii) charges a fee for its services; and

(iii) provides all or part of its services in the outdoors.

(b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts, 4-H clubs, or other similar organizations.

~~(41)~~*(42)* "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

~~(42)~~*(43)* "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

~~(43)~~*(44)* "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

~~(44)~~*(45)* "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

~~(45)~~*(46)* "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

~~(46)~~*(47)* "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.

~~(47)~~*(48)* "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

~~(48)~~*(49)* "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

~~(49)~~*(50)* "Resident" means an individual who is in a long-term care facility or in a residential care facility.

~~(50)~~*(51)* "Residential care facility" means an adult day-care center, an adult foster care home, an assisted living facility, or a retirement home.

~~(51)~~*(52)* "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

~~(52)~~*(53)* "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

~~(53)~~*(54)* "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

~~(54)~~*(55)* "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

~~(55)~~*(56)* (a) "Specialty hospital" means a subclass of hospital that is exclusively engaged in the diagnosis, care, or treatment of one or more of the following categories:

(i) patients with a cardiac condition;

(ii) patients with an orthopedic condition;

(iii) patients undergoing a surgical procedure; or

(iv) patients treated for cancer-related diseases and receiving oncology services.

(b) For purposes of this subsection ~~(55)~~ *(56)*, a specialty hospital may provide other services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals as otherwise provided by law if the care encompasses 35% or less of the hospital services.

(c) The term "specialty hospital" does not include:

(i) psychiatric hospitals;

(ii) rehabilitation hospitals;

(iii) children's hospitals;

(iv) long-term care hospitals; or

(v) critical access hospitals.

~~(56)~~*(57)* "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and

approved by the governor and a statewide health coordinating council appointed by the director of the department.

~~(57)~~*(58)* "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient.

*(59) "The joint commission" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.*"

**Section 2.** Section 50-5-103, MCA, is amended to read:

**"50-5-103. Rules and standards — accreditation.** (1) The department shall adopt rules and minimum standards for implementation of parts 1 and 2.

(2) Any facility covered by this chapter shall comply with the state and federal requirements relating to construction, equipment, and fire and life safety.

(3) The department shall extend a reasonable time for compliance with rules for parts 1 and 2 upon adoption.

(4) *(a)* Any hospital located in this state that furnishes written evidence required by the department, including the recommendation for future compliance statements*,* to the department of its accreditation granted by ~~the joint commission on accreditation of health care organizations,~~ *an entity listed in subsection (4)(b)* is eligible for licensure in the state for the accreditation period and may not be subjected to an inspection by the department for purposes of the licensing process.

*(b) A hospital may provide evidence of its accreditation by:*

*(i) DNV healthcare, inc.;*

*(ii) the healthcare facilities accreditation program; or*

*(iii) the joint commission;*

*(c)* The department may, in addition to its inspection authority in 50-5-116, inspect any licensed health care facility to answer specific complaints made in writing by any person against the facility when the complaints pertain to licensing requirements. Inspection by the department upon a specific complaint made in writing pertaining to licensing requirements is limited to the specific area or condition of the health care facility to which the complaint pertains.

(5) The department may consider as eligible for licensure during the accreditation period any health care facility located in this state, other than a hospital, that furnishes written evidence, including the recommendation for future compliance statements, of its accreditation by the joint commission ~~on accreditation of healthcare organizations~~. The department may inspect a health care facility considered eligible for licensure under this section to ensure compliance with state licensure standards.

(6) The department may consider as eligible for licensure during the accreditation period any rehabilitation facility that furnishes written evidence, including the recommendation for future compliance statements, of accreditation of its programs by the commission on accreditation of rehabilitation facilities. The department may inspect a rehabilitation facility considered eligible for licensure under this section to ensure compliance with state licensure standards.

(7) The department may consider as eligible for licensure during the accreditation period any outpatient center for surgical services that furnishes written evidence, including the recommendation for future compliance

statements, of accreditation of its programs by the accreditation association for ambulatory health care. The department may inspect an outpatient center for surgical services considered eligible for licensure under this section to ensure compliance with state licensure standards.

(8) The department may consider as eligible for licensure during the accreditation period any behavioral treatment program, chemical dependency treatment program, residential treatment facility, or mental health center that furnishes written evidence, including the recommendation for future compliance statements, of accreditation of its programs by the council on accreditation. The department may inspect a behavioral treatment program, chemical dependency treatment program, residential treatment facility, or mental health center considered eligible for licensure under this section to ensure compliance with state licensure standards."

Approved April 5, 2013

# CHAPTER NO. 158

[SB 134]

AN ACT REVISING THE MONTANA ELDER AND PERSONS WITH DEVELOPMENTAL DISABILITIES ABUSE PREVENTION ACT; CLARIFYING THE DEFINITION OF "OLDER PERSON"; ELIMINATING THE REQUIREMENT IN PROSECUTIONS THAT AN OLDER PERSON BE UNABLE TO PROVIDE PERSONAL PROTECTION DUE TO MENTAL OR PHYSICAL IMPAIRMENT OR FRAILTIES OR DEPENDENCIES BROUGHT ABOUT BY ADVANCED AGE; PROVIDING FOR A MINIMUM PRISON SENTENCE IN CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 52-3-803 AND 52-3-825, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 52-3-803, MCA, is amended to read:

**"52-3-803. Definitions.** As used in this part, the following definitions apply:

(1) "Abuse" means:

(a) the infliction of physical or mental injury; or

(b) the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person or a person with a developmental disability without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Exploitation" means:

(a) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money, assets, or property;

(b) an act taken by a person who has the trust and confidence of an older person or a person with a developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money, assets, or property;

(c) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability done in the course of an offer or sale of insurance or securities in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of the person's money, assets, or property.

(4) "Incapacitated person" has the meaning given in 72-5-101.

(5) "Long-term care facility" means a facility defined in 50-5-101.

(6) "Mental injury" means an identifiable and substantial impairment of a person's intellectual or psychological functioning or well-being.

(7) "Neglect" means the failure of a person who has assumed legal responsibility or a contractual obligation for caring for an older person or a person with a developmental disability or who has voluntarily assumed responsibility for the person's care, including an employee of a public or private residential institution, facility, home, or agency, to provide food, shelter, clothing, or services necessary to maintain the physical or mental health of the older person or the person with a developmental disability.

(8) "Older person" means a person who is at least 60 years of age. ~~For purposes of prosecution under 52-3-825(2) or (3), the person 60 years of age or older must be unable to provide personal protection from abuse, sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.~~

(9) "Person with a developmental disability" means a person 18 years of age or older who has a developmental disability, as defined in 53-20-102.

(10) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

(11) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5."

**Section 2.** Section 52-3-825, MCA, is amended to read:

**"52-3-825. Penalties.** (1) A person who purposely or knowingly fails to make a report required by 52-3-811 or discloses or fails to disclose the contents of a case record or report in violation of 52-3-813 is guilty of an offense and upon conviction is punishable as provided in 46-18-212.

(2) (a) A person who purposely or knowingly abuses, sexually abuses, or neglects an older person or a person with a developmental disability is guilty of a felony and shall be imprisoned for a term not to exceed 10 years and be fined an amount not to exceed $10,000, or both.

(b) (i) A person who negligently abuses an older person or a person with a developmental disability is guilty of a misdemeanor and upon a first conviction shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

(ii) Upon a second or subsequent conviction of the conduct described in subsection (2)(b)(i), the person is guilty of a felony and shall be imprisoned for a term not to exceed 10 years and be fined an amount not to exceed $10,000, or both.

(c) A person with a developmental disability may not be charged under subsection (2)(a) or (2)(b).

(3) (a) A person convicted of purposely or knowingly exploiting an older person or a person with a developmental disability in a case involving money, assets, or property in an amount of $1,000 or less in value shall be fined an amount not more than $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. A person convicted of purposely or knowingly exploiting an older person or a person with a developmental disability in a case involving money, assets, or property in an amount of more than $1,000 *but less than $25,000* in value shall be fined an amount not more than $50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both. *A person convicted of purposely or knowingly exploiting an older person or a person with a developmental disability in a case involving money, assets, or property in an amount of $25,000 or more in value shall be fined an amount not more than $50,000 or be imprisoned in a state prison for a term of not less than 1 year and not more than 10 years, or both.*

(b) For purposes of prosecution under subsection (3)(a) in a case involving the same transaction or in a case prosecuted pursuant to a common scheme, the amounts may be aggregated in determining the value involved."

**Section 3. Effective date.** [This act] is effective on passage and approval.

**Section 4. Applicability.** [This act] applies to offenses committed on or after [the effective date of this act].

Approved April 5, 2013

# CHAPTER NO. 159

[SB 137]

AN ACT PROVIDING A LOCAL GOVERNMENT ENTITY WITH A DEFENSE AGAINST LIABILITY IN A TORT ACTION FOR DAMAGES SUFFERED AS A RESULT OF AN ACT OR OMISSION THAT CONSTITUTES A VIOLATION OF THE CLEAN WATER STATUTES, THE SOLID WASTE MANAGEMENT ACT, THE HAZARDOUS WASTE ACT, PETROLEUM STORAGE TANK CLEANUP REQUIREMENTS, OR THE UNDERGROUND STORAGE TANK ACT ON PROPERTY ACQUIRED BY VIRTUE OF THE LOCAL GOVERNMENT'S AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Liability — defense and exclusions.** (1) A person has a defense against liability in a tort action for damages suffered as a result of an act or omission that constitutes a violation of this chapter, a rule adopted under this chapter, or a condition of a permit or authorization required by a rule adopted

under this chapter if the person can establish by a preponderance of the evidence that:

(a) the person is a government entity that acquired ownership or control through bankruptcy, tax delinquency, abandonment, or lien foreclosure in which the government entity acquired title by virtue of the government entity's authority;

(b) the person has not caused or contributed to the violation; and

(c) the person is making an effort to abate the violation.

(2) For the purposes of this part, "government entity" includes a consolidated city-county, a county, and an incorporated city or town.

**Section 2. Liability — defense and exclusions.** (1) A person has a defense against liability in a tort action for damages suffered as a result of an act or omission that constitutes a violation of this part, a rule adopted under this part, or a condition of a permit or authorization required by a rule adopted under this part if the person can establish by a preponderance of the evidence that:

(a) the person is a government entity that acquired ownership or control through bankruptcy, tax delinquency, abandonment, or lien foreclosure in which the government entity acquired title by virtue of the government entity's authority;

(b) the person has not caused or contributed to the violation; and

(c) the person is making an effort to abate the violation.

(2) For the purposes of this part, "government entity" includes a consolidated city-county, a county, and an incorporated city or town.

**Section 3. Liability — defense and exclusions.** (1) A person has a defense against liability in a tort action for damages suffered as a result of an act or omission that constitutes a violation of this part, a rule adopted under this part, or a condition of a permit or authorization required by a rule adopted under this part if the person can establish by a preponderance of the evidence that:

(a) the person is a government entity that acquired ownership or control through bankruptcy, tax delinquency, abandonment, or lien foreclosure in which the government entity acquired title by virtue of the government entity's authority;

(b) the person has not caused or contributed to the violation; and

(c) the person is making an effort to abate the violation.

(2) For the purposes of this part, "government entity" includes a consolidated city-county, a county, and an incorporated city or town.

**Section 4. Liability — defense and exclusions.** (1) A person has a defense against liability in a tort action for damages suffered as a result of an act or omission that constitutes a violation of this part, a rule adopted under this part, or a condition of a permit or authorization required by a rule adopted under this part if the person can establish by a preponderance of the evidence that:

(a) the person is a government entity that acquired ownership or control through bankruptcy, tax delinquency, abandonment, or lien foreclosure in which the government entity acquired title by virtue of the government entity's authority;

(b) the person has not caused or contributed to the violation; and

(c) the person is making an effort to abate the violation.

(2) For the purposes of this part, "government entity" includes a consolidated city-county, a county, and an incorporated city or town.

**Section 5. Liability — defense and exclusions.** (1) A person has a defense against liability in a tort action for damages suffered as a result of an act or omission that constitutes a violation of this part, a rule adopted under this part, or a condition of a permit or authorization required by a rule adopted under this part if the person can establish by a preponderance of the evidence that:

(a) the person is a government entity that acquired ownership or control through bankruptcy, tax delinquency, abandonment, or lien foreclosure in which the government entity acquired title by virtue of the government entity's authority;

(b) the person has not caused or contributed to the violation; and

(c) the person is making an effort to abate the violation.

(2) For the purposes of this part, "government entity" includes a consolidated city-county, a county, and an incorporated city or town.

**Section 6. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 75, chapter 5, and the provisions of Title 75, chapter 5, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 75, chapter 10, part 2, and the provisions of Title 75, chapter 10, part 2, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 75, chapter 10, part 4, and the provisions of Title 75, chapter 10, part 4, apply to [section 3].

(4) [Section 4] is intended to be codified as an integral part of Title 75, chapter 11, part 3, and the provisions of Title 75, chapter 11, part 3, apply to [section 4].

(5) [Section 5] is intended to be codified as an integral part of Title 75, chapter 11, part 5, and the provisions of Title 75, chapter 11, part 5, apply to [section 5].

**Section 7. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 9. Two-thirds vote required.** Because [this act] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

**Section 10. Effective date.** [This act] is effective on passage and approval.

Approved April 5, 2013

## CHAPTER NO. 160

[SB 172]

AN ACT PROHIBITING A DENTAL INSURANCE PLAN FROM REQUIRING A PARTICIPATING DENTIST TO ACCEPT A FEE SET BY THE PLAN FOR ANY SERVICES EXCEPT COVERED SERVICES; PROHIBITING NETWORKS FROM SETTING DENTAL FEES OTHER THAN FOR

COVERED SERVICES; PROVIDING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Provider agreement limited to covered services — dental network constraints — penalty — definitions.** (1) A provider agreement entered into or renewed on or after July 1, 2013, between dentists licensed under Title 37, chapter 4, and an issuer that offers an excepted benefits plan for limited-scope dental benefits or a health benefit plan that includes covered services may not:

(a) require the dentist to provide dental services to an individual covered under the excepted benefits plan or health benefit plan at a fee set by or subject to the approval of the issuer unless the dental services are covered services; or

(b) prohibit the dentist from offering or providing to an individual covered under the excepted benefits plan or health benefit plan any dental services that are not covered services. The fee for the noncovered services may be determined only under terms or conditions set by the dentist or negotiated by the dentist with the individual covered under the excepted benefits plan or health benefit plan.

(c) provide minimal coverage for covered services under the provider agreement for the sole purpose of avoiding the requirements of this section.

(2) A business entity that owns a network of health care providers and markets access to that network may not circumvent the terms of this section by making available to an issuer of an excepted benefits plan for limited-scope dental benefits or a health benefit plan that includes covered services any dentists in that network if the business entity sets dental services fees in its network for any services except covered services.

(3) An issuer of an excepted benefits plan for limited-scope dental benefits or a health benefit plan that includes covered services is subject to a fine as provided in 33-1-317 for a violation of this section.

(4) For the purposes of this section, the following definitions apply:

(a) "Covered services" means dental care services provided under a plan for limited-scope dental benefits or a health benefit plan for which a payment is available subject to the application of contractual terms, including but not limited to annual or lifetime maximums, deductibles, copayments, coinsurance, waiting periods, frequency limitations, or alternative benefit reimbursement.

(b) "Issuer" includes an insurer, a health service corporation, or a third-party administrator that offers or administers an excepted benefits plan for limited-scope dental benefits or a health benefit plan that includes covered services.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 33, chapter 22, and the provisions of Title 33, chapter 22, apply to [section 1].

**Section 3. Effective date.** [This act] is effective July 1, 2013.

Approved April 5, 2013

# CHAPTER NO. 161

[SB 189]

AN ACT REVISING PARTNER OR FAMILY MEMBER ASSAULT LAWS; PROVIDING THAT A CONVICTION IN ANOTHER STATE FOR AN

OFFENSE RELATED TO DOMESTIC VIOLENCE BETWEEN PARTNERS OR FAMILY MEMBERS, AS THOSE TERMS ARE DEFINED IN MONTANA, IS A CONVICTION FOR PURPOSES OF DETERMINING THE NUMBER OF PRIOR CONVICTIONS FOR THE OFFENSE OF PARTNER OR FAMILY MEMBER ASSAULT; PROVIDING THAT A CONVICTION FOR AGGRAVATED ASSAULT, IF THE OFFENDER WAS A PARTNER OR FAMILY MEMBER OF THE VICTIM, IS A PRIOR CONVICTION FOR PURPOSES OF PARTNER OR FAMILY MEMBER ASSAULT; AMENDING SECTION 45-5-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 45-5-206, MCA, is amended to read:

**"45-5-206. Partner or family member assault — penalty.** (1) A person commits the offense of partner or family member assault if the person:

(a) purposely or knowingly causes bodily injury to a partner or family member;

(b) negligently causes bodily injury to a partner or family member with a weapon; or

(c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family member.

(2) For the purposes of Title 40, chapter 15, 45-5-231 through 45-5-234, 46-6-311, and this section, the following definitions apply:

(a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(b) "Partners" means spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex.

(3) (a) (i) An offender convicted of partner or family member assault shall be fined an amount not less than $100 or more than $1,000 and be imprisoned in the county jail for a term not to exceed 1 year or not less than 24 hours for a first offense.

(ii) An offender convicted of a second offense under this section shall be fined not less than $300 or more than $1,000 and be imprisoned in the county jail not less than 72 hours or more than 1 year.

(iii) Upon a first or second conviction, the offender may be ordered into misdemeanor probation as provided in 46-23-1005.

(iv) On a third or subsequent conviction for partner or family member assault, the offender shall be fined not less than $500 and not more than $50,000 and be imprisoned for a term not less than 30 days and not more than 5 years. If the term of imprisonment does not exceed 1 year, the person shall be imprisoned in the county jail. If the term of imprisonment exceeds 1 year, the person shall be imprisoned in the state prison.

(v) If the offense was committed within the vision or hearing of a minor, the judge shall consider the minor's presence as a factor at the time of sentencing.

(b) ~~(i)~~ For the purpose of determining the number of convictions under this section, a conviction means~~: a conviction, as defined in 45-2-101, in this state,~~

~~conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or in another state for a violation of a similar statute, which forfeiture has not been vacated. A prior conviction for domestic abuse under this section is a prior conviction for purposes of subsection (3)(a).~~

~~(ii) A conviction for assault with a weapon under 45-5-213, if the offender was a partner or family member of the victim, constitutes a conviction for the purpose of calculating prior convictions under this section.~~

*(i) a conviction, as defined in 45-2-101, under this section;*

*(ii) a conviction for domestic abuse under this section;*

*(iii) a conviction for a violation of a statute similar to this section in another state;*

*(iv) if the offender was a partner or family member of the victim, a conviction for aggravated assault under 45-5-202 or assault with a weapon under 45-5-213;*

*(v) a conviction in another state for an offense related to domestic violence between partners or family members, as those terms are defined in this section, regardless of what the offense is named or whether it is misdemeanor or felony, if the offense involves conduct similar to conduct that is prohibited under 45-5-202, 45-5-213, or this section; or*

*(vi) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or in another state for a violation of a statute similar to this section, which forfeiture has not been vacated.*

(4) (a) An offender convicted of partner or family member assault is required to pay for and complete a counseling assessment with a focus on violence, controlling behavior, dangerousness, and chemical dependency. An investigative criminal justice report, as defined in 45-5-231, must be copied and sent to the offender intervention program, as defined in 45-5-231, to assist the counseling provider in properly assessing the offender's need for counseling and treatment. Counseling providers shall take all required precautions to ensure the confidentiality of the report. If the report contains confidential information relating to the victim's location or not related to the charged offense, that information must be deleted from the report prior to being sent to the offender intervention program.

(b) The offender shall complete all recommendations for counseling, referrals, attendance at psychoeducational groups, or treatment, including any indicated chemical dependency treatment, made by the counseling provider. The counseling provider must be approved by the court. The counseling must include a preliminary assessment for counseling, as defined in 45-5-231. The offender shall complete a minimum of 40 hours of counseling. The counseling may include attendance at psychoeducational groups, as defined in 45-5-231, in addition to the assessment. The preliminary assessment and counseling that holds the offender accountable for the offender's violent or controlling behavior must be:

(i) with a person licensed under Title 37, chapter 17, 22, or 23;

(ii) with a professional person as defined in 53-21-102; or

(iii) in a specialized domestic violence intervention program.

(c) The minimum counseling and attendance at psychoeducational groups provided in subsection (4)(b) must be directed to the violent or controlling conduct of the offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the minimum 40 hours. Subsection (4)(b) does not prohibit the placement of the offender in other appropriate

treatment if the court determines that there is no available treatment program directed to the violent or controlling conduct of the offender.

(5) In addition to any sentence imposed under subsections (3) and (4), after determining the financial resources and future ability of the offender to pay restitution as provided for in 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable actual medical, housing, wage loss, and counseling costs.

(6) In addition to the requirements of subsection (5), if financially able, the offender must be ordered to pay for the costs of the offender's probation, if probation is ordered by the court.

(7) The court may prohibit an offender convicted under this section from possession or use of the firearm used in the assault. The court may enforce 45-8-323 if a firearm was used in the assault.

(8) The court shall provide an offender with a written copy of the offender's sentence at the time of sentencing or within 2 weeks of sentencing if the copy is sent electronically or by mail."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 5, 2013

# CHAPTER NO. 162

[SB 230]

AN ACT REVISING AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY LICENSING TO ALLOW FOR TELEPRACTICE; DEFINING THE SCOPE OF AND REQUIREMENTS FOR TELEPRACTICE; EXTENDING THE BOARD'S RULEMAKING AUTHORITY; AND AMENDING SECTIONS 37-15-102 AND 37-15-202, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 37-15-102, MCA, is amended to read:

**"37-15-102. Definitions.** As used in this chapter, the following definitions apply:

~~(1) "Association" means the Montana speech-language and hearing association.~~

~~(2)~~*(1)* "Audiologist" means a person who practices audiology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is an audiologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words "audiologist", "audiology", "audiometrist", "audiometry", "audiological", "audiometrics", "hearing clinician", "hearing clinic", "hearing therapist", "hearing therapy", "hearing center", "hearing aid audiologist", or any similar title or description of services.

~~(3)~~*(2)* "Audiology aide or assistant" means any person meeting the minimum requirements established by the board of speech-language pathologists and audiologists who works directly under the supervision of a licensed audiologist.

~~(4)~~*(3)* "Board" means the board of speech-language pathologists and audiologists provided for in 2-15-1739.

~~(5)~~*(4)* "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

*(5) "Facilitator" means a trained individual who is physically present with the patient and facilitates telepractice at the direction of an audiologist or speech-language pathologist. A facilitator may be but is not limited to an audiology or speech-language pathology aide or assistant.*

*(6) "Patient" means a consumer of services from an audiologist or speech-language pathologist, including a consumer of those services provided through telepractice.*

~~(6)~~*(7)* "Practice of audiology" means nonmedical diagnosis, assessment, and treatment services relating to auditory and vestibular disorders as provided by board rule and includes the selling, dispensing, and fitting of hearing aids.

~~(7)~~*(8)* "Practice of speech-language pathology" means nonmedical diagnosis, assessment, and treatment services relating to speech-language pathology as provided by board rule.

~~(8)~~*(9)* "Speech-language pathologist" means a person who practices speech-language pathology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is a speech-language pathologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words "speech pathologist", "speech pathology", "speech correctionist", "speech corrections", "speech therapist", "speech therapy", "speech clinician", "speech clinic", "language pathologist", "language pathology", "voice therapist", "voice therapy", "voice pathologist", "voice pathology", "logopedist", "logopedics", "communicologist", "communicology", "aphasiologist", "aphasiology", "phoniatrist", "language therapist", "language clinician", or any similar title or description of services or functions.

~~(9)~~*(10)* "Speech-language pathology aide or assistant" means a person meeting the minimum requirements established by the board who works directly under the supervision of a licensed speech-language pathologist.

*(11) "Telepractice" means the practice of audiology or speech-language pathology by an audiologist or speech-language pathologist at a distance through any means, method, device, or instrumentality for the purposes of assessment, intervention, and consultation."*

**Section 2.** Section 37-15-202, MCA, is amended to read:

**"37-15-202. Powers and duties of board and department.** (1) The board shall:

(a) administer, coordinate, and enforce the provisions of this chapter;

(b) evaluate the qualifications of each applicant for a license as issued under this chapter and supervise the examination of applicants;

(c) conduct hearings and keep records and minutes as the board considers necessary to an orderly dispatch of business;

(d) adopt rules, including but not limited to those governing ethical standards of practice *or standards for telepractice* under this chapter;

(e) make recommendations to the governor and other state officials regarding new and revised programs and legislation related to speech-language pathology or audiology which could be beneficial to the citizens of the state of Montana;

(f) cause the prosecution and enjoinder of all persons violating this chapter, by the complaints of its secretary filed with the county attorney in the county where the violation took place, and incur necessary expenses ~~therefor~~ *for the prosecution*;

(g) adopt a seal by which the board shall authenticate its proceedings.

(2) Copies of the proceedings, records, and acts of the board, signed by the presiding officer or secretary of the board and stamped with the seal, are prima facie evidence of the validity of the documents.

(3) The board may make rules ~~which~~ *that* are reasonable or necessary for the proper performance of its duties and for the regulation of proceedings before it.

(4) The department may employ persons it considers necessary to carry out the provisions of this chapter.

(5) The department shall prepare a report to the governor as required by law."

**Section 3. Telepractice — authorization — licensure.** (1) An audiologist or speech-language pathologist who is licensed under and meets the requirements of this chapter may engage in telepractice in Montana without obtaining a separate or additional license from the board.

(2) Except as provided in 37-15-103, an audiologist or speech-language pathologist who is not a resident of Montana and who is not licensed under this chapter may not provide services to patients in Montana through telepractice without first obtaining a license from the board in accordance with this part.

(3) An audiology aide or assistant or a speech-language pathology aide or assistant may not engage in telepractice. This section does not prohibit an audiology aide or assistant or a speech-language pathology aide or assistant from serving as a facilitator.

**Section 4. Scope of telepractice — requirements.** (1) The quality of services provided through telepractice must be equivalent to the quality of audiology or speech-language pathology services that are provided in person and must conform to all existing state, federal, and institutional professional standards, policies, and requirements for audiologists and speech-language pathologists.

(2) Technology used to provide telepractice, including but not limited to equipment, connectivity, software, hardware, and network compatibility, must be appropriate for the service being delivered and must address the unique needs of each patient. Audio and video quality utilized in telepractice must be sufficient to deliver services that are equivalent to services that are provided in person. A person providing telepractice services is responsible for calibrating clinical instruments in accordance with standard operating procedures and the manufacturer's specifications.

(3) A person providing telepractice services shall comply with all state and federal laws, rules, and regulations governing the maintenance of patient records, including maintaining patient confidentiality and protecting sensitive patient data.

(4) A person providing telepractice services shall conduct an initial assessment of each patient's candidacy for telepractice, including the patient's behavioral, physical, and cognitive abilities to participate in services provided through telepractice. Telepractice may not be provided only through written correspondence.

(5) At a minimum, a person providing telepractice services shall provide a notice of telepractice services to each patient and, if applicable, the patient's guardian, caregiver, or multidisciplinary team. The notification must provide that a patient has the right to refuse telepractice services and has options for service delivery and must include instructions on filing and resolving complaints.

**Section 5. Codification instruction.** [Sections 3 and 4] are intended to be codified as an integral part of Title 37, chapter 15, part 3, and the provisions of Title 37, chapter 15, part 3, apply to [sections 3 and 4].

Approved April 5, 2013

# CHAPTER NO. 163

[SB 249]

AN ACT REVISING LAWS RELATED TO WILDLIFE MANAGEMENT DECISIONS; DEFINING CONSULTATION WHEN MAKING MANAGEMENT DECISIONS INVOLVING LARGE PREDATORS AND LARGE GAME SPECIES; REQUIRING THE FISH, WILDLIFE, AND PARKS COMMISSION TO COMPLY WITH, ADOPT POLICIES THAT COMPLY WITH, AND ENSURE THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS IMPLEMENTS STATE WILDLIFE MANAGEMENT PLANS; AND AMENDING SECTIONS 87-1-217 AND 87-1-301, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 87-1-217, MCA, is amended to read:

**"87-1-217. Policy for management of large predators — legislative intent.** (1) In managing large predators, the primary goals of the department, in the order of listed priority, are to:

(a) protect humans, livestock, and pets;

(b) preserve and enhance the safety of the public during outdoor recreational and livelihood activities; and

(c) preserve citizens' opportunities to hunt large game species.

~~(2) As used in this section:~~

~~(a) "large game species" means deer, elk, mountain sheep, moose, antelope, and mountain goats; and~~

~~(b) "large predators" means bears, mountain lions, and wolves.~~

~~(3)~~*(2)* With regard to large predators, it is the intent of the legislature that the specific provisions of this section concerning the management of large predators will control the general supervisory authority of the department regarding the management of all wildlife.

~~(4)~~*(3)* For the management of wolves in accordance with the priorities established in subsection (1), the department may use lethal action to take problem wolves that attack livestock if the state objective for breeding pairs has been met. For the purposes of this subsection, "problem wolves" means any individual wolf or pack of wolves with a history of livestock predation.

~~(5)~~*(4)* The department shall work with the livestock loss board and the United States department of agriculture wildlife services to establish the conditions under which wolf carcasses or parts of wolf carcasses are retrieved during wolf management activities and when those carcasses or parts of carcasses are made available to the livestock loss board for sale or auction pursuant to 2-15-3113.

~~(6)~~*(5)* The department shall ensure that county commissioners and tribal governments in areas that have identifiable populations of large predators have the opportunity for consultation and coordination with state and federal agencies prior to state and federal policy decisions involving large predators and large game species.

*(6) As used in this section:*

*(a) "consultation" means to actively provide information to a county or tribal government regarding proposed policy decisions on matters that may have a harmful effect on agricultural production or livestock operations or that may pose a risk to human health or safety in that county or on those tribal lands and to seek information and advice from counties or tribal governments on these matters;*

*(b) "large game species" means deer, elk, mountain sheep, moose, antelope, and mountain goats; and*

*(c) "large predators" means bears, mountain lions, and wolves.*"

**Section 2.** Section 87-1-301, MCA, is amended to read:

**"87-1-301. Powers of commission.** (1) Except as provided in subsection (7), the commission:

(a) shall set the policies for the protection, preservation, management, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;

(b) shall establish the hunting, fishing, and trapping rules of the department;

(c) except as provided in 87-1-303(3), shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(d) must have the power within the department to establish wildlife refuges and bird and game preserves;

(e) shall approve all acquisitions or transfers by the department of interests in land or water, except as provided in 87-1-209(4);

(f) shall review and approve the budget of the department prior to its transmittal to the budget office;

(g) shall review and approve construction projects that have an estimated cost of more than $1,000 but less than $5,000; ~~and~~

(h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In developing or implementing an elk management plan, the commission shall consider landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a particular hunting district. As used in this subsection (1)(h), "landowner tolerance" means the written or documented verbal opinion of an affected landowner regarding the impact upon the landowner's property within the particular hunting district where a restriction on elk hunting on public property is proposed.

*(i) shall comply with, adopt policies that comply with, and ensure the department implements in each region the provisions of state wildlife management plans adopted following an environmental review conducted pursuant to Title 75, chapter 1, parts 1 through 3.*

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the

commission considers appropriate to promote or enhance hunting by Montana's youth and persons with disabilities.

(4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

(i) separate deer licenses from nonresident elk combination licenses;

(ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;

(iii) condition the use of the deer licenses; and

(iv) limit the number of licenses sold.

(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders:

(i) for the biologically sound management of big game populations of elk, deer, and antelope;

(ii) to control the impacts of those elk, deer, and antelope populations on uses of private property; and

(iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-321 through 87-1-325.

(5) (a) Subject to the provisions of 87-2-115, the commission may adopt rules establishing license preference systems to distribute hunting licenses and permits:

(i) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and

(ii) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(a), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission.

(b) The commission shall square the number of points purchased by an applicant per species when conducting drawings for licenses and permits.

(6) (a) The commission may adopt rules to:

(i) limit the number of nonresident mountain lion hunters in designated hunting districts; and

(ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting districts.

(b) The commission shall consider, but is not limited to consideration of, the following factors:

(i) harvest of lions by resident and nonresident hunters;

(ii) history of quota overruns;

(iii) composition, including age and sex, of the lion harvest;

(iv) historical outfitter use;

(v) conflicts among hunter groups;

(vi) availability of public and private lands; and

(vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.

(7) The commission may not regulate the use or possession of firearms, firearm accessories, or ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:

(a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the establishment of special archery seasons;

(b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including bows and arrows, traditional handguns, and muzzleloading rifles;

(c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-6-401(1)(f);

(d) the regulation of migratory game bird hunting pursuant to 87-3-403; or

(e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h)."

Approved April 5, 2013

# CHAPTER NO. 164

[SB 270]

AN ACT REQUIRING INSURANCE COVERAGE FOR HEALTH CARE SERVICES PROVIDED VIA TELEMEDICINE; AMENDING SECTIONS 33-22-101, 33-31-111, AND 33-35-306, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Coverage for telemedicine services.** (1) Each group or individual policy, certificate of disability insurance, subscriber contract, membership contract, or health care services agreement that provides coverage for health care services must provide coverage for health care services provided by a health care provider or health care facility by means of telemedicine if the services are otherwise covered by the policy, certificate, contract, or agreement.

(2) Coverage under this section must be equivalent to the coverage for services that are provided in person by a health care provider or health care facility.

(3) Nothing in this section may be construed to require:

(a) a health insurance issuer to provide coverage for services that are not medically necessary, subject to the terms and conditions of the insured's policy; or

(b) a health care provider to be physically present with a patient at the site where the patient is located unless the health care provider who is providing health care services by means of telemedicine determines that the presence of a health care provider is necessary.

(4) Coverage under this section may be subject to deductibles, coinsurance, and copayment provisions. Special deductible, coinsurance, copayment, or other limitations that are not generally applicable to other medical services covered under the plan may not be imposed on the coverage for services provided by means of telemedicine.

(5) This section does not apply to disability income, hospital indemnity, medicare supplement, or long-term care policies.

(6) For the purposes of this section, the following definitions apply:

(a) "Health care facility" means a critical access hospital, hospice, hospital, long-term care facility, mental health center, outpatient center for primary care, or outpatient center for surgical services licensed pursuant to Title 50, chapter 5;

(b) "Health care provider" means an individual:

(i) licensed pursuant to Title 37, chapter 3, 6, 7, 10, 11, 15, 17, 20, 22, 23, 24, 25, or 35;

(ii) licensed pursuant to Title 37, chapter 8, to practice as a registered professional nurse or as an advanced practice registered nurse;

(iii) certified by the American board of genetic counseling as a genetic counselor; or

(iv) certified by the national certification board for diabetes educators as a diabetes educator.

(c) "Store-and-forward technology" means electronic information, imaging, and communication that is transferred, recorded, or otherwise stored in order to be reviewed at a later date by a health care provider or health care facility at a distant site without the patient present in real time. The term includes interactive audio, video, and data communication.

(d) (i) "Telemedicine" means the use of interactive audio, video, or other telecommunications technology that is:

(A) used by a health care provider or health care facility to deliver health care services at a site other than the site where the patient is located; and

(B) delivered over a secure connection that complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d, et seq.

(ii) The term includes the use of electronic media for consultation relating to the health care diagnosis or treatment of a patient in real time or through the use of store-and-forward technology.

(iii) The term does not include the use of audio-only telephone, e-mail, or facsimile transmissions.

**Section 2.** Section 33-22-101, MCA, is amended to read:

**"33-22-101. Exceptions to scope.** (1) Subject to subsection (2), parts 1 through 4 of this chapter, except 33-22-107, 33-22-110, 33-22-111, 33-22-114, 33-22-125, 33-22-129, 33-22-130 through 33-22-136, *[section 1],* 33-22-140, 33-22-141, 33-22-142, 33-22-243, and 33-22-304, and part 19 of this chapter do not apply to or affect:

(a) any policy of liability or workers' compensation insurance with or without supplementary expense coverage;

(b) any group or blanket policy;

(c) life insurance, endowment, or annuity contracts or supplemental contracts that contain only those provisions relating to disability insurance that:

(i) provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means; or

(ii) operate to safeguard contracts against lapse or to give a special surrender value or special benefit or an annuity if the insured or annuitant becomes totally and permanently disabled as defined by the contract or supplemental contract;

(d) reinsurance.

(2) Sections 33-22-137, 33-22-150 through 33-22-152, and 33-22-301 apply to group or blanket policies."

**Section 3.** Section 33-31-111, MCA, is amended to read:

**"33-31-111. Statutory construction and relationship to other laws.** (1) Except as otherwise provided in this chapter, the insurance or health service

corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, part 19;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) Title 33, chapter 1, parts 12 and 13, Title 33, chapter 2, part 19, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-401, 33-3-422, 33-3-431, 33-15-308, Title 33, chapter 17, Title 33, chapter 19, 33-22-107, 33-22-129, 33-22-131, 33-22-136, 33-22-137, *[section 1],* 33-22-141, 33-22-142, 33-22-152, 33-22-244, 33-22-246, 33-22-247, 33-22-514, 33-22-515, 33-22-521, 33-22-523, 33-22-524, 33-22-526, and 33-22-706 apply to health maintenance organizations."

**Section 4.** Section 33-35-306, MCA, is amended to read:

**"33-35-306. Application of insurance code to arrangements.** (1) In addition to this chapter, self-funded multiple employer welfare arrangements are subject to the following provisions:

(a) 33-1-111;

(b) Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare arrangement is limited to those matters to which the arrangement is subject to regulation under this chapter;

(c) Title 33, chapter 1, part 7;

(d) 33-3-308;

(e) Title 33, chapter 18, except 33-18-242;

(f) Title 33, chapter 19;

(g) 33-22-107, 33-22-131, 33-22-134, 33-22-135, *[section 1],* 33-22-141, 33-22-142, and 33-22-152; and

(h) 33-22-512, 33-22-515, 33-22-525, and 33-22-526.

(2) Except as provided in this chapter, other provisions of Title 33 do not apply to a self-funded multiple employer welfare arrangement that has been issued a certificate of authority that has not been revoked."

**Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [section 1].

**Section 6. Effective date.** [This act] is effective January 1, 2014.

Approved April 5, 2013

# CHAPTER NO. 165

[SB 293]

AN ACT REQUIRING A SUBDIVIDER TO SUBMIT INFORMATION REGARDING WHETHER A PROPOSED SUBDIVISION'S WATER AND WASTEWATER SYSTEMS WILL BE UNDER THE PUBLIC SERVICE COMMISSION'S JURISDICTION; AMENDING SECTION 76-3-622, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 76-3-622, MCA, is amended to read:

**"76-3-622. Water and sanitation information to accompany preliminary plat.** (1) Except as provided in subsection (2), the subdivider shall submit to the governing body or to the agent or agency designated by the governing body the information listed in this section for proposed subdivisions that will include new water supply or wastewater facilities. The information must include:

(a) a vicinity map or plan that shows:

(i) the location, within 100 feet outside of the exterior property line of the subdivision and on the proposed lots, of:

(A) flood plains;

(B) surface water features;

(C) springs;

(D) irrigation ditches;

(E) existing, previously approved, and, for parcels less than 20 acres, proposed water wells and wastewater treatment systems;

(F) for parcels less than 20 acres, mixing zones identified as provided in subsection (1)(g); and

(G) the representative drainfield site used for the soil profile description as required under subsection (1)(d); and

(ii) the location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities;

(b) a description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including*:*

*(i)* whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rules published by the department of environmental quality*; and*

(ii) if the water supply and wastewater treatment systems are shared, multiple user, or public, a statement of whether the systems will be public

utilities as defined in 69-3-101 and subject to the jurisdiction of the public service commission or exempt from public service commission jurisdiction and, if exempt, an explanation for the exemption;

(c) a drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that shows all information required for a lot layout document in rules adopted by the department of environmental quality pursuant to 76-4-104;

(d) evidence of suitability for new onsite wastewater treatment systems that, at a minimum, includes:

(i) a soil profile description from a representative drainfield site identified on the vicinity map, as provided in subsection (1)(a)(i)(G), that complies with standards published by the department of environmental quality;

(ii) demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer; and

(iii) in cases in which the soil profile or other information indicates that ground water is within 7 feet of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance provided in subsection (1)(d)(ii);

(e) for new water supply systems, unless cisterns are proposed, evidence of adequate water availability:

(i) obtained from well logs or testing of onsite or nearby wells;

(ii) obtained from information contained in published hydrogeological reports; or

(iii) as otherwise specified by rules adopted by the department of environmental quality pursuant to 76-4-104;

(f) evidence of sufficient water quality in accordance with rules adopted by the department of environmental quality pursuant to 76-4-104;

(g) a preliminary analysis of potential impacts to ground water quality from new wastewater treatment systems, using as guidance rules adopted by the board of environmental review pursuant to 75-5-301 and 75-5-303 related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant changes in water quality. The preliminary analysis may be based on currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this subsection (1)(g), the subdivider may perform a complete nondegradation analysis in the same manner as is required for an application that is reviewed under Title 76, chapter 4.

(2) A subdivider whose land division is excluded from review under 76-4-125(2) is not required to submit the information required in this section.

(3) A governing body may not, through adoption of regulations, require water and sanitation information in addition to the information required under this section unless the governing body complies with the procedures provided in 76-3-511."

**Section 2. Applicability.** [This act] applies to applications submitted on or after [the effective date of this act].

Approved April 5, 2013

# CHAPTER NO. 166

[SB 312]

AN ACT REVISING THE STATE POLICY ON INFORMATION TECHNOLOGY; AND AMENDING SECTION 2-17-505, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-17-505, MCA, is amended to read:

**"2-17-505. Policy.** (1) It is the policy of the state that information technology be used to improve the quality of life of Montana citizens by providing educational opportunities, creating quality jobs and a favorable business climate, improving government, and protecting individual privacy and the privacy of the information contained within information technology systems.

(2) It is the policy of the state that the development of information technology resources in the state must be conducted in an organized, deliberative, and cost-effective manner.

*(3) It is the policy of the state that information technology is essential and vital to the people of the state of Montana, and the services, systems, and infrastructure are therefore considered to be an asset of the state.*

*(4)* The following principles must guide the development of state information technology resources:

(a) There are statewide information technology policies, standards, procedures, and guidelines applicable to all state agencies and other entities using the state network.

*(b) Mitigation of risks is a priority in order to protect individual privacy and the privacy of information contained within information technology systems as they become more interconnected and as the liabilities stemming from the risk to information technology, also known as cyber risk, have increased.*

~~(b)~~*(c)* Whenever feasible ~~and cost-effective~~ *and not an undue cyber risk*, common data is entered once and shared among ~~agencies~~ *government entities at any level or political subdivision*.

*(d) Third-party providers of data, such as citizens, businesses, and other government entities, are responsible for the accuracy and integrity of the data provided to government entities.*

*(e) Government entities are required to conduct business through open, transparent processes to ensure accountability to the citizenry, and information technology provides access to information through simple and expeditious procedures.*

~~(c)~~*(f)* In order to minimize unwarranted duplication, similar information technology systems and data management applications are implemented and managed in a coordinated manner.

~~(d)~~*(g)* Planning and development of information technology resources are conducted in conjunction with budget development and approval.

~~(e)~~*(h)* Information technology systems are deployed aggressively whenever it can be shown that it will provide improved services to Montana citizens.

~~(f)~~*(i)* Public-private partnerships are used to deploy information technology systems when practical and cost-effective.

~~(g)~~*(j)* State information technology systems are developed in cooperation with the federal government and local governments with the objective of

providing seamless access to information and services to the greatest degree possible.

~~(h)~~*(k)* State information technology systems are able to accommodate electronic transmissions between the state and its citizens, businesses, and other government entities*, including providing financial incentives for citizens and businesses to use electronic government services*.

*(l) State information technology systems are able to embrace the economics of digitized records to avoid duplication and transport costs.*

*(m) Electronic record creation, management, storage, and retrieval processes and procedures are used to create and deliver professional records management experiences for the citizens of Montana.*

*(n) State information technology systems are able to embrace continuous process improvement initiatives in order to keep pace with new and emerging technologies and delivery channels in order to allow citizens to determine when, where, and how they interact with government agencies.*

(3) It is the policy of the state that the department must be accountable to the governor, the legislature, and the citizens of Montana."

Approved April 5, 2013

# CHAPTER NO. 167

[SB 128]

AN ACT PROVIDING THAT THE ACCOUNT OF AN EMPLOYER WITH AN EXPERIENCE RATING MAY NOT BE CHARGED WITH RESPECT TO UNEMPLOYMENT BENEFITS PAID WHEN AN EMPLOYEE LEAVES FOR GOOD CAUSE; AMENDING SECTION 39-51-1214, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 39-51-1214, MCA, is amended to read:

**"39-51-1214. Benefit payments chargeable to employer experience rating accounts — *definition.*** (1) Except for cost reimbursement, benefits paid must be charged to the account of each of the claimant's base period employers. The benefit charged must be based on the percentage of wages paid by the employer as compared to the total wages paid by all employers in the claimant's base period.

(2) The account of an employer with an experience rating as provided in 39-51-1213 may not be charged with respect to benefits paid under the following situations:

(a) if paid to a worker who terminated services voluntarily ~~without good cause attributable to~~ *with* a covered employer ~~or who had been discharged for misconduct in connection with services;~~ *without good cause. The department shall determine a claimant left work with good cause attributable to employment when:*

*(i) the claimant had compelling reasons arising from the work environment that caused the claimant to leave and the claimant:*

*(A) attempted to correct the problem in the work environment; and*

*(B) informed the employer of the problem and gave the employer reasonable opportunity to correct the problem;*

*(ii) the claimant left work that the department determines to be unsuitable; or*

*(iii) the claimant left work within 30 days of returning to state-approved training.*

(b) if paid in accordance with the extended benefit program triggered by either national or state indicators;

(c) if the base period employer continues to provide employment with no reduction in hours or wages;

(d) if benefits are paid to claimants who are in training approved under 39-51-2307;

(e) if the base period employer is ordered to military service, as defined in 10-1-1003;

(f) if benefits are paid to an employee laid off as the result of the return to work of a permanent employee who:

(i) was called to military service, as defined in 10-1-1003; and

(ii) had completed 4 or more weeks of military service and exercised reemployment rights under Title 10, chapter 1, part 10; ~~or~~

(g) if the worker separates from employment as a result of domestic violence, a sexual assault, or stalking pursuant to 39-51-2111*; or*

*(h) if paid to a worker who was terminated by the employer for misconduct or gross misconduct.*

*(3) For purposes of this section, the term "compelling reasons" includes but is not limited to:*

*(a) undue risk of injury, illness, or physical impairment or reasonably foreseeable risk to the claimant's morals;*

*(b) unreasonable actions by the employer concerning hours, wages, terms of employment, or working conditions;*

*(c) a condition underlying a workers' compensation or occupational disease claim for which liability has been accepted by a workers' compensation insurer. If the condition is one for which liability has not been accepted by the workers' compensation insurer, the department shall independently evaluate the condition to determine whether the condition appears to result from the claimant's employment. If the condition appears to the satisfaction of the department to be related to work, the department shall consider the condition to provide a compelling reason for leaving work.*

*(d) unreasonable rules or discipline by the employer so severe as to constitute harassment.*"

**Section 2. Effective date.** [This act] is effective July 1, 2013.

Approved April 7, 2013

# CHAPTER NO. 168

[HB 7]

AN ACT IMPLEMENTING THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; PRIORITIZING PROJECT GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AMENDING SECTION 90-2-1113, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Appropriations for reclamation and development grants.** (1) There is appropriated to the department of natural resources and conservation from the natural resources projects state special revenue account established in 15-38-302 up to:

(a) $1,000,000 to be used for planning reclamation and development projects to be awarded by the department over the course of the biennium ending June 30, 2015;

(b) $525,000 to implement measures to control invasive aquatic species in state waters; and

(c) $300,000 for ground water baseline sampling in areas potentially affected by oil and gas development.

(2) The amount of $4,418,645 is appropriated to the department of natural resources and conservation from the natural resources projects state special revenue account for grants to political subdivisions and local governments during the biennium ending June 30, 2015. The funds in this subsection must be awarded by the department to the named entities for the described purposes and in the grant amounts set out in subsection (4) subject to the conditions set forth in [sections 1 through 4] and the contingencies described in the reclamation and development grant program January 2013 report to the 63rd legislature. The legislature approves the grants listed in subsection (4).

(3) Funds must be awarded up to the amounts approved in this section in the order of priority listed in subsection (4). Funds not accepted or used by these projects may be provided for grants awarded under subsection (1) or under House Bill No. 6.

(4) The following are the prioritized grant projects:

| Applicant/Project | Grant Amount |
|---|---|
| Missoula County | |
| (Kennedy Creek Mine Reclamation) | $300,000 |
| Montana DEQ - Abandoned Mine Lands Bureau | |
| (South Fork Lower Willow Creek Black Pine Mine Reclamation) | $300,000 |
| Philipsburg, Town of | |
| (Tailings-Contaminated Sludge Disposal from Decommissioned Wastewater Lagoons) | $300,000 |
| Montana DEQ - LUST/Brownfields | |
| (Petroleum Product Delineation & Mitigation of Threat to Harlowton Public Water Supply Well) | $300,000 |
| Confederated Salish & Kootenai Tribes | |
| (Joseph Allotment and Elmo Cash Store - Cleanup Implementation) | $126,998 |
| Powell County | |
| (Milwaukee Roundhouse Recreational Subarea Interim Cleanup Action - Phase 2) | $300,000 |
| Missoula County | |
| (Sawpit Ninemile Reclamation) | $300,000 |
| Malta, City of | |
| (Former Malta Airport Facility - Herbicide/Pesticide Cleanup) | $249,480 |

| | |
|---|---|
| Cascade Conservation District | |
| (Barker-Hughesville Reclamation Area Fish Barrier Projects on Dry Fork Belt Creek) | $113,300 |
| Butte-Silver Bow City-County Government | |
| (Butte Mining District: Reclamation & Protection Project Phase IV) | $244,720 |
| Ryegate, Town of | |
| (Former Ryegate Conoco Groundwater Remediation) | $206,080 |
| Cascade County | |
| (County Shops Remediation of Wood Treatment Preservatives) | $300,000 |
| Butte-Silver Bow City-County Government | |
| (Irrigation Project for Butte Acidic Mine Waters) | $275,690 |
| Custer Conservation District | |
| (Addressing Cumulative Effects on the Yellowstone River) | $127,377 |
| Ruby Valley Conservation District | |
| (Upper Missouri Headwaters River/Flood Hazard Map Development) | $300,000 |
| Montana DEQ - Water Quality Planning | |
| (Baseline Groundwater Sampling in Areas of Anticipated Oil & Gas Development) | $160,000 |
| Yellowstone Conservation District | |
| (Lower Pryor Creek Stabilization and Restoration) | $70,000 |
| Montana DEQ - Abandoned Mine Lands Bureau | |
| (Sheridan County 2012-2013 Reclamation Project) | $300,000 |
| Montana DNRC - Water Projects | |
| (Deadman's Basin Diversion Dam) | $145,000 |

(5) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the biennium ending June 30, 2015, pursuant to 17-7-302.

**Section 2. Coordination of fund sources for project grants.** A project sponsor listed under [section 1(4)] may not be funded by both the reclamation and development grants program and the renewable resource grant program for the same project during the same biennium.

**Section 3. Conditions of grants.** Disbursement of grant funds under [sections 1 through 4] is subject to the following conditions that must be met by the project sponsor:

(1) A scope of work and budget for the project must be approved by the department of natural resources and conservation. Any changes in scope of work or budget subsequent to legislative approval may not change project goals and objectives. Changes in activities that would reduce the public or natural resource benefits may result in a proportional reduction in the grant amount.

(2) The project sponsor shall show satisfactory completion of conditions described in the recommendation section of the project narrative of the reclamation and development grants program report to the legislature for the biennium ending June 30, 2015.

(3) The project sponsor must have a fully executed grant agreement with the department.

(4) Any other specific requirements considered necessary by the department must be met to accomplish the purpose of the grant as evidenced from the application to the department or from the proposal as presented to the legislature.

**Section 4. Other appropriations.** There is appropriated to any entity of state government that receives a grant under [sections 1 through 3] the amount of the grant upon award of the grant by the department of natural resources and conservation. Grants to entities from a prior biennium are reauthorized for completion of contract work.

**Section 5.** Section 90-2-1113, MCA, is amended to read:

**"90-2-1113. Evaluation criteria — priority.** (1) Except as provided in subsections (2) and (3), the department shall consider the following criteria in evaluating eligible applications and in selecting projects to be recommended to the governor for funding:

(a) the degree to which the project will provide benefits in its eligibility category or categories;

(b) the degree to which the project will provide public benefits;

(c) the degree to which the project will promote, enhance, or advance the policies and purposes of the reclamation and development grants program;

(d) the degree to which the project will provide for the conservation of natural resources;

(e) the degree of need and urgency for the project;

(f) the extent to which the project sponsor or local entity is contributing to the costs of the project or is generating additional nonstate funds;

(g) the degree to which jobs are created for persons who need job training, receive public assistance, or are chronically unemployed; and

(h) any other criteria that the department considers necessary to carry out the policies and purposes of the reclamation and development grants program.

(2) (a) Subject to the conditions of this part, the department shall give priority to grant requests, not to exceed a total of $600,000 for the biennium, from the board of oil and gas conservation beginning on July 1, 2015. The board of oil and gas conservation shall use a grant that received priority under this subsection (2)(a) for oil and gas reclamation projects. The board may use a maximum of 2.5% of the amount of a grant for administrative costs associated with implementing the projects covered in the grant.

(b) Any unobligated fund balance of a grant that received priority under subsection (2)(a) remaining at the end of the current biennium must be included as part of the $600,000 limitation for the next biennium.

(c) The priority given to the board of oil and gas conservation under subsection (2)(a) does not preclude the board of oil and gas conservation from submitting additional grant requests. The department shall evaluate additional grant requests from the board of oil and gas conservation in accordance with the provisions of subsection (1).

(3) Subject to the conditions of this part, the department shall give priority to grant requests not to exceed a total of $800,000 for the biennium for abandoned mine reclamation projects. A grant may not be used for personnel costs or general operating expenses."

**Section 6. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

**Section 7. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 8. Effective date.** [This act] is effective July 1, 2013.

Approved April 9, 2013

# CHAPTER NO. 169

[HB 22]

AN ACT GENERALLY REVISING INSURANCE LAW; REVISING CONFIDENTIALITY REQUIREMENTS PERTAINING TO WORKING PAPERS; ESTABLISHING THAT THE PRESENTATION OF COUNTERFEIT DOCUMENTS IS A FORM OF INSURANCE FRAUD; REVISING DEPOSITARY OR CUSTODIAL AGREEMENTS REQUIREMENTS; REVISING BYLAWS OF FARM MUTUAL INSURERS WITH RESPECT TO THE TIME OF ANNUAL MEETINGS; MODIFYING MEMBERSHIP REQUIREMENTS FOR THE GUARANTY ASSOCIATION BOARD OF DIRECTORS; MODIFYING THE DEFINITION OF "HOME STATE"; CLARIFYING LICENSING REQUIREMENTS FOR NONRESIDENT ADJUSTERS AND CONSULTANTS; REVISING LICENSE DISPLAY REQUIREMENTS FOR INSURANCE PRODUCERS; MODIFYING THE TYPE OF PLANS SMALL EMPLOYER CARRIERS ARE REQUIRED TO OFFER TO SMALL EMPLOYERS; APPLYING CAPTIVE INSURANCE CAPITAL SURPLUS REQUIREMENTS TO RISK RETENTION GROUPS; AUTHORIZING ANY CAPTIVE INSURANCE COMPANY TO MAKE LOANS TO ITS AFFILIATES; REVISING REQUIREMENTS FOR BUSINESS WRITTEN BY A PROTECTED CELL CAPTIVE INSURANCE COMPANY; ESTABLISHING REQUIREMENTS FOR A PROTECTED CELL CAPTIVE INSURANCE COMPANY'S REINSURED BUSINESS; ELIMINATING THE REQUIREMENT THAT INSURERS AND HEALTH SERVICE CORPORATIONS OFFER GROUP UNIFORM HEALTH BENEFIT COVERAGE; AMENDING SECTIONS 33-1-409, 33-1-1202, 33-2-604, 33-2-606, 33-2-611, 33-2-612, 33-2-1303, 33-3-401, 33-4-302, 33-10-104, 33-17-102, 33-17-214, 33-17-301, 33-17-503, 33-17-505, 33-17-1101, 33-22-1811, 33-22-2002, 33-28-104, 33-28-202, AND 33-28-301, MCA; REPEALING SECTION 33-22-522, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 33-1-409, MCA, is amended to read:

**"33-1-409. Examination reports — hearings — confidentiality — publication.** (1) All examination reports must be composed only of facts appearing upon the books, records, or other documents of the company, its agents, or other persons examined or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs. The report must contain the conclusions and recommendations that the examiners find reasonably warranted from the facts.

(2) ~~No~~ *Not* later than 60 days following completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice that

gives the company examined a reasonable opportunity, but not more than 30 days, to make a written submission or rebuttal with respect to any matters contained in the examination report.

(3) Within 30 days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers and enter an order:

(a) adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation, or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure the violation.

(b) rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, information, or testimony and of refiling pursuant to subsection (2); or

(c) calling for an investigatory hearing with no less than 20 days' notice to the company for purposes of obtaining additional data, documentation, information, and testimony.

(4) (a) All orders entered pursuant to subsection (3)(a) must be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner workpapers, and any written submissions or rebuttals. An order must be considered a final administrative decision and may be appealed pursuant to Title 33, chapter 1, part 7, and must be served upon the company by certified mail, together with a copy of the adopted examination report. Within 30 days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(b) (i) A hearing conducted under subsection (3)(c) by the commissioner or an authorized representative must be conducted as a nonadversarial, confidential, investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant workpapers or by the written submission or rebuttal of the company. Within 20 days of the conclusion of the hearing, the commissioner shall enter an order pursuant to subsection (3)(a).

(ii) The commissioner may not appoint an examiner as an authorized representative to conduct the hearing. The hearing must proceed expeditiously with discovery by the company limited to the examiner's workpapers that tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or the commissioner's representative may issue subpoenas for the attendance of witnesses or the production of documents considered relevant to the investigation, whether under the control of the department, the company, or other persons. The documents produced must be included in the record, and testimony taken by the commissioner or the commissioner's representative must be under oath and preserved for the record. This section does not require the department to disclose any information or records that would indicate or show the existence or content of an investigation or activity of a criminal justice agency.

(iii) The hearing must proceed with the commissioner or the commissioner's representative posing questions to the persons subpoenaed. The company and

the department may present testimony relevant to the investigation. Cross-examination may be conducted only by the commissioner or the commissioner's representative. The company and the department must be permitted to make closing statements and may be represented by counsel of their choice.

(5) (a) Upon the adoption of the examination report under subsection (3)(a), the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of 30 days, except to the extent provided in subsection (2). After 30 days, the commissioner shall open the report for public inspection as long as a court of competent jurisdiction has not stayed its publication.

(b) This title does not prevent and may not be construed as prohibiting the commissioner from disclosing the content of an examination report or preliminary examination report, the results of an examination, or any matter relating to a report or results to the insurance department of this state or of any other state or country, to law enforcement officials of this state or of any other state, or to an agency of the federal government at any time as long as the agency or office receiving the report or matters relating to the report agrees in writing to hold it in a manner consistent with this part.

(c) If the commissioner determines that regulatory action is appropriate as a result of an examination, the commissioner may initiate any proceedings or actions as provided by law.

~~(6) All working papers, confidential criminal justice information, as defined in 44-5-103, personal information protected by an individual privacy interest, and trade secrets, as defined in 30-14-402, specifically identified and for which there are reasonable grounds of privilege asserted by the party claiming the privilege obtained by or disclosed to the commissioner or any other person in the course of an examination made under this part must be given confidential treatment, are not subject to subpoena, and may not be made public by the commissioner or any other person, except to the extent provided in subsection (5). Access may also be granted to the NAIC. The persons given access to confidential criminal justice information, trade secrets, and personal information shall agree in writing, prior to receiving the information, to treat the information in the manner required by this section unless the prior written consent of the company to which it pertains has been obtained.~~

*(6) (a) Working papers must be given confidential treatment, are not subject to subpoena, are not discoverable or admissible as evidence in any private action, and may not be made public by the commissioner or any other person except to the extent provided in 33-1-311(5) and subsection (5) of this section. Persons given access to working papers shall agree in writing, prior to receiving the information, to treat the information in the manner required by this section unless prior written consent has been obtained from the company to which the working papers pertain.*

*(b) For purposes of subsection (6)(a), "working papers" means:*

*(i) all papers and copies created, produced, obtained by, or disclosed to the commissioner or any other person in the course of an examination or analysis by the commissioner;*

*(ii) confidential criminal justice information, as defined in 44-5-103;*

*(iii) personal information protected by an individual privacy interest; and*

*(iv) specifically identified trade secrets, as defined in 30-14-402, that have been obtained by or disclosed to the commissioner or any other person in the*

*course of an examination made under this part for which there are reasonable grounds of privilege that are asserted by the party claiming the privilege.*"

**Section 2.** Section 33-1-1202, MCA, is amended to read:

**"33-1-1202. Insurance fraud.** A person commits the act of insurance fraud when the person:

(1) for the purpose of obtaining any money or benefit, presents or causes to be presented to any insurer, purported insurer, producer, or administrator, as defined in 33-17-102, any written or oral statement, including computer-generated documents, containing false, incomplete, or misleading information concerning any fact or thing material to, as part of, or in support of a claim for payment or other benefit pursuant to an insurance policy;

(2) assists, abets, solicits, or conspires with another to prepare or make any written or oral statement containing false, incomplete, or misleading information concerning any fact that is intended to be presented to any insurer or purported insurer or in connection with, material to, or in support of any claim for payment or other benefit pursuant to an insurance policy or contract;

(3) presents or causes to be presented to or by an insurer, purported insurer, producer, or administrator, as defined in 33-17-102, a materially false or altered application of insurance;

(4) accepts premium money knowing that coverage will not be provided;

(5) as a health care provider, submits a false or altered bill or report of physical condition to an insurer; ~~or~~

(6) offers or accepts a direct or indirect inducement to file a false statement of claim with the intent of deceiving an insurer*; or*

*(7) presents or causes to be presented counterfeit insurance documents to any person*."

**Section 3.** Section 33-2-604, MCA, is amended to read:

**"33-2-604. Depositary or custodian.** (1) Deposits made in this state under this code ~~shall~~ *must* be made through the office of the commissioner ~~in safe deposit~~ or under custodial arrangements as required or approved by the commissioner consistent with the purposes of ~~such~~ *the* deposit~~, with an established safe deposit institution,~~. *The deposit must be made with a* bank~~,~~ or trust company located in the ~~city of Helena,~~ state of Montana~~,~~ *and* selected by the insurer with the commissioner's approval. *The commissioner may, with good cause, withhold or withdraw approval.*

~~(2) No safe deposit shall be used for any such deposit unless the box or compartment in which are kept the assets and securities comprising the deposit requires two separate and distinctly differing keys or one key and a combination, in the case of a box having a combination lock, to open the same. One of such keys or the combination shall at all times be kept by the commissioner, and the other key or the combination shall at all times be kept by the insurer. Such box or compartment shall not at any time be opened or remain open except through the joint action and in the presence of both the commissioner and a duly authorized officer or representative of the insurer.~~

~~(3)~~*(2)* ~~Where of~~ *For* convenience *purposes,* ~~to the insurer~~ in the buying, selling, and exchange of securities comprising its deposit and in the collection of interest and other income currently accruing ~~thereon~~ *on the securities*, the insurer may, with the commissioner's *advance* written approval ~~in advance~~, deposit ~~certain of such~~ *the* securities under custodial arrangements with an established bank or trust company located outside this state.~~, so long as receipts~~ *Any receipts* representing ~~all such~~ *the* securities *that* are issued by ~~such~~ *an*

*out-of-state* custodian bank or trust company ~~and are held in safe deposit or custody~~ *are* subject to the requirements of ~~subsections~~ *subsection* (1) ~~and (2) of this section~~.

~~(4)~~*(3)* The form and terms of all ~~such~~ depositary or custodial agreements ~~shall~~ *must* be as prescribed or approved by the commissioner, consistent with the applicable provisions of this code.

~~(5)~~*(4)* The compensation and expenses of the depositary or custodian ~~shall~~ *must* be borne by the insurer."

**Section 4.** Section 33-2-606, MCA, is amended to read:

**"33-2-606. Assignment or conveyance of assets or securities.** All securities not negotiable by delivery and deposited under this code must be duly assigned to the commissioner ~~and the commissioner's successors in office~~. In the case of securities held under custodial arrangements outside this state pursuant to 33-2-604~~(3)~~*(2)*, the custodian's receipt for the securities must be delivered, if negotiable, or assigned to the commissioner if legal title to the securities is vested in the commissioner. The insurer shall transfer or convey to the commissioner ~~and the commissioner's successors in office~~ all other assets deposited. Upon release to the insurer of any asset or security, the commissioner shall reassign or transfer or reconvey the asset or security to the insurer."

**Section 5.** Section 33-2-611, MCA, is amended to read:

**"33-2-611. Deficiency of deposit — revocation of certificate.** If for any reason the market value of assets and securities of an insurer held on deposit in this state or in another state under custodial arrangements authorized by 33-2-604~~(3)~~*(2)* falls below the amount required under this code to be ~~so~~ held, the insurer shall promptly deposit other or additional assets or securities eligible for deposit under this part and in *an* amount sufficient to cure ~~such~~ *the* deficiency. If the insurer has failed to cure the deficiency within 20 days after receipt of notice ~~thereof~~ *of the deficiency* by ~~registered or~~ certified mail from the commissioner, the commissioner shall ~~forthwith~~ revoke the insurer's certificate of authority."

**Section 6.** Section 33-2-612, MCA, is amended to read:

**"33-2-612. Duration and release of deposit.** (1) Every deposit made in this state by an insurer pursuant to this code, including assets and securities held in another state under custodial arrangements permitted by 33-2-604~~(3)~~*(2)*, must be held as long as there is outstanding any liability of the insurer as to which the deposit was ~~so~~ required, or if a deposit was required under the retaliatory law, 33-2-709, the deposit must be held for as long as the basis of the retaliation exists.

(2) Upon the request of a domestic insurer, the commissioner shall return to the insurer the whole or any portion of the assets and securities of the insurer held on deposit when the commissioner is satisfied that the assets and securities to be returned are not subject to liability and are not required to be held by any provision of law or purposes of the original deposit. If the insurer has reinsured all its outstanding risks in another insurer or insurers authorized to transact insurance in this state, then the commissioner shall deliver the assets and securities to the insurer or insurers assuming the risks upon:

(a) written notice to the commissioner by the domestic insurer that the assets and securities have been assigned, transferred, and set over to the reinsuring insurer or insurers, accompanied by a verified copy of the assignment, transfer, or conveyance; and

(b) in the case of deposits of the reserves of domestic life insurers under 33-2-531, proof satisfactory to the commissioner that the reinsuring insurer or

insurers have deposited or will deposit and will maintain on deposit in public custody through the insurance supervisory official of its state of domicile assets and securities of like quality in an amount not less than the reserves of the policies and contracts reinsured, in addition to any other deposit of the insurer required or permitted by law, and, unless the insurer is required to deposit and maintain on deposit all of its reserves, that the deposit of the reserves will be deposited and held on deposit for the special benefit and protection of the holders of the life insurance policies and annuity contracts reinsured.

(3) The commissioner shall return to a foreign insurer any deposit made in this state by the insurer when the insurer has ceased transacting insurance in this state or in the United States, and the insurer is not subject to any liability in this state on account of which the deposit was held.

(4) If the insurer is subject to delinquency proceedings, as defined in part 13 of this chapter, upon the order of a court of competent jurisdiction, the commissioner shall yield the assets and securities held on deposit to the receiver, conservator, rehabilitator, or liquidator of the insurer or to any other properly designated official or officials who succeed to the management and control of the insurer's assets.

(5) A release of deposited assets may not be made except upon application to and the written order of the commissioner. The commissioner does not have personal liability for release of any deposit or part of a deposit made in good faith."

**Section 7.** Section 33-2-1303, MCA, is amended to read:

**"33-2-1303. Definitions.** For the purposes of this part the following definitions apply:

(1) "Ancillary state" means any state other than a domiciliary state.

(2) "Commissioner" means the commissioner of insurance of this state.

(3) "Creditor" is a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.

(4) "Delinquency proceeding" means any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving ~~such~~ *the* insurer and any summary proceeding under 33-2-1321 or 33-2-1322. "Formal delinquency proceeding" means any liquidation or rehabilitation proceeding.

(5) "Doing business" includes any of the following acts, whether effected by mail or otherwise:

(a) the issuance or delivery of contracts of insurance to persons resident in this state;

(b) the solicitation of applications for ~~such~~ contracts *of insurance* or other negotiations preliminary to the execution of ~~such~~ *the* contracts;

(c) the collection of premiums, membership fees, assessments, or other consideration for ~~such~~ contracts *of insurance*;

(d) the transaction of matters subsequent to execution of ~~such~~ contracts *of insurance* and arising out of them; or

(e) operating *as an insurer* under a license or certificate of authority~~, as an insurer,~~ issued by the commissioner.

(6) "Domiciliary state" means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, its state of entry.

(7) "Fair consideration" is given for property or *an* obligation:

(a) when in exchange for ~~such~~ *the* property or obligation, as a fair equivalent ~~therefor~~ *for the property or obligation* and in good faith, property is conveyed or services are rendered or an obligation is incurred or an antecedent debt is satisfied; or

(b) when ~~such~~ *the* property or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared to the value of the property or obligation obtained.

(8) "Foreign country" means any ~~other~~ jurisdiction not ~~in any state~~ *in any state*.

(9) "General assets" means all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, "general assets" includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, ~~shall~~ *must* be treated as general assets.

(10) "Guaranty association" means the Montana insurance guaranty association, the workers' compensation security fund, the Montana life and health insurance guaranty association, and any other similar entity ~~now or hereafter~~ created by the legislature of this state for the payment of claims of insolvent insurers. "Foreign guaranty association" means any similar entities ~~now in existence in or hereafter~~ created by the legislature of any other state.

(11) (a) "Insolvency" or "insolvent" means:

(i) for an insurer issuing only assessable fire insurance policies, the inability to pay any obligation within 30 days after it becomes payable; or

(ii) for any other insurer, the inability to pay its obligations when they are due or when its admitted assets do not exceed its liabilities plus the greater of:

(A) any capital and surplus required by law for its organization; or

(B) the total par or stated value of its authorized and issued capital stock~~;~~

~~(iii) as to any insurer licensed to do business in this state as of July 1, 1979, which does not meet the standard established under subsection (11)(a)(ii), for a period not to exceed 3 years from July 1, 1979, the inability to pay its obligations when they are due or that its admitted assets do not exceed its liabilities plus any required capital contribution ordered by the commissioner under provisions of the insurance law~~.

(b) For purposes of this subsection *(11)* "liabilities" include but are not limited to reserves required by statute or by the commissioner upon a subject company at the time of admission or subsequent ~~thereto~~ *to the time of admission*.

(12) "Insurer" means any person who has done, purports to do, is doing, or is licensed to do insurance business and is or has been subject to the authority of or to liquidation, rehabilitation, reorganization, supervision, or conservation by any insurance commissioner. Any other persons included under 33-2-1304 are considered to be insurers.

(13) "Preferred claim" means any claim with respect to which the terms of this part accord priority of payment from the general assets of the insurer.

(14) "Receiver" means *a* receiver, liquidator, rehabilitator, or conservator as the context requires.

(15) "Reciprocal state" means any state other than this state in which in substance and effect 33-2-1342(1), 33-2-1381, 33-2-1382, and 33-2-1384 through 33-2-1386 are in force and in which provisions are in force requiring that the commissioner or equivalent official be the receiver of a delinquent insurer and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.

(16) "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims ~~which~~ *that* have become liens upon specific assets by reason of judicial process.

(17) "Special deposit claim" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class of persons, but not including any claim secured by general assets.

(18) "State" means any state, district, or territory of the United States.

(19) "Transfer" includes the sale and every other mode, direct or indirect, of disposing of or parting with property or with an interest ~~therein~~ *in the property* or with the possession ~~thereof~~ *of the property* or fixing a lien upon property or upon an interest ~~therein~~ *in the property*, absolutely or conditionally, voluntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor is considered a transfer suffered by the debtor."

**Section 8.** Section 33-3-401, MCA, is amended to read:

**"33-3-401. Home office and records — penalty for unlawful removal of records or assets.** (1) Each domestic insurer ~~must have and~~ shall maintain its principal place of business and home office in this state and shall maintain at its principal place of business or home office complete records of its assets, transactions, and affairs in accordance with methods and systems customary or suitable to the kind or kinds of insurance that it transacts. Records of the insurer's operations and other financial records reasonably related to its insurance operations for the preceding 5 years must be maintained and be available to the commissioner or the commissioner's examiner.

(2) Each domestic insurer ~~must have and~~ shall maintain its assets in this state, except for:

(a) real property and appurtenant personal property lawfully owned by the insurer and located outside this state; and

(b) property of the insurer that is customary, necessary, and convenient to enable and facilitate the operation of its branch offices and regional home offices located outside this state as referred to in subsection (4).

(3) Removal of all or a material part of the records or assets of a domestic insurer from this state except pursuant to a plan of merger or consolidation approved by the commissioner under this code or for reasonable purposes and periods of time as may be approved by the commissioner in writing in advance is prohibited. Any person who removes or attempts to remove all or a material part of records or assets from the home office, other place of business, or safekeeping of the insurer in this state with the intent to remove the records or assets from this state or who conceals or attempts to conceal records or assets from the commissioner, in violation of this subsection, shall upon conviction be guilty of a felony punishable by a fine of not more than $10,000 or by imprisonment in the penitentiary for not more than 5 years or by both a fine and imprisonment in the discretion of the court. Upon any removal or attempted removal of records or assets or upon retention of records or assets or a material part of the records or assets outside this state beyond the period specified in the commissioner's

consent under which the records were removed or upon concealment of or attempt to conceal records or assets in violation of this section, the commissioner may institute delinquency proceedings against the insurer pursuant to the provisions of chapter 2, part 13.

(4) This section does not prohibit or prevent an insurer from:

(a) establishing and maintaining branch offices or regional home offices in other states when necessary or convenient to the transaction of its business and keeping there the detailed records and assets customary and necessary for the servicing of its insurance in force and affairs in the territory served by the out-of-state office, as long as the records and assets are made readily available at that office for examination by the commissioner when requested;

(b) having, depositing, or transmitting funds and assets of the insurer in or to jurisdictions outside of this state as reasonably and customarily required in the regular course of its business;

(c) making deposits under custodial arrangements as provided by 33-2-604~~(3)~~*(2)*.

(5) An insurer that fails to maintain records and make them available to the commissioner's staff is subject to the penalties and procedures in 33-1-317, 33-1-318, and 33-2-119."

**Section 9.** Section 33-4-302, MCA, is amended to read:

**"33-4-302. Bylaws — contents.** (1) The bylaws of a farm mutual insurer must provide:

(a) for the liability of each member for payment of the expenses and losses of the insurer and for what obligations must be given for the expenses and losses when a person applies for insurance;

(b) for the time when obligations of members for losses and expenses become due;

(c) for the limitation of liability of members for the payment of expenses and losses of the insurer;

(d) for the terms of office of the directors. At least part of the directors must be elected at each annual meeting of members. The term of any director may not be longer than 3 years.

(e) the ~~date~~ *month* of the annual meeting of the members, at which vacancies existing or occurring on the board of directors are to be filled by election by the members. Each member must be permitted to cast at least one vote, either in person or, if authorized in the bylaws, by proxy, for each director to be elected and may cumulate the member's votes for one or more directors, not exceeding the number to be elected.

(f) how directors are to be elected in case an election does not occur at the annual meeting or in event of resignation, disability, or death of a director;

(g) the manner and time of giving notice of annual and special meetings of members.

(2) The bylaws may provide:

(a) the character of property to be insured and under what restrictions and limitations;

(b) restrictions and limitations as to membership and the powers, duties, and obligations of the members other than as to obligations covered under subsection (1)(a);

(c) the manner of making and collecting assessments;

(d) the manner of the suspension and expulsion of members;

(e) the form of application and the form of policy;

(f) the manner of making proof, adjustment, and payment of losses;

(g) for who is authorized to adjust losses for the insurer;

(h) for arbitration, as provided in 33-4-411, in *the* event *that* the insurer's adjuster and any claimant cannot agree as to the amount of any insured damage or loss;

(i) the duties and compensation of the officers and the bonds to be required of them;

(j) the books and records to be kept by the insurer, *the* reports required of the officers, and the manner of examining and auditing their accounts;

(k) what must be contained on the corporate seal and when the seal is required to be used;

(l) other matters as may be considered necessary or convenient for the management of the affairs of the insurer."

**Section 10.** Section 33-10-104, MCA, is amended to read:

**"33-10-104. Board of directors — commissioner approval — compensation.** (1) The board of directors of the association consists of not less than seven or more than nine persons serving terms as established in the plan of operation. Two of the members must be appointed from the public at large by the commissioner. The other members of the board must be *member insurers and must be* selected by member insurers subject to the approval of the commissioner. Vacancies on the board must be filled for the remaining period of the term in the same manner as initial appointments.

(2) In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors."

**Section 11.** Section 33-17-102, MCA, is amended to read:

**"33-17-102. Definitions.** As used in this ~~title~~ *chapter*, the following definitions apply:

(1) (a) "Adjuster" means a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of an independent contractor or for a fee or commission investigates and negotiates the settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer.

(b) The term does not include a:

(i) licensed attorney who is qualified to practice law in this state;

(ii) salaried employee of an insurer or of a managing general agent;

(iii) licensed insurance producer who adjusts or assists in adjustment of losses arising under policies issued by the insurer;

(iv) licensed third-party administrator who adjusts or assists in adjustment of losses arising under policies issued by the insurer; or

(v) claims examiner as defined in 39-71-116.

(2) "Adjuster license" means a document issued by the commissioner that authorizes a person to act as an adjuster.

(3) (a) "Administrator" means a person who collects charges or premiums from residents of this state in connection with life, disability, property, or

casualty insurance or annuities or who adjusts or settles claims on these coverages.

(b) The term does not include:

(i) an employer on behalf of its employees or on behalf of the employees of one or more subsidiaries of affiliated corporations of the employer;

(ii) a union on behalf of its members;

(iii) (A) an insurer that is either authorized in this state or acting as an insurer with respect to a policy lawfully issued and delivered by the insurer in and pursuant to the laws of a state in which the insurer is authorized to transact insurance; or

(B) a health service corporation as defined in 33-30-101;

(iv) a life, disability, property, or casualty insurance producer who is licensed in this state and whose activities are limited exclusively to the sale of insurance;

(v) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(vi) a trust established in conformity with 29 U.S.C. 186 or the trustees, agents, and employees of the trust;

(vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees and employees of the trust;

(viii) a custodian acting pursuant to a custodian account that meets the requirements of section 401(f) of the Internal Revenue Code or the agents and employees of the custodian;

(ix) a bank, credit union, or other financial institution that is subject to supervision or examination by federal or state banking authorities;

(x) a company that issues credit cards and that advances for and collects premiums or charges from the company's credit card holders who have authorized the company to do so, if the company does not adjust or settle claims;

(xi) a person who adjusts or settles claims in the normal course of the person's practice or employment as an attorney and who does not collect charges or premiums in connection with life or disability insurance or annuities; or

(xii) a person appointed as a managing general agent in this state whose activities are limited exclusively to those described in 33-2-1501(10) and Title 33, chapter 2, part 16.

~~(4) "Administrator license" means a document issued by the commissioner that authorizes a person to act as an administrator.~~

~~(5)~~*(4)* (a) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(b) The term does not include an individual.

~~(6)~~*(5)* "Consultant" means an individual who for a fee examines, appraises, reviews, evaluates, makes recommendations, or gives advice regarding an insurance policy, annuity, or pension contract, plan, or program.

~~(7)~~*(6)* "Consultant license" means a document issued by the commissioner that authorizes an individual to act as an insurance consultant.

~~(8)~~*(7)* "Home state" means the District of Columbia or any state or territory of the United States in which ~~the insurance producer:~~ *a person licensed under this chapter*

~~(a)~~ maintains a principal place of residence or a principal place of business~~;~~ ~~and~~

~~(b) is licensed as an insurance producer~~.

~~(9)~~*(8)* "Individual" means a natural person.

~~(10)~~*(9)* "Insurance producer", except as provided in 33-17-103, means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

~~(11)~~*(10)* "Lapse" means the expiration of the license for failure to renew by the biennial renewal date.

~~(12)~~*(11)* "License" means a document issued by the commissioner that authorizes a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create actual, apparent, or inherent authority in the holder to represent or commit an insurer to a binding agreement.

~~(13)~~*(12)* "Limited line credit insurance" includes credit life insurance, credit disability insurance, credit property insurance, credit unemployment insurance, involuntary unemployment insurance, mortgage life insurance, mortgage guaranty insurance, mortgage disability insurance, gap insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing the credit obligation and that the commissioner determines should be designated as a form of limited line credit insurance.

~~(14)~~*(13)* "Limited line credit insurance producer" means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy.

~~(15)~~*(14)* "Limited lines insurance" means those lines of insurance that the commissioner finds necessary to recognize for the purposes of complying with 33-17-401(3).

~~(16)~~*(15)* "Limited lines producer" means a person authorized by the commissioner to sell, solicit, or negotiate limited lines insurance.

~~(17)~~*(16)* "Lines of authority" means any kind of insurance as defined in Title 33.

~~(18)~~*(17)* "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract if the person engaged in negotiation either sells insurance or obtains insurance from insurers for purchasers.

~~(19)~~*(18)* "Person" means an individual or a business entity.

~~(20)~~*(19)* "Public adjuster" means an adjuster employed by and representing the interests of the insured.

~~(21)~~*(20)* "Sell" means to exchange a contract of insurance by any means, for money or the equivalent, on behalf of an insurance company.

~~(22)~~*(21)* "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance.

~~(23)~~*(22)* "Suspend" means to bar the use of a person's license for a period of time.

~~(24) "Uniform application" means the national association of insurance commissioners' uniform application for resident and nonresident insurance producer licensing.~~

~~(25) "Uniform business entity application" means the national association of insurance commissioners uniform business entity application for resident and nonresident business entities.~~"

**Section 12.** Section 33-17-214, MCA, is amended to read:

**"33-17-214. Issuance of license — insurance producer lines of authority — license data — lapse of license — change of address.** (1) A person who has met the requirements of 33-17-211 and 33-17-212 must be issued a license unless that person has been denied a license pursuant to 33-17-1001.

(2) An insurance producer may receive a license qualifying the insurance producer in one or more of the following lines of authority:

(a) life insurance coverage on human lives, including benefits of endowment and annuities, and the coverage may include:

(i) funeral insurance as defined in 33-20-1501;

(ii) benefits in the event of death or dismemberment by accident; and

(iii) benefits for disability income;

(b) accident and health or sickness insurance coverage providing for sickness, bodily injury, or accidental death, and the coverage may provide benefits for disability income;

(c) property insurance coverage for the direct or consequential loss or damage to property of every kind;

(d) casualty insurance coverage against legal liability, including liability for death, injury, or disability or damage to real or personal property;

(e) variable life and variable annuity products insurance coverage provided under variable life insurance contracts and variable annuities;

(f) personal lines of property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;

(g) limited line credit insurance; or

(h) any other line of insurance permitted under Title 33.

(3) The license must state the name and *primary business* address of the licensee, personal identification number, date of issuance, general conditions relative to expiration or termination, kind of insurance covered, and other information that the commissioner considers necessary.

(4) The license of a business entity must also state the name of each individual authorized to exercise the license powers.

(5) Each license remains in effect~~,~~ unless it is suspended, revoked, or terminated or the license lapses.

(6) (a) A person shall inform the commissioner in writing within 30 days of:

(i) a change of address *or a change of business e-mail address*;

(ii) the final disposition resulting in disciplinary action taken against or a conviction of the insurance producer in any state or federal jurisdiction or by another governmental agency in this state of:

(A) any administrative action related to transacting insurance;

(B) any action taken against any type of securities license; and

(C) any criminal action, excluding traffic violations.

(b) (i) As used in this subsection (6), "final disposition" includes but is not limited to a settlement agreement, consent order, plea agreement, sentence and judgment, or order.

(ii) The term does not include an action that is dismissed or that results in an acquittal, for which ~~no~~ *a* report is *not* necessary."

**Section 13.** Section 33-17-301, MCA, is amended to read:

**"33-17-301. Adjuster license — qualifications — catastrophe adjustments — public adjuster.** (1) An individual may not act as or purport to be an adjuster in this state unless licensed as an adjuster under this chapter. An individual shall apply to the commissioner for an adjuster license in a form approved by the commissioner. The commissioner shall issue the adjuster license to individuals qualified to be licensed as an adjuster.

(2) To be licensed as an adjuster, the applicant:

(a) must be an individual 18 years of age or ~~more~~ *older*;

(b) *(i)* must be a resident of Montana or *a* resident of another state that permits residents of Montana regularly to act as adjusters in the other state; *or*

*(ii) if not a resident of this state, shall designate a home state in which the adjuster does not maintain a place of business or residence if:*

*(A) the adjuster's principal state of business or residence does not offer adjuster licensure; and*

*(B) the adjuster qualifies for the license as if the adjuster were a resident of the designated home state;*

(c) shall pass an adjuster licensing examination as prescribed by the commissioner and pay the fee pursuant to 33-2-708;

(d) must be trustworthy and of good character and reputation;

*(e) shall submit to a licensing background examination that meets the requirements provided in 33-17-220;* and

~~(e)~~*(f)* ~~must have and~~ shall maintain in this state an office accessible to the public and shall keep in the office for not less than 5 years the usual and customary records pertaining to transactions under the license. This provision does not prohibit maintenance of the office in the home of the licensee.

(3) A business entity, whether or not organized under the laws of this state, may be licensed as an adjuster if each individual who is to exercise the adjuster license powers is separately licensed or is named in the business entity adjuster license and is qualified for an individual adjuster license.

(4) An adjuster license or qualifications are not required for an adjuster who is sent into this state by and on behalf of an insurer or adjusting business entity for the purpose of investigating or making adjustments of a particular loss under an insurance policy or for the adjustment of a series of losses resulting from a catastrophe common to all losses.

(5) An adjuster license continues in force until lapsed, suspended, revoked, or terminated. The licensee shall renew the license by the biennial renewal date and pay the appropriate fee or the license will lapse. The biennial fee is established pursuant to 33-2-708.

(6) The commissioner may adopt rules providing for the examination, licensure, bonding, and regulation of public adjusters."

**Section 14.** Section 33-17-503, MCA, is amended to read:

**"33-17-503. Application — *residency* — fee — expiration.** (1) Before a consultant license is issued or renewed, the prospective licensee shall:

(a) properly file with the office of the commissioner a written application in a form approved by the commissioner; and

(b) pay a fee pursuant to 33-2-708, which the commissioner shall forward to the state treasurer to be deposited in the state special revenue fund to the credit of the state auditor's office.

*(2) To be licensed as a consultant, the prospective licensee:*

*(a) must be an individual 18 years of age or older; and*

*(b) (i) must be a resident of Montana or a resident of another state that permits residents of Montana regularly to act as consultants in the other state; or*

*(ii) if not a resident of this state, shall designate a home state in which the consultant does not maintain a place of business or residence if:*

*(A) the consultant's principal state of business or residence does not offer consultant licensure; and*

*(B) the consultant qualifies for the license as if the consultant were a resident of the designated home state.*

~~(2)~~*(3)* A consultant license continues in force until lapsed, suspended, revoked, or terminated."

**Section 15.** Section 33-17-505, MCA, is amended to read:

**"33-17-505. Qualification examination — *background examination.*** (1) *(a)* In order to determine the competency of an applicant for a consultant license, the commissioner shall require the applicant to pass an examination.

~~(2)~~*(b)* The commissioner may conduct the examination or make arrangements, including contracting with an outside testing service, for administering the examination and collecting the fees required by 33-17-503. The commissioner may arrange for the testing service to recover its cost of the examination from the applicant.

*(2) The applicant shall submit to a licensing background examination that meets the requirements provided in 33-17-220.*"

**Section 16.** Section 33-17-1101, MCA, is amended to read:

**"33-17-1101. Place of business — display of license — records.** (1) A resident insurance producer shall maintain a place or places of business in this state accessible to the public. A nonresident insurance producer may maintain a place or places of business in this state. An insurance producer's place or places of business must be a place in which transactions are conducted under the insurance producer's license. The ~~street~~ address ~~or addresses~~ of the *primary* place ~~or places~~ of business must appear ~~upon~~ *on* the license. This section does not prohibit the maintenance of a place of business in a licensee's place of residence.

(2) The license *or, if the insurance producer has more than one place of business, a copy of the license* must be conspicuously displayed ~~in a place of business at the street address shown on the license~~ in a part of the place of business customarily open to the public.

(3) The insurance producer shall keep at a place of business complete records pertaining to transactions under the license for a period of at least 3 years after completion of the respective transactions, except that a title insurance producer, as defined in 33-25-105, shall retain records as provided in 33-25-214 and 33-25-216."

**Section 17.** Section 33-22-1811, MCA, is amended to read:

**"33-22-1811. Availability of coverage — required plans.** (1) (a) As a condition of transacting business in this state with small employers, each small employer carrier must have approved for issuance to small employer groups at least two health benefit plans. ~~One plan must be a basic health benefit plan, and one plan must be a standard health benefit plan.~~

(b) (i) A small employer carrier shall issue all plans marketed under this part to any eligible small employer that applies for a plan and agrees to make the

required premium payments and to satisfy the other reasonable provisions of the health benefit plan not inconsistent with this part.

(ii) In the case of a small employer carrier that establishes more than one class of business pursuant to 33-22-1808, the small employer carrier shall maintain and offer to eligible small employers all plans marketed under this part in each established class of business. A small employer carrier may apply reasonable criteria in determining whether to accept a small employer into a class of business, provided that:

(A) the criteria are not intended to discourage or prevent acceptance of small employers applying for a health benefit plan;

(B) the criteria are not related to the health status or claims experience of the small employers' employees;

(C) the criteria are applied consistently to all small employers that apply for coverage in that class of business; and

(D) the small employer carrier provides for the acceptance of all eligible small employers into one or more classes of business.

(iii) The provisions of subsection (1)(b)(ii) may not be applied to a class of business into which the small employer carrier is no longer enrolling new small businesses.

~~(c) A small employer carrier that elects not to comply with the requirements of subsections (1)(a) and (1)(b) may continue to provide coverage under health benefit plans previously issued to small employers in this state for a period of no more than 7 years from October 1, 1995, if the carrier:~~

~~(i) complies with all other applicable provisions of this part, except 33-22-1810, 33-22-1813, and subsections (2) through (4) of this section;~~

~~(ii) does not amend or alter the benefits and coverages of the previously issued health benefit plans unless required to do so by law or rule; and~~

~~(iii) complies with all applicable provisions of Public Law 104-191.~~

(2) (a) A small employer carrier shall, pursuant to 33-1-501, file the basic health benefit plans and the standard health benefit plans to be used by the small employer carrier.

(b) The commissioner may at any time, after providing notice and an opportunity for a hearing to the small employer carrier, disapprove the continued use by a small employer carrier of a basic or standard health benefit plan on the grounds that the plan does not meet the requirements of this part.

(3) Health benefit plans covering small employers must comply with the following provisions:

(a) A health benefit plan may not:

(i) because of a preexisting condition, deny, exclude, or limit benefits for a covered individual for losses incurred more than 12 months following the individual's enrollment date. A health benefit plan may not define a preexisting condition exclusion more restrictively than 33-22-140.

(ii) use a preexisting condition exclusion more restrictive than exclusions allowed under 33-22-514.

(b) A health benefit plan must waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services for the period of time that an individual was previously covered by creditable coverage that provided benefits with respect to those services if the creditable coverage was continuous to a date not more than 63 days prior to the submission of an application for new coverage. A health benefit plan may

determine waivers of time periods applicable to preexisting condition exclusions or limitations on the basis of prior coverage of benefits within each of several classes or categories as specified in regulations implementing Public Law 104-191, rather than as provided in this subsection (3)(b). This subsection (3)(b) does not preclude application of any waiting period applicable to all new enrollees under the health benefit plan.

(c) A health benefit plan may exclude coverage for late enrollees for 18 months or for an 18-month preexisting condition exclusion, provided that if both a period of exclusion from coverage and a preexisting condition exclusion are applicable to a late enrollee, the combined period may not exceed 18 months from the date on which the individual enrolls for coverage under the health benefit plan.

(d) (i) Requirements used by a small employer carrier in determining whether to provide coverage to a small employer, including requirements for minimum participation of eligible employees and minimum employer contributions, must be applied uniformly among all small employers that have the same number of eligible employees and that apply for coverage or receive coverage from the small employer carrier. For the purpose of meeting minimum participation requirements of groups of four or more, a small employer carrier may not consider employees who, because they are covered under another health plan, waive coverage under the small employer's plan as part of the group of eligible employees. However, a small employer carrier may require at least two eligible employees to participate in a plan.

(ii) A small employer carrier may vary the application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

(e) (i) If a small employer carrier offers coverage to a small employer, the small employer carrier shall offer coverage to all of the eligible employees of a small employer and their dependents. A small employer carrier may not offer coverage only to certain individuals in a small employer group or only to part of the group, except in the case of late enrollees as provided in subsection (3)(c).

(ii) A small employer carrier may not modify a plan marketed under this part with respect to a small employer or any eligible employee or dependent, through riders, endorsements, or otherwise, to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

(iii) A small employer carrier shall secure a waiver of coverage from each eligible employee who declines, at the sole discretion of the eligible employee, an offer of coverage under a health benefit plan provided by the small employer. The waiver must be signed by the eligible employee and must certify that the employee was informed of the availability of coverage under the health benefit plan and of the penalties for late enrollment. The waiver may not require the eligible employee to disclose the reasons for declining coverage.

(iv) A small employer carrier may not issue coverage to a small employer if the carrier or a producer for the carrier has evidence that the small employer induced or pressured an eligible employee to decline coverage due to the health status or risk characteristics of the eligible employee or of the dependents of the eligible employee.

(4) (a) A small employer carrier may not be required to offer coverage or accept applications pursuant to subsection (1) in the case of the following:

(i) to an employer whose employees do not work or reside within the small employer carrier's established geographic service area for a network plan, as defined in 33-22-140; or

(ii) within an area where the small employer carrier reasonably anticipates and demonstrates to the satisfaction of the commissioner that it will not have the capacity within its established geographic service area to deliver service adequately to the members of a group because of its obligations to existing group policyholders and enrollees. The small employer carrier may not deny coverage under this subsection unless the small employer carrier acts uniformly without regard to claims experience or health status-related factors of employers, employees, or dependents.

(b) A small employer carrier may not be required to provide coverage to small employers pursuant to subsection (1) for which the commissioner determines that the small employer carrier does not have the financial reserves necessary to underwrite additional coverage and that the small employer carrier has denied coverage of small employers uniformly throughout the state and without regard to the claims experience and health status-related factors of the applicant small employer groups. The small employer carrier exempted from providing coverage under this subsection may not offer coverage to small employer groups in this state for 180 days after the date on which coverage is denied or until the small employer carrier has demonstrated to the commissioner that the small employer carrier has sufficient financial reserves to underwrite additional coverage, whichever is later."

**Section 18.** Section 33-22-2002, MCA, is amended to read:

**"33-22-2002. Small business health insurance pool — definitions.** As used in this part, the following definitions apply:

(1) "Board" means the board of directors of the small business health insurance pool as provided for in 33-22-2003.

(2) "Dependent" has the meaning provided in 33-22-1803.

(3) (a) "Eligible small employer" means an employer who is sponsoring or will sponsor a group health plan and who employed at least two but not more than nine employees during the preceding calendar year and who employs at least two but not more than nine employees on the first day of the plan year.

(b) The term includes small employers who obtain group health plan coverage through a qualified association health plan.

(4) "Employee" means an eligible employee as defined in 33-22-1803.

(5) "Group health plan" means health insurance coverage offered in connection with a group health plan or health insurance coverage offered to an eligible group as described in 33-22-501.

(6) "Premium" means the amount of money that a health insurance issuer charges to provide coverage under a group health plan.

(7) "Premium assistance payment" means a payment provided for in 33-22-2006 on behalf of employees who qualify to be applied on a monthly basis to premiums paid for group health plan coverage through the purchasing pool or through qualified association health plans.

(8) "Premium incentive payment" means a payment provided for in 33-22-2007(1)(b) to eligible small employers who qualify under 33-22-2007 to be applied to premiums paid on a monthly basis for group health plan coverage obtained through the purchasing pool or through qualified association health plans.

(9) "Purchasing pool" means the small business health insurance pool.

(10) "Qualified association health plan" means a plan established by an association whose members consist of employers who sponsor group health plans for their employees and purchase that coverage through an association that qualifies as a bona fide association, as defined in 33-22-1803, or nonbona fide, as provided for in administrative rule. A qualified association health plan is subject to applicable employer group health insurance law and must receive approval from the commissioner to operate as a qualified association health plan for the purposes of this part.

(11) "Related employers" means:

(a) affiliates or affiliated entities or persons who directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with a specified entity or person; ~~and~~ *or*

(b) entities or persons that are eligible to file a combined or joint tax return for purposes of state taxation.

(12) "Tax credit" means a refundable tax credit as provided for in 33-22-2008.

(13) "Tax year" means the taxpayer's tax year for federal income tax purposes."

**Section 19.** Section 33-28-104, MCA, is amended to read:

**"33-28-104. Minimum capital surplus — letter of credit.** (1) A captive insurance company may not be issued a license unless it possesses and maintains unimpaired paid-in capital and surplus of:

(a) in the case of a pure captive insurance company, not less than $250,000;

(b) in the case of an industrial insured captive insurance company, *including a captive risk retention group,* not less than $500,000;

(c) in the case of an association captive insurance company, not less than $500,000;

(d) in the case of a special purpose captive insurance company, an amount determined by the commissioner after giving due consideration to the company's business plan, feasibility study, and pro forma documents, including the nature of the risks to be insured;

(e) in the case of a protected cell captive insurance company, not less than $500,000. However, if the protected cell captive insurance company does not assume any risks, the risks insured by the protected cells are homogenous, and if there are not more than 10 cells, the commissioner may reduce the amount required in this subsection (1)(e) to an amount not less than $250,000.

(f) in the case of a branch captive insurance company, not less than the applicable amount of capital and surplus required in subsections (1)(a) through (1)(e), as determined based upon the organizational form of the foreign captive insurance company. The minimum capital and surplus must be jointly held by the commissioner and the branch captive insurance company in a bank of the federal reserve system approved by the commissioner.

(g) in the case of a captive reinsurance company, not less than 50% of the capital that would be required for that type of captive insurance company.

(2) The commissioner may require additional capital and surplus based upon the type, volume, and nature of insurance business transacted.

(3) Capital and surplus may be in the form of cash, cash equivalent, or an irrevocable letter of credit issued by a bank chartered by the state of Montana or a member bank of the federal reserve system and approved by the commissioner."

**Section 20.** Section 33-28-202, MCA, is amended to read:

**"33-28-202. Legal investments.** (1) (a) An industrial insured captive insurance company, an association captive insurance company, and a captive risk retention group shall comply with the investment requirements contained in Title 33, chapter 12, and the rules promulgated in accordance with these provisions.

(b) The commissioner may approve the use of alternative reliable methods of valuation and rating.

(c) When a captive insurance company's admitted assets total less than $5 million, the commissioner may approve an investment of up to 20% of admitted assets in rated credit instruments in any one investment that meets the requirements of 33-12-303(1)(c).

(2) A pure captive insurance company or protected cell captive insurance company is not subject to any restrictions on allowable investments, except that the commissioner may prohibit or limit any investment that threatens the solvency or liquidity of the company.

(3) ~~Only a pure~~ *Any* captive insurance company may make loans to ~~its parent company or~~ *any of its* affiliates. Loans ~~to a parent company or any affiliate~~ may not be made without prior written approval of the commissioner and must be evidenced by a note in a form approved by the commissioner. Loans of minimum capital and surplus funds required by 33-28-104 are prohibited."

**Section 21.** Section 33-28-301, MCA, is amended to read:

**"33-28-301. Protected cell captive insurance company.** (1) One or more sponsors may form a protected cell captive insurance company, which may be incorporated or unincorporated.

(2) A protected cell captive insurance company formed or licensed under the provisions of this chapter is subject to the following:

(a) (i) A protected cell captive insurance company may establish one or more protected cells with the prior written approval of the commissioner of a plan of operation or amendments submitted by the protected cell captive insurance company with respect to each protected cell.

(ii) Upon the written approval of the commissioner of the plan of operation, which must include but is not limited to the specific business objectives and investment guidelines of the protected cell, the protected cell captive insurance company in accordance with the approved plan of operation may attribute to the protected cell insurance obligations with respect to its insurance business.

(iii) A protected cell must have its own distinct name or designation that must include the words "protected cell" or "incorporated cell".

(iv) The protected cell captive insurance company shall transfer all assets attributable to a protected cell to one or more separately established and identified protected cell accounts bearing the name or designation of that protected cell. Protected cell assets must be held in the protected cell accounts for the purpose of satisfying the obligations of that protected cell.

(v) An incorporated protected cell may be organized and operated in any form of business organization authorized by the commissioner. Each incorporated protected cell of a protected cell captive insurance company must be treated as a captive insurance company for purposes of this chapter, except for the application of 33-28-201. Unless otherwise permitted by the articles of incorporation or other organizational document of a protected cell captive insurance company, each incorporated protected cell of the protected cell

captive insurance company must have the same directors, secretary, and registered office as the protected cell captive insurance company.

(b) All attributions of assets and liabilities between a protected cell and the protected cell captive insurance company's general account must be in accordance with the plan of operation and participant contracts approved by the commissioner. No other attribution of assets and liabilities may be made by a protected cell captive insurance company between the protected cell captive insurance company's general account and its protected cells. Any attribution of assets and liabilities between the general account and a protected cell must be in cash or in readily marketable securities with established market values.

(c) The creation of a protected cell does not create, with respect to that protected cell, a legal person separate from the protected cell captive insurance company unless the protected cell is an incorporated cell. Amounts attributed to a protected cell under this chapter, including assets transferred to a protected cell account, are owned by the protected cell, and the protected cell captive insurance company may not be a trustee or hold itself out to be a trustee with respect to those protected cell assets of that protected cell account. A protected cell captive insurance company may allow for a security interest to attach to protected cell assets or a protected cell account when the security interest is in favor of a creditor of the protected cell and is otherwise allowed under applicable law.

(d) This chapter may not be construed to prohibit the protected cell captive insurance company from contracting with or arranging for an investment adviser, commodity trading adviser, or other third party to manage the protected cell assets of a protected cell if all remuneration, expenses, and other compensation of the third party are payable from the protected cell assets of that protected cell and not from the protected cell assets of other protected cells or the assets of the protected cell captive insurance company's general account.

(e) (i) A protected cell captive insurance company shall establish administrative and accounting procedures necessary to properly identify the one or more protected cells of the protected cell captive insurance company and the protected cell assets and protected cell liabilities attributable to the protected cells. The directors of a protected cell captive insurance company shall keep protected cell assets and protected cell liabilities:

(A) separate and separately identifiable from the assets and liabilities of the protected cell captive insurance company's general account; and

(B) attributable to one protected cell separate and separately identifiable from protected cell assets and protected cell liabilities attributable to other protected cells.

(ii) If the provisions of this subsection (2)(e) are violated, the remedy of tracing is applicable to protected cell assets commingled with protected cell assets of other protected cells or the assets of the protected cell captive insurance company's general account. The remedy of tracing may not be construed as an exclusive remedy.

(f) When establishing a protected cell, the protected cell captive insurance company shall attribute to the protected cell assets with a value at least equal to the reserves attributed to that protected cell.

(3) Each protected cell must be accounted for separately on the books and records of the protected cell captive insurance company to reflect the financial condition and result of operations of the protected cell, including but not limited to the net income or loss, dividends or other distributions to participants, and

any other factor provided in the participant contract or required by the commissioner.

(4) The assets of a protected cell may not be chargeable with liabilities arising from any other insurance business of the protected cell captive insurance company.

(5) A sale, exchange, or other transfer of assets may not be made by a protected cell captive insurance company among any of its protected cells without the consent of the participants of each affected protected cell.

(6) A sale, exchange, transfer of assets, dividend, or distribution may not be made from a protected cell to a sponsor or a participant without the commissioner's prior written approval, which may not be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to the protected cell.

(7) Each protected cell captive insurance company shall file annually with the commissioner any financial reports required by the commissioner and shall include, without limitation, accounting statements detailing the financial experience of each protected cell.

(8) Each protected cell captive insurance company shall notify the commissioner in writing within 20 business days from the time that a protected cell has become impaired or insolvent or is otherwise unable to meets its claim or expense obligations.

(9) A participant contract may not take effect without the commissioner's prior written approval.

(10) An addition of each new protected cell or the withdrawal of any participant of an existing protected cell constitutes a change in the business plan of the protected cell captive insurance company and may not be effective without the commissioner's prior written approval.

(11) The business written by a protected cell captive insurance company, with respect to each cell, must be~~:~~

~~(a)~~ fronted by an insurance company licensed under the laws of any state *or approved by the commissioner*~~;~~

~~(b) reinsured by a reinsurer authorized or approved by the commissioner; or~~

~~(c) secured by a trust fund in the United States for the benefit of policyholders and claimants, which must be funded by an irrevocable letter of credit or other asset that is acceptable to the commissioner, and with the following requirements:~~

~~(i) the amount of the security provided by the trust fund may not be less than the reserves associated with the liabilities that are not fronted or reinsured, including but not limited to reserves for losses that are allocated for loss adjustment expenses, incurred but not reported losses, and unearned premiums for business written through the participant's protected cell;~~

~~(ii) the commissioner may require the protected cell captive insurance company to increase the funding of any trust;~~

~~(iii) if the form of security in the trust is a letter of credit, the letter of credit must be established, issued, or confirmed by a bank chartered in this state, a member of the federal reserve system, or a bank chartered by another state if that state-chartered bank is acceptable to the commissioner; and~~

~~(iv) the trust and trust instrument must be in a form and with terms approved by the commissioner~~.

*(12) If a protected cell captive insurance company's business is reinsured, with respect to each cell it must be:*

*(a) reinsured by a reinsurer authorized or approved by the commissioner; or*

*(b) secured by a trust fund in the United States for the benefit of policyholders and claimants, which must be funded by an irrevocable letter of credit or other asset that is acceptable to the commissioner, and subject to the following:*

*(i) the amount of the security provided by the trust fund may not be less than the reserves associated with the liabilities that are not fronted or reinsured, including but not limited to reserves for losses that are allocated for loss adjustment expenses, incurred but not reported losses, and unearned premiums for business written through the participant's protected cell;*

*(ii) the commissioner may require the protected cell captive insurance company to increase the funding of any trust;*

*(iii) if the form of security in the trust is a letter of credit, the letter of credit must be established, issued, or confirmed by a bank chartered in this state, a member of the federal reserve system, or a bank chartered by another state if that state-chartered bank is acceptable to the commissioner; and*

*(iv) the trust and trust instrument must be in a form and with terms approved by the commissioner.*"

**Section 22. Repealer.** The following section of the Montana Code Annotated is repealed:

33-22-522. Uniform health benefit plan — group.

**Section 23. Effective date.** [This act] is effective on passage and approval.

Approved April 9, 2013

# CHAPTER NO. 170

[HB 194]

AN ACT INCREASING THE CONTRACT AMOUNT FOR WHICH A LOCAL GOVERNMENT PROJECT MUST BE PUT TO A BID IF THE PROJECT IS FUNDED WITH GASOLINE TAXES; AMENDING 15-70-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-70-101, MCA, is amended to read:

**"15-70-101. Disposition of funds.** (1) All taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be placed in a highway revenue account in the state special revenue fund to the credit of the department of transportation. All interest and income earned on the account must be deposited to the credit of the account and any unexpended balance in the account must remain in the account. Those funds allocated to cities, towns, counties, and consolidated city-county governments in this section must, in accordance with the provisions of 17-2-124, be paid by the department of transportation from the state special revenue fund to the cities, towns, counties, and consolidated city-county governments.

(2) The amount of $16,766,000 of the taxes collected under this chapter is statutorily appropriated, as provided in 17-7-502, to the department of transportation and must be allocated each fiscal year on a monthly basis to the counties, incorporated cities and towns, and consolidated city-county governments in Montana for construction, reconstruction, maintenance, and

repair of rural roads and city or town streets and alleys, as provided in subsections (2)(a) through (2)(c):

(a) The amount of $100,000 must be designated for the purposes and functions of the Montana local technical assistance transportation program in Bozeman.

(b) The amount of $6,306,000 must be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the national highway system and the primary system, bears to the total rural road mileage in the state, exclusive of the national highway system and the primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state.

(c) The amount of $10,360,000 must be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the national highway system and the primary system, within corporate limits bears to the total street and alley mileage, exclusive of the national highway system and primary system, within the corporate limits of all cities and towns in Montana.

(3) (a) For the purpose of allocating the funds in subsections (2)(b) and (2)(c) to a consolidated city-county government, each entity must be considered to have separate city and county boundaries. The city limit boundaries are the last official city limit boundaries for the former city unless revised boundaries based on the location of the urban area have been approved by the department of transportation and must be used to determine city and county populations and road mileages in the following manner:

(i) Percentage factors must be calculated to determine separate populations for the city and rural county by using the last official decennial federal census population figures that recognized an incorporated city and the rural county. The factors must be based on the ratio of the city to the rural county population, considering the total population in the county minus the population of any other incorporated city or town in the county.

(ii) The city and county populations must be calculated by multiplying the total county population, as determined by the latest official decennial census or the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census, minus the population of any other incorporated city or town in that county, by the factors established in subsection (3)(a)(i).

(b) The amount allocated by this method for the city and the county must be combined, and single monthly payments must be made to the consolidated city-county government.

(4) All funds allocated by this section to counties, cities, towns, and consolidated city-county governments must be used for the construction, reconstruction, maintenance, and repair of rural roads or city or town streets

and alleys or for the share that the city, town, county, or consolidated city-county government might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets that are part of the primary or secondary highway system or urban extensions to those systems. The governing body of a town or third-class city, as defined in 7-1-4111, may each year expend no more than 25% of the funds allocated to that town or third-class city for the purchase of capital equipment and supplies to be used for the maintenance and repair of town or third-class city streets and alleys. The governing body of a town or third-class city may place all or a part of the 25% in a restricted asset account within the gas tax apportionment fund that is carried forward until there is a need for the expenditure.

(5) All funds allocated by this section to counties, cities, towns, and consolidated city-county governments must be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases in which the contract for construction, reconstruction, maintenance, or repair is in excess of ~~$25,000~~ *the amounts provided in 7-5-2301 and 7-5-4302.*

(6) For the purposes of this section in which distribution of funds is made on a basis related to population, the population must be determined annually for counties and biennially for cities according to the latest official decennial census or the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(7) For the purposes of this section in which determination of mileage is necessary for distribution of funds, it is the responsibility of the cities, towns, counties, and consolidated city-county governments to furnish to the department of transportation a yearly certified statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted is subject to review and approval by the department of transportation.

(8) Except by a town or third-class city as provided in subsection (4), the funds authorized by this section may not be used for the purchase of capital equipment.

(9) Funds authorized by this section must be used for construction and maintenance programs."

**Section 2. Effective date.** [This act] is effective July 1, 2013.

Approved April 9, 2013

# CHAPTER NO. 171

[HB 314]

AN ACT REVISING LAWS GOVERNING SPECIAL DISTRICTS; ALLOWING A GOVERNING BODY TO ORDER A REFERENDUM ON THE CREATION OF A SPECIAL DISTRICT; REVISING THE REQUIREMENTS FOR INITIATING THE CREATION OF A SPECIAL DISTRICT BY PETITION; INCREASING THE AMOUNT OF TIME A CLERK OF A GOVERNING BODY HAS TO CERTIFY OR REJECT A PETITION; REQUIRING THAT MAPS OF PROPOSED BOUNDARIES BE MADE AVAILABLE TO THE PUBLIC AT A CERTAIN TIME; CLARIFYING WHO MUST RECEIVE NOTICE OF PASSAGE OF A RESOLUTION OF INTENT TO CREATE A SPECIAL DISTRICT; REVISING THE DEADLINE FOR PROTESTING A PROPOSED DISTRICT AND SUFFICIENCY OF PROTEST; REQUIRING A PROTEST FORM TO BE SENT TO PROPERTY OWNERS IN THE PROPOSED

DISTRICT; REQUIRING A REFERENDUM UNDER CERTAIN CIRCUMSTANCES; REQUIRING CREATION OF A SPECIAL DISTRICT UNDER CERTAIN CIRCUMSTANCES; REVISING THE DEADLINE BY WHICH THE GOVERNING BODY MUST ESTIMATE COSTS OF A SPECIAL DISTRICT; LIMITING THE AMOUNT A GOVERNING BODY MAY CHARGE TO ADMINISTER A SPECIAL DISTRICT; REVISING SPECIAL DISTRICT COST ESTIMATE AND ASSESSMENT DATES; AMENDING SECTIONS 7-11-1003, 7-11-1006, 7-11-1007, 7-11-1008, 7-11-1011, 7-11-1013, 7-11-1021, 7-11-1023, AND 7-11-1025, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-11-1003, MCA, is amended to read:

**"7-11-1003. Authorization to create special districts.** (1) Whenever the public convenience and necessity may require:

(a) the governing body may*:*

*(i)* create a special district *by resolution; or*

*(ii) order a referendum on the creation of a special district* to serve the inhabitants of the special district *as provided in 7-11-1011*; or

(b) petitioners may initiate the creation of a special district to serve inhabitants of the special district *as provided in subsection (2)*.

(2) (a) *(i)* ~~Subject to subsection (2)(b),~~ *Upon receipt of* a petition to institute the creation of a special district ~~must be~~ *that is* signed by ~~40%~~ *at least 25%* of *the* registered voters or ~~40% of~~ *by the* owners of *at least 25% of the* real property within the boundary of the proposed special district and *that is* submitted to the clerk of the governing body*, the governing body shall order a referendum on the creation of the special district pursuant to 7-11-1011*.

*(ii) Upon receipt of a petition to institute the creation of a special district that is signed by more than 50% of the registered voters or by the owners of more than 50% of the real property within the boundary of the proposed special district, the governing body shall conduct a public hearing pursuant to 7-11-1007. Following the hearing and if insufficient protests are made as provided in 7-11-1008, the governing body shall order the creation of the special district in accordance with 7-11-1013.*

(b) If a proposed special district would be financed by a mill levy, a petition to institute the creation of the special district must be signed by *at least* 40% of *the* registered voters or *at least* 40% of *the* property taxpayers within the boundary of the proposed district.

(c) The form of the petition may be prescribed by the governing body*, and the clerk of the governing body shall verify the signatures on the petition*.

(d) Subject to subsection (2)(c), the petition must:

(i) require the printed name of each signatory;

(ii) specify whether the signatory is a property taxpayer or owner of real property within the proposed special district and *either* the *street* address *or the legal description, whichever the signatory prefers,* of that property;

(iii) describe the type of special district being proposed and the general character of any proposed improvements and program to be administered within the special district;

(iv) designate the method of financing any proposed improvements ~~and~~ *or maintenance* program within the special district;

(v) include a ~~general~~ description of the areas to be included in the proposed special district; and

(vi) specify whether the proposed special district would be administered by the local governing body or an appointed or elected board.

(3) Within ~~30~~ *60* days of receipt of a petition to create a special district, the clerk of the governing body shall:

(a) certify that the petition is sufficient under the provisions of subsection (2) and present it to the governing body at its next meeting; or

(b) reject the petition if it is insufficient under the provisions of subsection (2).

(4) A defect in the contents of the petition or in its title, form of notice, or signatures may not invalidate the petition and subsequent proceedings as long as the petition has a sufficient number of qualified signatures attached."

**Section 2.** Section 7-11-1006, MCA, is amended to read:

**"7-11-1006. Determining special district boundaries.** (1) The boundaries of the proposed special district must be mapped, ~~and~~ clearly described, *and made available to the public at the time of the publication of the notice of public hearing pursuant to 7-11-1007* before the district may be approved.

(2) The governing body or petitioners shall consult with a professional land surveyor, as defined in 37-67-101, to prepare a legal description of the boundaries for the proposed special district.

(3) The boundaries must follow property ownership, precinct, school district, municipal, and county lines as far as practical."

**Section 3.** Section 7-11-1007, MCA, is amended to read:

**"7-11-1007. Public hearing — resolution of intention to create special district.** (1) The governing body shall hold at least one public hearing concerning the creation of a proposed special district prior to the passage of a resolution of intention to create the special district. A resolution of intention to create a special district may be based upon a decision of the governing body *as provided in 7-11-1003(1)(a)* or upon a petition that contains the required number of signatures *as provided in 7-11-1003(1)(b)*.

(2) The resolution must designate:

(a) the proposed name of the special district;

(b) the necessity for the proposed special district;

(c) a general description of the territory or lands to be included within the proposed special district, giving the boundaries of the proposed special district;

(d) the general character of any proposed improvements and the proposed location for the proposed program or improvements;

(e) the estimated cost and method of financing the proposed program or improvements;

(f) any requirements specifically applicable to the type of special district; ~~and~~

(g) whether the proposed special district would be administered by the governing body or an appointed or elected board*; and*

*(h) the duration of the proposed special district*.

(3) (a) The governing body shall publish notice of passage of the resolution of intention to create a special district as provided in 7-1-2121 and 7-1-2122 or

7-1-4127 and 7-1-4129, as applicable. The notice must contain a notice of a hearing and the time and place where the hearing will be held.

(b) At the same time that notice is published pursuant to subsection (3)(a), the governing body shall provide a list of those properties subject to potential assessment, fees, or taxation under the creation of the proposed special district. The list may not be distributed or sold for use as a mailing list in accordance with 2-6-109.

(c) A copy of the notice described in subsection (3)(a) must be mailed to ~~the owners~~ *each owner or purchaser under contract for deed* of the property included on the list referred to in subsection (3)(b) *as shown by the current property tax record maintained by the department of revenue for the county*."

**Section 4.** Section 7-11-1008, MCA, is amended to read:

**"7-11-1008. Right to protest — procedure — hearing.** (1) An owner of property that is liable to be assessed for the program or improvements in the proposed special district has ~~30~~ *60* days from *either* the date of the first publication of the notice of passage of the resolution of intention *or the date the protest form provided for in subsection (2)(c) was sent to property owners, whichever is later,* to make a written protest against the proposed program or improvements.

(2) *(a) A property owner may register a written protest under either subsection (2)(b) or (2)(c).*

*(b) A property owner may register a written protest in any format in conformity with this section.*The protest must ~~be in writing,~~ identify the property in the district owned by the protestor *by either its street address or its legal description, whichever the property owner prefers*, be signed by ~~all~~ *a majority* of the owners of that property, and be delivered to the clerk of the governing body, who shall endorse on the protest the date of receipt.

*(c) The governing body shall send each person referred to in 7-11-1007(3)(c) a protest form with space for any information required under subsection (2)(b) of this section, mailing instructions, and the date the form must be returned to the governing body. The form must specify that if it is not returned, the owner's lack of action must be construed as support of the creation of the special district. The form must allow a property owner to select either support for or opposition against the creation of the district. However, if an owner does not make a selection of support or opposition and returns the form to the governing body, it must be construed as a protest of the creation of the special district.*

(3) (a) For purposes of this section, "owner" means, as of the date a protest is filed, ~~the~~ *a* record owner of fee simple title to the property or ~~the~~ *a* contract buyer on file with the county clerk and recorder.

(b) The term does not include a tenant of or other holder of a leasehold interest in the property.

(4) An owner of property created as a condominium may protest pursuant to the provisions in 7-11-1027.

(5) (a) At the hearing provided for in 7-11-1007, the governing body shall consider all protests.

~~(b) In determining the sufficiency of protest, each protest must be weighted in proportion to the amount of the assessment to be levied against the lot or parcel with respect to which it is made.~~

~~(c)~~*(b)* If the protest is made by the owners of property in the proposed district to be assessed for*:*

*(i)* ~~more than~~ 50% *or more* of the cost of the proposed program or improvements, in accordance with the method or methods of assessment, further proceedings may not be taken by the governing body for at least 12 months*; or*

*(ii) more than 10% but less than 50% of the cost of the proposed program or improvements, in accordance with the method or methods of assessment, and if the governing body decides to proceed with proposing the district, the governing body shall order a referendum in accordance with 7-11-1011.*

~~(d)~~*(c)* In determining whether or not sufficient protests have been filed in the proposed special district to prevent further proceedings, property owned by a governmental entity must be considered the same as any other property in the district.

~~(e)~~*(d)* The decision of the governing body is final and conclusive.

~~(f)~~*(e)* The governing body may adjourn the hearing from time to time."

**Section 5.** Section 7-11-1011, MCA, is amended to read:

**"7-11-1011. Referendum — election.** (1) The governing body may order a referendum on the creation of the proposed special district to be submitted to the registered voters who reside within the proposed special district and the individuals qualified to vote pursuant to subsections (5) and (6).

(2) The referendum must state:

(a) the type and maximum rate of the initial proposed assessments or fees that would be imposed, consistent with the requirements of 7-11-1007(2)(e) and 7-11-1024;

(b) the type of activities proposed to be financed, including a general description of the program or improvements;

(c) a ~~general~~ description of the areas included in the proposed special district; and

(d) whether the proposed special district would be administered by the governing body or an appointed or elected board.

(3) The referendum must be held in conjunction with a regular or primary election or must be conducted by mail ballot election as provided in Title 13, chapter 19.

(4) The proposition to be submitted to the electorate must read: "Shall the proposition to organize (name of proposed special district) be adopted?"

(5) Except as provided in subsection (6), an individual is entitled to vote on the proposition if the individual:

(a) meets all qualifications required of electors under the general election laws of the state; and

(b) is a resident of or owner of taxable real property in the area subject to the proposed special district.

(6) An individual who is the owner of real property described in subsection (5)(b) need not possess the qualifications required of an elector in subsection (5)(a) if the individual is qualified to vote in any county of the state and files proof of registration with the election administrator at least 20 days prior to the referendum in which the individual intends to vote.

(7) The referendum must be conducted, the vote canvassed, and the result declared in the same manner as provided by Title 13 in respect to general elections, so far as it is applicable, except as provided in subsection (3).

(8) If the referendum is approved, the election administrator of each county shall:

(a) immediately file with the secretary of state a certificate stating that the proposition was adopted ~~and~~*;*

*(b)* record the certificate in the office of the clerk and recorder of the county or counties in which the special district is situated; and

~~(b)~~*(c)* notify any municipalities lying within the boundaries of the special district."

**Section 6.** Section 7-11-1013, MCA, is amended to read:

**"7-11-1013. Order creating district — power to implement program.** (1) The governing body ~~may~~ *shall* create a special district and establish assessments or fees if the governing body finds that insufficient protests have been made in accordance with 7-11-1008 or if the eligible registered voters have approved a referendum as provided in 7-11-1011.

(2) To create a special district, the governing body shall issue an order or pass an ordinance or resolution in accordance with the resolution of intention introduced and passed by the governing body or in accordance with the terms of the referendum *required under 7-11-1011*. This must be done within 30 days of the end of the protest period or approval of the referendum.

(3) If the governing body creates the special district of its own accord and without a referendum being held, a copy of the order, ordinance, or resolution creating the district, certified by the clerk of the governing body, must be delivered to the clerk and recorder of the county or counties in which the special district is situated and to the secretary of state, who shall issue a certificate of establishment in accordance with 7-11-1012."

**Section 7.** Section 7-11-1021, MCA, is amended to read:

**"7-11-1021. Governance — powers and duties.** (1) A special district must be administered and operated either by the governing body or by a separate elected or appointed board as determined by the governing body.

(2) (a) If the special district is governed by a separate board, the board must be established in accordance with Title 7, chapter 1, part 2, and specific powers and duties granted to the board and those specifically withheld must be stated.

(b) The governing body may grant additional powers to the board. This includes the authorization to use privately contracted legal counsel or the attorney of the governing body. If privately contracted counsel is used, notice must be provided to the attorney of the governing body.

(c) The governing body has ultimate authority under this subsection (2).

(3) The entity chosen to administer the special district, as provided in subsection (1), may:

(a) implement a program and order improvements for the special district designed to fulfill the purposes of the special district;

~~(b) administer the budget of the special district;~~

~~(c)~~*(b)* employ personnel *directly related to the specific improvement or program*;

~~(d)~~*(c)* purchase, rent, or lease equipment, personal property, and material necessary to develop and implement an effective program;

~~(e)~~*(d)* cooperate or contract with any corporation, association, individual, or group of individuals, including any agency of federal, state, or local government, in order to develop and implement an effective program;

~~(f)~~*(e)* receive gifts, grants, or donations for the purpose of advancing the program and, by gift, deed, devise, or purchase, acquire land, facilities, buildings, and material necessary to implement the purposes of the special district;

~~(g)~~*(f)* construct*, improve,* and maintain *new or existing* facilities and buildings necessary to accomplish the purposes of the special district;

~~(h)~~*(g)* provide grants to private, nonprofit entities as part of implementing an effective program;

~~(i)~~*(h)* adopt a seal and alter it at the entity's pleasure;

~~(j)~~*(i)* administer local ordinances as appropriate;

~~(k)~~*(j)* establish district capital improvement funds pursuant to 7-6-616, maintenance funds, and debt service funds; and

~~(l)~~*(k)* borrow money by the issuance of:

(i) general obligation bonds as authorized by the governing body pursuant to Title 7, chapter 6, part 40, and the appropriate provisions of Title 7, chapter 7, part 22 or 42; or

(ii) revenue bonds for the lease, purchase, and maintenance of land, facilities, and buildings and the funding of projects in the manner and subject to the appropriate provisions of Title 7, chapter 7, part 25 or 44.

(4) ~~The entity chosen to administer~~ *If* the special district *is administered by a separate board, the board* shall submit annual budget and work plans to the governing body for review and approval.

(5) The right to exercise eminent domain pursuant to 70-30-102 is limited to cemetery districts."

**Section 8.** Section 7-11-1023, MCA, is amended to read:

**"7-11-1023. Alteration of special districts.** (1) ~~The~~ *Subject to subsections (2) and (3), the* governing body may change the boundaries of any special district by resolution.

(2) The boundaries may be altered by petition after complying with the requirements for petitions as provided in 7-11-1003.

(3) Alteration of *special district* boundaries is also subject to procedures for public notice, protest, referendum, certification, reporting, and establishment of assessment as provided in 7-11-1006 through 7-11-1008, 7-11-1011 through 7-11-1015, and 7-11-1024.

(4) Changes made to the boundaries may not:

(a) occur more than once each year unless the governing body makes a special finding that an alteration is necessary;

(b) delete any portion of the area if the deletion will create an island of included or excluded lands;

(c) delete any portion of the area that is negatively contributing or may reasonably be expected to negatively contribute to environmental impacts that fall within the scope of the special district's program; and

(d) affect indebtedness existing at the time of the change."

**Section 9.** Section 7-11-1025, MCA, is amended to read:

**"7-11-1025. Notice of resolution for assessment — assessment.** (1) The governing body shall estimate, as near as practicable, the cost of each established special district annually by the later of the ~~second Monday in August~~ *first Thursday after the first Tuesday in September* or within ~~45~~ *30*

calendar days after receiving certified taxable values from the department of revenue.

(2) *(a)* The governing body shall pass and finally adopt a resolution specifying the special district assessment option and levying and assessing all the property within the special district with an amount equal to the annual cost of the program and improvements *as provided in 7-6-4012 and 7-6-4013.*

*(b) If the entity chosen to administer the special district is the governing body, the governing body may not charge more than 15% of the annual fees or assessments collected to administer the special district.*.

(3) The resolution levying the assessment to defray the cost of the special district must contain or refer to a list that describes the lot or parcel of land assessed with the name of the owner of the lot or parcel, if known, and the amount assessed.

(4) The resolution must be kept on file in the office of the clerk of the governing body.

(5) A notice, signed by the clerk of the governing body, stating that the resolution levying a special assessment or changing the method of assessment to defray the cost of the special district is on file in the clerk's office and subject to inspection must be published as provided in 7-1-2121 or 7-1-4127. The notice must state the time and place at which objections to the final adoption of the resolution will be heard by the governing body and must contain a statement setting out the method of assessment being proposed for adoption or the change in assessment being proposed for adoption. The time for the hearing must be at least 5 days after the final publication of the notice.

(6) The notice and hearing process may be included in the local government's general budgeting process as provided in Title 7, chapter 6, part 40.

(7) At the time set, the governing body shall meet and hear all objections that may be made to the assessment or any part of the assessment, may adjourn from time to time for that purpose, and may by resolution modify the assessment.

(8) A copy of the resolution, certified by the clerk of the governing body, must be delivered to the department of revenue by the ~~third Monday in August~~ *later of the first Thursday after the first Tuesday in September* or within ~~45~~ *30* calendar days after receiving certified taxable values from the department of revenue."

**Section 10. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 11. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 12. Effective date.** [This act] is effective on passage and approval.

**Section 13. Applicability.** [This act] applies to special districts created on or after [the effective date of this act].

Approved April 9, 2013

# CHAPTER NO. 172

[HB 323]

AN ACT ADDING LIVESTOCK LOSSES DUE TO GRIZZLY BEAR PREDATION TO THE LIVESTOCK LOSS PROGRAMS; AND AMENDING SECTIONS 2-15-3110, 2-15-3111, 2-15-3112, 2-15-3113, AND 81-1-110, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-15-3110, MCA, is amended to read:

**"2-15-3110. Livestock loss board — purpose, membership, and qualifications.** (1) There is a livestock loss board. The purpose of the board is to administer the programs called for in the Montana gray wolf *and grizzly bear* management ~~plan~~ *plans* and established in 2-15-3111 through 2-15-3113, with funds provided through the accounts established in 81-1-110, in order to minimize losses caused by wolves *and grizzly bears* to livestock producers and to reimburse livestock producers for livestock losses from wolf *and grizzly bear* predation.

(2) The board consists of seven members, appointed by the governor, as follows:

(a) three members from a list of names recommended by the board of livestock;

(b) three members from a list of names recommended by the fish, wildlife, and parks commission; and

(c) one member of the general public.

(3) Each board member must have knowledge of or have experience in at least one of the following:

(a) the raising of livestock in Montana;

(b) livestock marketing, valuations, sales, or breeding associations;

(c) the interaction of wolves *and grizzly bears* with livestock and livestock mortality caused by wolves *and grizzly bears*;

(d) wildlife conservation;

(e) administration; and

(f) fundraising.

(4) The board is designated as a quasi-judicial board for the purposes of 2-15-124. Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the board.

(5) The board is allocated to the department of livestock for administrative purposes only as provided in 2-15-121.

(6) The board shall adopt rules to implement the provisions of 2-15-3110 through 2-15-3114 and 81-1-110 through 81-1-112."

**Section 2.** Section 2-15-3111, MCA, is amended to read:

**"2-15-3111. Livestock loss reduction program.** The livestock loss board shall establish and administer a program to cost-share with individuals or incorporated entities in implementing measures to prevent wolf *and grizzly bear* predation on livestock, including:

(1) eligibility requirements for program participation;

(2) application procedures for program participation and procedures for awarding grants for wolf *and grizzly bear* predation prevention measures, subject to grant priorities and the availability of funds;

(3) criteria for the selection of projects and program participants, which may include establishment of grant priorities based on factors such as chronic depredation, multiple depredation incidents, single depredation incidents, and potential high-risk geographical or habitat location;

(4) grant guidelines for prevention measures on public and private lands, including:

(a) grant terms that clearly set out the obligations of the livestock producer and that provide for a term of up to 12 months subject to renewal based on availability of funds, satisfaction of program requirements, and prioritization of the project;

(b) cost-share for prevention measures, which may be a combination of grant and livestock producer responsibility, payable in cash or in appropriate services, such as labor to install or implement preventive measures, unless the board adjusts the cost-share because of extenuating circumstances related to chronic or multiple depredation; and

(c) proactive preventive measures, including but not limited to fencing, fladry, night penning, increased human presence in the form of livestock herders and riders, guard animals, providing hay and dog food, rental of private land or alternative pasture allotments, delayed turnouts, and other preventive measures as information on new or different successful prevention measures becomes available; and

(5) reporting requirements for program participants to assist in determining the effectiveness of loss reduction relative to each grant."

**Section 3.** Section 2-15-3112, MCA, is amended to read:

**"2-15-3112. Livestock loss mitigation program — definitions.** The livestock loss board shall establish and administer a program to reimburse livestock producers for livestock losses caused by wolves *and grizzly bears*, subject to the following provisions:

(1) The board shall establish eligibility requirements for reimbursement, which must provide that all Montana livestock producers are eligible for coverage for losses by wolves *and grizzly bears* to cattle, swine, horses, mules, sheep, goats, llamas, and livestock guard animals on state, federal, and private land and on tribal land that is eligible through agreement pursuant to 2-15-3113(2).

(2) Confirmed and probable livestock losses must be reimbursed at an amount not to exceed fair market value as determined by the board.

(3) Other losses may be reimbursed at rates determined by the board.

(4) A claim process must be established to be used when a livestock producer suffers a livestock loss for which wolves *or grizzly bears* may be responsible. The claim process must set out a clear and concise method for documenting and processing claims for reimbursement for livestock losses.

(5) A process must be established to allow livestock producers to appeal reimbursement decisions. A producer may appeal a staff adjuster's decision by notifying the staff adjuster and the board in writing, stating the reasons for the appeal and providing documentation supporting the appeal. If the documentation is incomplete, the board or a producer may consult with the U.S. department of agriculture wildlife services to complete the documentation. The board may not accept any appeal on the question of whether the loss was or was not a confirmed or probable loss because that final determination lies solely with the U.S. department of agriculture wildlife services and may not be changed by the board. The board shall hold a hearing on the appeal within 90 days of receipt

of the written appeal, allowing the staff adjuster and the producer to present their positions. A decision must be rendered by the board within 30 days after the hearing. The producer must be notified in writing of the board's decision.

(6) As used in this section, the following definitions apply:

(a) "Confirmed" means reasonable physical evidence that livestock was actually attacked or killed by a wolf *or grizzly bear*, including but not limited to the presence of bite marks indicative of the spacing of ~~canine~~ tooth punctures of wolves *or grizzly bears* and associated subcutaneous hemorrhaging and tissue damage indicating that the attack occurred while the animal was alive, feeding patterns on the carcass, fresh tracks, scat, hair rubbed off on fences or brush, eyewitness accounts, or other physical evidence that allows a reasonable inference of wolf *or grizzly bear* predation on an animal that has been largely consumed.

(b) "Fair market value" means:

(i) for commercial sheep more than 1 year old, the average price of sheep of similar age and sex paid at the most recent Billings livestock sale ring or other ring as determined by the board;

(ii) for commercial lambs, the average market weaning value;

(iii) for registered sheep, the average price paid to the specific breeder for sheep of similar age and sex during the past year at public or private sales for that registered breed;

(iv) for commercial cattle more than 1 year old, the average price of cattle of similar age and sex paid at the most recent Billings livestock sale ring or other ring as determined by the board;

(v) for commercial calves, the average market weaning value;

(vi) for registered cattle, the average price paid to the owner for cattle of similar age and sex during the past year at public or private sales for that registered breed;

(vii) for other registered livestock, the average price paid to the producer at public or private sales for animals of similar age and sex. A producer may provide documentation that a registered animal has a fair market value in excess of the average price, in which case the board shall seek additional verification of the value of the animal from independent sources. If the board determines that the value of that animal is greater than the average price, then the increased value must be accepted as the fair market value for that animal.

(viii) for other livestock, the average price paid at the most recent public auction for the type of animal lost or the replacement price as determined by the board.

(c) "Probable" means the presence of some evidence to suggest possible predation but a lack of sufficient evidence to clearly confirm predation by a particular species. A kill may be classified as probable depending on factors including but not limited to recent confirmed predation by the suspected depredating species in the same or a nearby area, recent observation of the livestock by the owner or the owner's employees, and telemetry monitoring data, sightings, howling, or fresh tracks suggesting that the suspected depredating species may have been in the area when the depredation occurred."

**Section 4.** Section 2-15-3113, MCA, is amended to read:

**"2-15-3113. Additional powers and duties of livestock loss board.** (1) The livestock loss board shall:

(a) process claims;

(b) seek information necessary to ensure that claim documentation is complete;

(c) provide payments authorized by the board for confirmed and probable livestock losses, along with a written explanation of payment;

(d) submit monthly and annual reports to the board of livestock summarizing claims and expenditures and the results of action taken on claims and maintain files of all claims received, including supporting documentation;

(e) provide information to the board of livestock regarding appealed claims and implement any decision by the board;

(f) prepare the annual budget for the board; and

(g) provide proper documentation of staff time and expenditures.

(2) The livestock loss board may enter into an agreement with any Montana tribe, if the tribe has adopted a wolf *or grizzly bear* management plan for reservation lands that is consistent with the state wolf *or grizzly bear* management plan, to provide that tribal lands within reservation boundaries are eligible for mitigation grants pursuant to 2-15-3111 and that livestock losses on tribal lands within reservation boundaries are eligible for reimbursement payments pursuant to 2-15-3112.

(3) The livestock loss board shall:

(a) coordinate and share information with state, federal, and tribal officials, livestock producers, nongovernmental organizations, and the general public in an effort to reduce livestock losses caused by wolves *and grizzly bears*;

(b) establish an annual budget for the prevention, mitigation, and reimbursement of livestock losses caused by wolves *and grizzly bears*;

(c) perform or contract for the performance of periodic program audits and reviews of program expenditures, including payments to individuals, incorporated entities, and producers who receive loss reduction grants and reimbursement payments;

(d) adjudicate appeals of claims;

(e) investigate alternative or enhanced funding sources, including possible agreements with public entities and private wildlife or livestock organizations that have active livestock loss reimbursement programs in place;

(f) meet as necessary to conduct business; and

(g) report annually to the governor, the legislature, members of the Montana congressional delegation, the board of livestock, the fish, wildlife, and parks commission, and the public regarding results of the programs established in 2-15-3111 through 2-15-3113.

(4) The livestock loss board may sell or auction any wolf carcasses or parts of wolf carcasses received pursuant to 87-1-217. The proceeds, minus the costs of the sale including the preparation of the carcass or part of the carcass for sale, must be deposited into the livestock loss reduction and mitigation special revenue account established in 81-1-110(2)(a) and used for the purposes of 2-15-3111 through 2-15-3114."

**Section 5.** Section 81-1-110, MCA, is amended to read:

**"81-1-110. Livestock loss reduction and mitigation accounts.** (1) There are livestock loss reduction and mitigation special revenue accounts administered by the department within the state special revenue fund and the federal special revenue fund established in 17-2-102.

(2) (a) All state proceeds allocated or budgeted for the purposes of 2-15-3110 through 2-15-3114, 81-1-110, and 81-1-111, except those transferred to the

account provided for in 81-1-112 or appropriated to the department of livestock, must be deposited in the state special revenue account provided for in subsection (1) of this section.

(b) Money received by the state in the form of gifts, grants, reimbursements, or allocations from any source intended to be used for the purposes of 2-15-3111 through 2-15-3113 must be deposited in the appropriate account provided for in subsection (1) of this section.

(c) All federal funds awarded to the state for compensation for wolf *or grizzly bear* depredations on livestock must be deposited in the federal special revenue account provided for in subsection (1) for the purposes of 2-15-3112.

(3) The livestock loss board may spend funds in the accounts only to carry out the provisions of 2-15-3111 through 2-15-3113."

**Section 6. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 9, 2013

# CHAPTER NO. 173

[HB 65]

AN ACT GENERALLY REVISING THE MONTANA CONSUMER LOAN ACT; REVISING DEFINITIONS; REVISING EXEMPTIONS FROM LICENSING; REVISING THE SUBMISSION METHOD FOR LICENSE AND LICENSE RENEWAL APPLICATION FEES; REVISING REQUIREMENTS FOR THE ISSUANCE, DENIAL, SURRENDER, REVOCATION, OR SUSPENSION OF LICENSES; REVISING FEES THAT MAY BE CHARGED TO LOAN CONSUMERS; ELIMINATING THE CAP ON CIVIL PENALTIES FOR A SINGLE ADMINISTRATIVE ACTION; CLARIFYING INSTALLMENT AND BALLOON PAYMENT REQUIREMENTS; PROVIDING THAT COMPLIANCE WITH FEDERAL LAW DOES NOT CONSTITUTE AUTHORIZATION TO MODIFY THE INTEREST OR FEES THAT MAY BE CHARGED TO LOAN CONSUMERS UNDER MONTANA LAW; CLARIFYING RECORDKEEPING REQUIREMENTS; PROVIDING THAT A CONSUMER LOAN BORROWER MAY VOLUNTARILY CONFESS JUDGMENT ON A LOAN IN DEFAULT; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO PARTICIPATE IN A NATIONWIDE LICENSING SYSTEM FOR LICENSING CONSUMER LOAN LICENSEES; GRANTING RULEMAKING AUTHORITY; PROHIBITING PRECOMPUTED INTEREST ON CONSUMER LOANS; AMENDING SECTIONS 32-5-102, 32-5-103, 32-5-201, 32-5-202, 32-5-205, 32-5-207, 32-5-301, 32-5-302, 32-5-303, 32-5-304, 32-5-305, AND 32-5-308, MCA; REPEALING SECTION 32-5-204, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 32-5-102, MCA, is amended to read:

**"32-5-102. Definitions.** ~~Unless the context requires otherwise, in~~ *For the purposes of* this chapter, the following definitions apply:

(1) "Balloon payment" means any repayment option in which the borrower is required to repay the entire amount of any outstanding balance as of a specific date or at the end of a specified term and the aggregate amount of the required

minimum periodic payments would not fully amortize the outstanding balance by the specific date or at the end of the loan term.

(2) (a) "Consumer loan" means credit offered or extended to an individual primarily for personal, family, or household purposes, including loans for personal, family, or household purposes that are not primarily secured by a mortgage, deed of trust, trust indenture, or other security interest in real estate.

(b) Consumer loans do not include:

(i) deferred deposit loans provided for in Title 31, chapter 1, part 7; *or*

~~(ii) title loans provided for in Title 31, chapter 1, part 8; or~~

~~(iii)~~*(ii)* residential mortgage loans as defined in 32-9-103.

(3) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

~~(4)~~*(4)* "Interest" means the compensation allowed by ~~law or fixed by the parties~~ *this chapter* for the use*,* ~~or~~ forbearance*,* or detention of money ~~and includes loan origination fees, points, and prepaid finance charges, as defined in 12 CFR 226.2~~.

~~(5)~~*(5)* "License" means a license provided for by this chapter.

~~(6)~~*(6)* "Licensee" means the person holding a license.

~~(7)~~*(7)* "Person" means individuals, partnerships, associations, corporations, and all legal entities."

**Section 2.** Section 32-5-103, MCA, is amended to read:

**"32-5-103. Engaging in business of making consumer loans restricted.** (1) Except as provided in subsection (5), a person may not engage in the business of making consumer loans in any amount and contract for, charge, or receive directly or indirectly on or in connection with any loan any compensation, whether for interest, fees, other consideration, or expense, except as provided in and authorized by this chapter. ~~The provisions of this chapter do not apply to any exempted person.~~

(2) A licensee may sell its business and assets to a bank, building and loan association, savings and loan association, trust company, credit union, credit association, development credit corporation, other licensee, *financial holding company,* or bank holding company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by an agency of the state of Montana or an agency of the federal government. All contracts for loans and all other contracts entered into by the licensee pursuant to the provisions of this chapter that are sold and transferred to an acquiring organization continue to be governed by the provisions of this chapter.

(3) The provisions of subsection (1) apply to any person who seeks to evade its applications by any device, subterfuge, or pretense.

(4) Any loan made or collected in violation of subsection (1) by a person other than a licensee or a person exempt under subsection (5) is void, and the person does not have the right to collect, receive, or retain any principal, interest, fees, or other charges.

(5) *The following are not required to comply with the provisions of this chapter:*

*(a) a regulated lender, as defined in 31-1-111, to whom the exemption in 31-1-112 applies; or*

~~A consumer loan licensee or a person who seeks a regulated lender exemption under 31-1-112 as a consumer loan licensee shall fully comply with~~

~~this chapter. A regulated lender as defined in 31-1-111, other than a consumer loan licensee or~~

*(b)* a person who*:*

*(i)* makes fewer than four consumer loans a year with the person's own funds*;*

*(ii)* ~~and~~ does not represent that the person is a licensee~~, who~~*; and*

*(iii)* complies with the provisions of Title 31, chapter 1, part 1~~, is not required to comply with this chapter. A deferred deposit lender, as defined in 31-1-703, who complies with the provisions of Title 31, chapter 1, part 7, is not required to comply with this chapter. A title lender, as defined in 31-1-803, who complies with the provisions of Title 31, chapter 1, part 8, is not required to comply with this chapter~~."

**Section 3.** Section 32-5-201, MCA, is amended to read:

**"32-5-201. License *and renewal* application ~~and~~ fees.** (1) (a) Each place of business operated under this chapter ~~shall properly display on the premises a nontransferable and nonassignable license~~ *must be licensed. Licenses are nontransferable and nonassignable*. The same person may obtain an additional license for each business location upon compliance with this chapter.

(b) Applications for a license or renewal must be ~~on a~~ *in the* form *and submitted in the manner* prescribed ~~and furnished~~ by the department.

(c) A licensee may move the licensee's place of business from one place to another upon ~~providing written notice to and receiving approval from the department prior to the move~~ *advance notice to the department in the manner the department directs*.

(d) *The license application fee and license renewal fee are $500 and are nonrefundable.* ~~With each application, the applicant shall submit $500 as a license application fee. The license application fee is nonrefundable.~~ The license year is the calendar year~~, and the license fee for any period less than 6 months is $250~~. *All consumer loan licenses issued under this chapter expire on December 31.*

(2) ~~All~~ *The department's share of all* licensing and examination fees collected pursuant to this chapter must be ~~paid by the department~~ *deposited* into the state special revenue fund for the use of the department in its supervision function.

*(3) The department may direct that fees charged under subsection (1)(d) be remitted to the department through a nationwide licensing system.*"

**Section 4.** Section 32-5-202, MCA, is amended to read:

**"32-5-202. Issuance or denial of license or license renewal.** ~~Within 30 days after a complete application for a license or a license renewal is filed with the department together with all required fees, the department shall issue the license or license renewal~~ *(1) Upon submission of a completed application and payment of all required fees, a license or renewal must be issued* if the department determines that*:*

*(a)* the character and general fitness of the applicant ~~warrants~~ *warrant* the belief that the business will be operated lawfully and fairly within the provisions of this chapter*;*

*(b) the applicant has not had a financial services license revoked by a regulatory agency in any jurisdiction;*

*(c) there are no outstanding civil judgments against the applicant for fraud in relation to providing consumer financial services; and*

*(d) the application does not contain material misstatements of fact or material omissions of fact*.

*(2)* The department may enter an order denying the license or license renewal application subject to notifying the applicant and providing the applicant an opportunity for a hearing. All notices and orders must be served as provided in 32-5-207(2)."

**Section 5.** Section 32-5-205, MCA, is amended to read:

**"32-5-205. Surrender of license.** ~~Any licensee may surrender any license by delivering it to the department with written notice thereon, but such~~ *A license may be surrendered on conditions of the department consistent with the protocols of a nationwide licensing system for license surrender. The license* surrender ~~shall~~ *does* not affect ~~such~~ *the* licensee's civil*, administrative,* or criminal liability for acts committed prior to ~~such~~ *the* surrender."

**Section 6.** Section 32-5-207, MCA, is amended to read:

**"32-5-207. Revocation and suspension of license — penalty — restitution.** (1) (a) The department, after providing a ~~10-day~~ *14-day* written notice to ~~the licensee~~ *a person, whether licensed or unlicensed,* that includes a statement of ~~the grounds for the proposed suspension or revocation and informing the licensee that the licensee~~ *alleged violations and notice that the person* has the right to an administrative hearing, may issue an order ~~suspending or revoking a license~~ *that includes one or more of the penalties provided for in subsection (1)(b)* if it finds that the ~~licensee~~ *person* has*:*

*(i)* violated any provision of this chapter~~,~~*;*

*(ii)* ~~has~~ failed to comply with any department rule, written instruction, or order~~,~~*;* ~~has~~

*(iii)* failed or refused to make required reports~~,~~*;* ~~has~~

*(iv)* furnished false information~~,~~*;* or ~~has~~

*(v)* operated without a license.

(b) The department may impose a civil penalty of not more than $1,000 for each violation ~~of this chapter, not to exceed $5,000 for each administrative action,~~ and may order restitution to borrowers and reimbursement of the department's costs in bringing an administrative action. The department may suspend or revoke the right of a person or licensee, directly or through an officer, agent, employee, or representative, to operate as a licensee or to engage in the business of making consumer loans.

(2) All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or in the case of an unlicensed ~~business~~ *person* to the last-known address of record.

(3) A revocation~~,~~ *or* suspension~~, or surrender~~ of a license does not relieve the licensee from civil*, administrative,* or criminal liability for acts committed prior to the revocation~~,~~ *or* suspension~~, or surrender~~ of the license.

(4) All civil penalties collected pursuant to this section must be deposited in the state general fund."

**Section 7.** Section 32-5-301, MCA, is amended to read:

**"32-5-301. Fees charged to consumers.** (1) A licensee may contract for and receive interest on *the principal amount of* any loan ~~of money~~. ~~Such~~ *The* interest, ~~including fees and charges incurred in the making of the loan but~~ excluding the fees authorized in subsections ~~(2) and (3)~~ *(3) and (4)*, may not exceed 36% ~~per annum~~ *a year*.

(2) ~~If provided for in the contract, an additional fee may be charged for any amount past due according to the original terms of the contract, whether by reason of default or extension agreement. The fee charged may be the greater of $15 or 5% of the amount past due, not to exceed $50. The fee charged for any past-due amount may be charged only once. Except as provided in subsection (3), other fees may not be charged for default or extension of the contract by the borrower.~~ *The following third-party fees may be financed, at the borrower's option, and included in the principal amount of any loan:*

*(a) the actual fees paid to a public official or agency of the state for filing, recording, or releasing any instrument securing the loan;*

*(b) the premium for insurance in lieu of filing or recording any instrument securing the loan to the extent that the premium does not exceed the fees that would otherwise be payable for filing, recording, or releasing any instrument securing the loan;*

*(c) the premium for any credit insurance;*

*(d) bona fide fees or charges related to real estate security paid to third parties;*

*(e) fees or premiums for title examination, title insurance, or similar purposes, including survey;*

*(f) fees for preparation of a deed, settlement statement, or other documents;*

*(g) fees for notarizing deeds and other documents;*

*(h) appraisal fees;*

*(i) fees for credit reports; and*

*(j) fees paid to a trustee for release of a trust deed.*

(3) (a) If provided for in the contract, a licensee may grant a deferral at any time. A deferral postpones the scheduled due date of the earliest unpaid installment and all subsequent installments as originally scheduled or as previously deferred for a period equal to the agreed-upon deferral period. The deferral period is that period during which an installment is not scheduled to be paid by reason of the deferral.

(b) A licensee may charge an additional fee for each deferral. The fee charged may be the greater of $15 or 5% of the amount currently due, not to exceed $50.

(c) Other fees may not be charged by the lender for any deferrals granted by the lender.

(4) ~~The licensee may include in the principal amount of any loan:~~

~~(a) the actual fees paid a public official or agency of the state for filing, recording, or releasing any instrument securing the loan;~~

~~(b) the premium for insurance in lieu of filing or recording any instrument securing the loan to the extent that the premium does not exceed the fees that would otherwise be payable for filing, recording, or releasing any instrument securing the loan;~~

~~(c) bona fide fees or charges related to real estate security paid to third parties;~~

~~(d) fees or premiums for title examination, title insurance, or similar purposes, including survey;~~

~~(e) fees for preparation of a deed, settlement statement, or other documents;~~

~~(f) fees for notarizing deeds and other documents;~~

~~(g) appraisal fees;~~

~~(h) fees for credit reports; and~~

~~(i) fees paid to a trustee for release of a trust deed.~~ *If provided for in the contract, a licensee may charge a fee for any amount past due, whether as a result of a default under the original contract terms or of a default under the terms of an extension agreement. The fee charged may be the greater of $15 or 5% of the amount past due, not to exceed $50. The fee charged for any past-due amount may be charged only once. Other fees may not be charged for any default of the contract by the borrower.*

(5) (a) ~~Other fees may not~~ *No other fees or charges may* be directly or indirectly contracted for or received by any licensee except those specifically authorized by this chapter. A licensee may not divide into separate parts any contract made for the purpose of or with the effect of obtaining fees in excess of those authorized by this chapter. ~~If~~ *In addition to other remedies and penalties provided for in this chapter, if* any amount in excess of the fees permitted by this chapter is charged, contracted for, or received, the licensee shall forfeit to the borrower a sum that is double the amount that is in excess of the fees authorized by this chapter.

(b) This section does not apply to fees for services rendered in connection with a loan after the loan has been consummated and if the borrower's participation in the services is strictly voluntary."

**Section 8.** Section 32-5-302, MCA, is amended to read:

**"32-5-302. Installment and balloon payments.** (1) Except as provided in subsection (4), if the loan contract requires installment payments, the contract must provide that principal and interest be payable at approximately equal periodic intervals, except that payment dates may be omitted to accommodate borrowers with seasonal incomes.

(2) An installment contracted for may not be substantially larger than any preceding installment. If a loan contract provides for monthly installment payments, the first installment must be payable at any time within 45 days of the date of the *making of the* loan ~~and interest may be charged for the number of days in excess of 30 from the date of the making of the loan and may be added to the scheduled amount of the installments~~.

(3) A licensee may not enter into any loan contract in which a borrower agrees to pay principal or interest in one lump sum unless the payment is due not less than 45 days from the date of the making of the loan and not more than 1 year from the date of the making of the loan.

(4) Loans with a balloon payment are permissible so long as all installment payments cover at least the interest that has accrued since the previous installment payment."

**Section 9.** Section 32-5-303, MCA, is amended to read:

**"32-5-303. Borrower to receive copy of contract or statement of contents.** *(1)* At the time a loan is made, there must be delivered to the borrower or borrowers the disclosures required by the federal Consumer Credit Protection Act and the federal Truth in Lending Act, 15 U.S.C. 1601, et seq., and a copy of the loan contract or a written statement showing in clear and distinct terms:

~~(1)~~*(a)* the name and address of the lender and of one of the borrowers or a maker of the loan;

~~(2)~~*(b)* the date of the loan contract;

~~(3)~~*(c)* the description or schedule of payments;

~~(4)~~*(d)* the principal amount of the loan excluding interest;

~~(5)~~*(e)* the rate and amount of interest as provided in the contract;

~~(6)~~*(f)* the amount collected or paid out for each kind of insurance, if any;

~~(7)~~*(g)* the amount collected or paid out for filing and other fees as allowed in this chapter;

~~(8)~~*(h)* the collateral or security for the loan including all other accommodation or other joint makers or comakers; and

~~(9)~~*(i)* that the borrower may prepay the loan in whole or in part without penalty at any time during a licensee's regular business hours.

*(2) Compliance with the disclosure requirements of the Truth in Lending Act, 15 U.S.C. 1601, et seq., does not constitute authorization to enlarge or modify the interest or the fees that may be charged under 32-5-301.*"

**Section 10.** Section 32-5-304, MCA, is amended to read:

**"32-5-304. Receipts — return of note.** Every licensee shall:

(1) give to the borrower a plain*, dated,* and complete receipt ~~in a form approved by the department~~ for every payment made in cash on account of any loan at the time the payment is made;

(2) endorse indelibly on a loan ledger or card *or maintain a record by reliable electronic means of*~~, which must be kept by the licensee,~~ the amount and date of each payment made by the borrower.*; and* ~~Subject to the prior written approval of the department, mechanical data processing methods may be used. The department may approve any system containing information that is equivalent to that required on a loan ledger or card.~~

(3) upon repayment of the loan in full, mark indelibly every obligation and security signed by the borrower with the word "paid" or "canceled" *or otherwise memorialize satisfaction of the obligation* and release any mortgage, restore any pledge, and cancel and return to the borrower any note and any assignment given to the licensee within 10 days after the repayment. *Reconveyance of a deed of trust must be in accordance with 71-1-307 through 71-1-309.* The canceled ~~notes~~ *note* and canceled ~~assignments~~ *assignment or other instrument clearly identifying the note or assignment and stating that it has been paid in full* must be mailed to the borrower at the borrower's last-known address unless returned to the borrower in person.

*(4) Licensees shall maintain records in accordance with 32-5-307.*"

**Section 11.** Section 32-5-305, MCA, is amended to read:

**"32-5-305. Confessions of judgment — incomplete instruments forbidden.** A licensee may not:

(1) take any confession of judgment from the borrower or any power of attorney running to the licensee or to any third person to confess judgment for the borrower or to appear for the borrower in a judicial proceeding*, except that this subsection does not prohibit a borrower from personally and voluntarily confessing judgment after the borrower's loan is in default*;

(2) take any note or promise to pay that does not disclose the amount of the loan, a schedule of payments or a description of the schedule of payments, and the agreed interest and fees to be charged. The note or promise may not contain blanks that are left to be filled in after execution. The disclosures required by this subsection are not required on a certificate of title to a motor vehicle, on a policy or certificate of insurance, or on customary powers in connection with bonds or stocks that may be pledged as collateral.

(3) take any instrument in which blanks are left to be filled in after the loan is made."

**Section 12.** Section 32-5-308, MCA, is amended to read:

**"32-5-308. Annual report.** (1) A licensee shall file an annual report ~~before April 15 for~~ *by the date and in the manner prescribed by the department covering the licensee's consumer loan activity in this state during* the preceding calendar year ~~with the department~~.

(2) The report must ~~be made under oath and be in a form and~~ contain the information prescribed by the department. The department ~~shall publish annually an analysis and summary of the reports~~ *may require information that is consistent with the protocols of a nationwide licensing system as provided in [section 13]*."

**Section 13. Department authorized to participate in nationwide licensing system for purposes of licensing consumer loan licensees — rulemaking.** (1) The department may participate in a nationwide licensing system for licensing purposes under this chapter and may require consumer loan licensees to apply for licensure on applications approved by the nationwide licensing system.

(2) The department may establish rules that are necessary to comply with the nationwide licensing system protocols and procedures pertaining to applications, fees, renewal dates, amending or surrendering a license, and submission of reports necessary for participation in the nationwide licensing system.

(3) The department's portion of the licensing fees collected through the nationwide licensing system must be deposited into the department's account in the state special revenue fund for use in the administration of this part.

**Section 14. Precomputed interest prohibited.** All consumer loans made or refinanced under this chapter must be made on simple interest and the interest on consumer loans made or refinanced under this chapter may not be precomputed.

**Section 15. Repealer.** The following section of the Montana Code Annotated is repealed:

32-5-204. License renewal fee.

**Section 16. Codification instruction.** (1) [Section 13] is intended to be codified as an integral part of Title 32, chapter 5, part 2, and the provisions of Title 32, chapter 5, part 2, apply to [section 13].

(2) [Section 14] is intended to be codified as an integral part of Title 32, chapter 5, part 3, and the provisions of Title 32, chapter 5, part 3, apply to [section 14].

**Section 17. Effective date.** [This act] is effective December 31, 2013.

Approved April 10, 2013

## CHAPTER NO. 174

[HB 463]

AN ACT GENERALLY REVISING LAWS RELATED TO NONFERROUS METAL; REVISING THE DEFINITION OF "SALVAGE METAL DEALER"; CREATING THE OFFENSE OF THEFT OF NONFERROUS METAL; PROVIDING PENALTIES; AMENDING SECTION 30-22-101, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 30-22-101, MCA, is amended to read:

**"30-22-101. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Nonferrous metal" means metal and metal alloys not containing significant quantities of iron or steel, including but not limited to:

(a) copper;

(b) brass;

(c) aluminum, other than aluminum cans;

(d) bronze;

(e) lead;

(f) zinc;

(g) nickel;

(h) stainless steel, including stainless steel beer kegs; and

(i) precious metals, including catalytic converters.

(2) "Person" means an individual, partnership, corporation, joint venture, trust, association, or any other legal entity.

(3) "Salvage metal dealer" means a person who is engaged in the business of paying, trading, *recycling,* or bartering for or collecting nonferrous metals that have served their original economic purpose, whether or not the person is engaged in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value.

(4) "Seller" means a person who sells or delivers nonferrous metal or otherwise makes nonferrous metal available to a salvage metal dealer."

**Section 2. Theft of nonferrous metal.** (1) A person commits the offense of theft of nonferrous metal if the person purposely or knowingly takes, steals, carries away, destroys, injures, or otherwise damages any personal or real property of another without consent, including fixtures or improvements, for the purpose of obtaining nonferrous metal as defined in 30-22-101.

(2) (a) If the injury to the property, the amount of loss in value to the property, the amount of repairs necessary to return the property to its condition before the act, or the property loss is less than $1,500, the person shall be fined an amount not to exceed $5,000 or be imprisoned for a term not to exceed 1 year, or both.

(b) If the injury to the property, the amount of loss in value to the property, the amount of repairs necessary to return the property to its condition before the act, or the property loss is $1,500 or more, the person shall be fined an amount not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 45, chapter 6, part 3, and the provisions of Title 45, chapter 6, part 3, apply to [section 1].

**Section 4. Applicability.** [This act] applies to offenses committed on or after [the effective date of this act].

Approved April 10, 2013

# CHAPTER NO. 175

[HB 38]

AN ACT TRANSFERRING THE ADMINISTRATION OF CERTAIN GEOGRAPHIC INFORMATION SYSTEMS FROM THE DEPARTMENT OF ADMINISTRATION TO THE STATE LIBRARY; AMENDING SECTIONS 7-11-1014, 7-11-1029, 76-6-212, 90-1-403, 90-1-404, 90-1-405, 90-1-406, 90-1-410, 90-1-411, AND 90-1-413, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-11-1014, MCA, is amended to read:

**"7-11-1014. Additional reporting procedures — coordination of information collection, transfer, and accessibility.** (1) Within 60 days after the creation of a special district or by January 1 of the effective tax year, whichever occurs first, the governing body shall provide to the department of revenue a:

(a) legal description of the special district;

(b) map of its boundaries;

(c) list of the property taxpayers or owners of real property within the special district's boundaries; and

(d) copy of the resolution establishing the special district, including any adopted method of assessment.

(2) The department of revenue shall review the information provided in accordance with subsection (1) and work with the governing body to identify and correct any discrepancies before the information is recorded by the department.

(3) If the governing body intends to submit any digital information to the department of revenue for the purposes of subsection (4)(b), the governing body shall notify the department of revenue as to the expected date of submission and submit the digital information in a manner prescribed by the department of revenue in consultation with the ~~department of administration~~ *state library*.

(4) The ~~department of administration~~ *state library*, in coordination with the department of revenue, governing bodies, and other appropriate entities, may develop standards, best practices, and procedures for:

(a) collecting and transferring between agencies any digital information submitted by a governing body for purposes of subsection (4)(b); and

(b) creating digital information to map special districts for land information purposes authorized in Title 90, chapter 1, part 4, that can be accessed through the ~~department's base map service center's website and discovered through the Montana geographical information system portal at~~ *website of* the ~~Montana~~ state library."

**Section 2.** Section 7-11-1029, MCA, is amended to read:

**"7-11-1029. Dissolution of special district.** (1) A special district may be dissolved if it is considered to be in the best interest of a local government or the inhabitants of the local government or if the purpose for creating the special district has been fulfilled and the special district is not needed in perpetuity.

(2) The governing body may pass a resolution of intention to dissolve a special district upon its own request or upon request of the separate board administering the special district.

(3) After the passage of the resolution provided for in subsection (2), the clerk of the local government that established the special district shall publish a

notice, as provided in 7-1-2121 or 7-1-4127, of the intention to dissolve the district.

(4) The notice must specify the boundaries of the special district to be dissolved, the date of the passage of the resolution of intention to dissolve, the date set for the passage of the resolution of dissolution, and that the resolution will be passed unless the clerk of the local government receives written protest in advance from:

(a) 40% of registered voters or 40% of the owners of real property in the district; or

(b) 40% of registered voters or 40% of the property taxpayers in the district if the district program or improvements have been financed through a mill levy.

(5) If the special district is dissolved, the clerk of the local government shall immediately send written notice to:

(a) the secretary of state; and

(b) the department of revenue, providing the same information required in 7-11-1014 when a district is created. The department of revenue and the ~~department of administration~~ *state library* shall respond to the dissolution in the same manner as they respond to the creation of a district, as described in 7-11-1014.

(6) The dissolution of a special district may not relieve the property owners from the assessment and payment of a sufficient amount to liquidate all charges existing against the special district prior to the date of dissolution.

(7) Any assets remaining after all debts and obligations of the special district have been paid, discharged, or irrevocably settled must be:

(a) deposited in the general fund of the local government;

(b) in the case of multiple local governments, divided in accordance with their interlocal agreement and deposited in the general fund of each local government; or

(c) transferred to a new special district that has been created to provide substantially the same service as provided by the dissolved special district.

(8) If the remaining assets are derived from private grants or gifts that restrict the use of those funds, the funds must be returned to the grantor or donor."

**Section 3.** Section 76-6-212, MCA, is amended to read:

**"76-6-212. Additional reporting procedures — coordination of information collection, transfer, and accessibility.** (1) A public body or qualified private organization holding a conservation easement before October 1, 2007, shall mail or electronically transfer a copy of that conservation easement to the department of revenue within 6 months of October 1, 2007.

(2) The department of revenue shall review conservation easement agreements collected pursuant to 76-6-207 and subsection (1) of this section and record the:

(a) legal description of the conservation easement as it relates to the established property boundaries identified in the conservation easement agreement;

(b) approximate acreage as identified in the conservation easement agreement;

(c) date of the conservation easement agreement;

(d) book and page or document number as provided for in 7-4-2617; and

(e) name of the conservation easement grantee.

(3) (a) The department of revenue shall transfer conservation easement information collected pursuant to 76-6-207 and subsections (1) and (2) of this section to the ~~department of administration~~ *state library*.

(b) The department of revenue shall coordinate with the ~~department of administration~~ *state library* to develop procedures regarding the collection and transfer of conservation easement information between the two agencies.

(c) The ~~department of administration~~ *state library* shall convert conservation easement information received from the department of revenue to a digital format for land information purposes authorized in Title 90, chapter 1, part 4, that can be accessed through the ~~department of administration's~~ *state library's* website.

(d) The ~~department of administration~~ *state library* shall ~~provide~~ *incorporate* the conservation easement data ~~to the Montana natural heritage program for incorporation~~ into appropriate databases developed or maintained *by the Montana natural heritage program* for the purposes of Title 90, chapter 15."

**Section 4.** Section 90-1-403, MCA, is amended to read:

**"90-1-403. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Account" means the Montana land information account created in 90-1-409.

(2) "Council" means the land information advisory council established in 90-1-405.

~~(3) "Department" means the department of administration provided for in 2-15-1001.~~

~~(4)~~*(3)* "Digital format" means information that is scanned, electronically drawn, layered through the GIS, or digitized by other electronic methods.

~~(5)~~*(4)* "Geographic information system" or "GIS" means an organized collection of computer hardware, software, land information, and other resources, including personnel, that is designed to or assists to efficiently collect, maintain, and disseminate all forms of geographically referenced information.

~~(6)~~*(5)* "Land information" means data that describes the geographic location and characteristics of natural or constructed features and boundaries within or pertaining to Montana.

*(6) "State librarian" means the executive officer of the state library commission provided for in 22-1-102.*

*(7) "State library" means the state library provided for in 22-1-201.*"

**Section 5.** Section 90-1-404, MCA, is amended to read:

**"90-1-404. Land information — management — duties of ~~department~~ *state library*.** (1) The ~~department~~ *state library* shall:

(a) serve as the administrator of the account;

(b) work with all federal, state, local, private, and tribal entities to develop and maintain land information;

(c) annually develop a land information plan that describes the priority needs to collect, maintain, and disseminate land information. The land information plan must have as a component a proposed budget designed to accomplish the goals and objectives of the plan.

(d) present the land information plan to the council for review and endorsement;

(e) establish, by administrative rule, an application process and a granting process that must be used to distribute funds in the account. The granting process must give preference to interagency or intergovernmental grant requests whenever multiple state agencies, local governments or agencies, or Indian tribal governments or tribal entities have partnered together to meet a requirement of the land information plan.

(f) review all grant applications from state agencies, local governments or agencies, and Indian tribal governments or tribal entities for the purpose of implementing the land information plan;

(g) monitor the use of grant funds distributed to a state agency, a local government or agency, or an Indian tribal government or tribal entity or to any combination of state, local, and Indian tribal governments or entities to ensure that the use of the funds complies with the purposes of this part;

(h) coordinate the development of ~~technological~~ *geographic information system* standards for creating land information;

(i) serve as the primary point of contact for national, regional, state, and other GIS coordinating groups for the purpose of channeling issues and projects to the appropriate individual, organization, agency, or other entity;

(j) provide administrative and staff support to the council, including paying the expenses of the council;

(k) annually prepare a budget to carry out the ~~department's~~ *state library's* responsibilities described in this section;

(l) report to the governor and the legislature, as provided for in 5-11-210, on the progress made in the ongoing collection, maintenance, standardization, and dissemination of land information; and

(m) implement the conservation easement information requirements as provided for in 76-6-212.

(2) To fulfill the responsibilities described in subsection (1), the ~~department~~ *state library* or any recipient of funds granted pursuant to this part may contract with a public or private entity."

**Section 6.** Section 90-1-405, MCA, is amended to read:

**"90-1-405. Land information advisory council — appointments — terms — vacancies — compensation.** (1) There is a land information advisory council.

(2) The council is composed of the following members:

(a) the ~~director of the department or the director's~~ *state librarian or the state librarian's* designee who shall:

(i) serve as the presiding officer of the council; or

(ii) appoint the presiding officer from among the other members of the council;

(b) ~~the state librarian or the state librarian's designee~~ *the chief information officer provided for in 2-17-506 or the chief information officer's designee*;

(c) to be appointed by the governor:

(i) ~~the~~ *four* directors of ~~four other~~ departments established in Title 2, chapter 15. A director may designate a person to act in the director's absence.

(ii) three persons who represent county or municipal government, at least one of whom is active in land information systems;

(iii) two persons who are employed by the U.S. department of agriculture;

(iv) two persons who are employed by the U.S. department of the interior;

(v) two persons who are active in land information systems and represent public utilities or private businesses;

(vi) one person who represents Indian tribal interests;

(vii) one person who represents the Montana university system;

(viii) two persons who are members of a Montana association of GIS professionals; and

(ix) one person who represents the interests of a Montana association of registered land surveyors;

(d) one member of the Montana state senate, appointed by the committee on committees, who must be appointed prior to the appointment of the member described in subsection (2)(e); and

(e) one member of the Montana house of representatives, appointed by the speaker of the house of representatives, who may not be a member of the same political party as the member of the senate appointed under subsection (2)(d).

(3) Each council member is appointed for a 2-year term that begins on July 1 of the odd-numbered year and ends on June 30 of the succeeding odd-numbered year. A member may be reappointed to the council.

(4) A vacancy on the council must be filled in the same manner as the original appointment, and the person appointed to fill the vacancy shall serve for the remainder of the unexpired term.

(5) (a) A member of the council who is not a legislator or an employee of the state or a political subdivision of the state is eligible to be reimbursed and compensated, as provided in 2-15-124.

(b) A member of the council who is not a legislator but is an employee of the state or a political subdivision of the state is not entitled to compensation but is entitled to be reimbursed for expenses, as provided in 2-18-501 through 2-18-503.

(c) A legislator who is a member of the council is eligible to be compensated and reimbursed, as provided in 5-2-302."

**Section 7.** Section 90-1-406, MCA, is amended to read:

**"90-1-406. Land information advisory council — duties — advisory only.** (1) The council shall:

(a) advise the ~~department~~ *state library* with regard to issues relating to the geographic information system and land information;

(b) advise the ~~department~~ *state library* on the priority of land information, including data layers, to be developed;

(c) review the land information plan described in 90-1-404 and advise the ~~department~~ *state library* on any element of the plan;

(d) advise the ~~department~~ *state library* on the development and management of the granting process described in 90-1-404(1)(e);

(e) advise the ~~department~~ *state library* on the management of and the distribution of funds in the account;

(f) assist in identifying, evaluating, and prioritizing requests received from state agencies, local governments, and Indian tribal government entities to provide development of and maintenance of services relating to the GIS and land information;

(g) promote coordination of programs, policies, technologies, and resources to maximize opportunities, minimize duplication of effort, and facilitate the documentation, distribution, and exchange of land information; and

(h) advocate for the development of consistent policies, standards, and guidelines for land information.

(2) The council functions in an advisory capacity, as defined in 2-15-102."

**Section 8.** Section 90-1-410, MCA, is amended to read:

**"90-1-410. Montana land information account — distribution of funds.** (1) The ~~department~~ *state library* shall annually prepare a budget to carry out the ~~department's~~ *state library's* responsibilities described in 90-1-404. Money in the account may be used to fund all or a portion of the budget or to otherwise accomplish the purposes of this part.

(2) A state agency, a local government, or an Indian tribal government entity may apply to the ~~department~~ *state library* for funds in the account for the purposes described in this part.

(3) The ~~department~~ *state library* shall ensure that funds distributed under this section are managed by the recipient of the funds according to standards and practices established by the ~~department~~ *state library* to allow for the greatest use and sharing of the land information."

**Section 9.** Section 90-1-411, MCA, is amended to read:

**"90-1-411. Montana land information account — use of funds — action by ~~department~~ *state library* — hearing.** (1) Money in the account may be used only for the purposes of this part, including purchasing technology to assist in collecting, maintaining, or disseminating land information and funding the budget required under 90-1-410.

(2) If the ~~department~~ *state library* determines that a recipient of funds from the account has not used or is not using funds in the manner prescribed by the ~~department~~ *state library*, the ~~department~~ *state library* may, after notice and hearing as provided for in Title 2, chapter 4, suspend further payment to the recipient.

(3) A recipient to whom the ~~department~~ *state library* has suspended payments under this section is not eligible to receive further funds from the account until the ~~department~~ *state library* determines that the recipient is using funds in the manner prescribed by the ~~department~~ *state library*."

**Section 10.** Section 90-1-413, MCA, is amended to read:

**"90-1-413. Rulemaking.** (1) The ~~department~~ *state library* shall adopt rules regarding:

(a) designing and implementing the process to develop the land information plan described in 90-1-404(1)(c);

(b) the application and granting processes provided for in 90-1-404(1)(e);

(c) the monitoring process provided for in 90-1-404(1)(g); and

(d) the process for coordinating ~~technological~~ *geographic information system* standards for creating land information provided for in 90-1-404(1)(h).

(2) The ~~department~~ *state library* may adopt other rules considered to be necessary for the effective administration of this part."

**Section 11. Effective date.** [This act] is effective July 1, 2013.

Approved April 12, 2013

# CHAPTER NO. 176

[HB 68]

AN ACT ESTABLISHING A STATEWIDE MULTIAGENCY REENTRY TASK FORCE FOR RELEASED OFFENDERS AT HIGH RISK OF RECIDIVISM; SPECIFYING DEPARTMENT OF CORRECTIONS DUTIES; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Legislative findings — definition.** (1) The legislature finds that:

(a) an effective reentry program targeting inmates at greatest risk of recidivism would not only save the state money but would enhance public safety;

(b) a successful reentry initiative requires planning and preparation, the support of multiple state agencies and community-based organizations, and targeted funding;

(c) in-prison access to resources is an important component of reentry planning prior to release; and

(d) studies have shown that offenders who participate in reentry and restorative justice programs that hold offenders accountable to victims and community volunteer panels are less likely to reoffend, more likely to find community acceptance and employment, and better able to pay restitution.

(2) As used in [sections 1 through 3], "restorative justice program" has the meaning provided in 2-15-2013(3)(c).

**Section 2. Reentry task force.** (1) There is a multiagency reentry task force that shall advise the department and help develop and implement reentry programs for offenders within 12 months of release from prison and at highest risk of recidivism.

(2) (a) The following agencies shall participate on the task force:

(i) the department;

(ii) the office of public instruction;

(iii) the university system;

(iv) the department of labor and industry established in 2-15-1701;

(v) the department of public health and human services established in 2-15-2201;

(vi) the department of commerce established in 2-15-1801;

(vii) the department of justice established in 2-15-2001; and

(viii) the board.

(b) Other agencies may participate as appropriate.

(3) Other members of the task force may include:

(a) a representative from community-based organizations that assist in the reentry process;

(b) a representative of community-based adult restorative justice programs;

(c) a representative of crime victims who is a crime victim;

(d) a representative of faith-based organizations that assist in the reentry process;

(e) a representative of community businesses interested in partnering with the department concerning reentry;

(f) a state legislator; and

(g) a representative of a mental health organization.

(4) The task force shall meet regularly at the call of the department director, who serves as the presiding officer. Task force members serving in their capacity as government employees are not entitled to additional compensation but are entitled to reimbursement for travel expenses incurred while engaged in task force activities as provided for in 2-18-501. Task force members who are not employed by the state are not entitled to compensation or travel expenses.

(5) Before July 1 of each even-numbered year, the task force shall report to the law and justice interim committee regarding the development, implementation, and effectiveness of reentry programs.

**Section 3. Department duties.** The department, in consultation with the reentry task force, shall:

(1) examine and implement programs that will help bring community resources into prisons to support inmate reentry planning and preparation;

(2) develop partnerships with and contract with community-based organizations that provide needed services to released inmates in areas such as mental health, chemical dependency, employment, housing, health care, faith-based services, parenting, relationship services, and victim impact panels;

(3) coordinate with community restorative justice programs to ensure victim concerns and opportunities for restorative justice practices, including restitution, are considered during an offender's reentry; and

(4) collect data, conduct program evaluation, and develop findings and any recommendations about reentry and recidivism and include this information in an annual report to be made available to the law and justice interim committee provided for in 5-5-226.

**Section 4. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 46, chapter 23, and the provisions of Title 46, chapter 23, apply to [sections 1 through 3].

**Section 5. Effective date.** [This act] is effective July 1, 2013.

Approved April 12, 2013

# CHAPTER NO. 177

[HB 72]

AN ACT PROVIDING THAT IN A CRIMINAL PROCEEDING A SENTENCING JUDGE MAY REQUIRE AS A CONDITION OF A DEFERRED OR SUSPENDED SENTENCE THAT THE OFFENDER PARTICIPATE IN A RESTORATIVE JUSTICE PROGRAM IF THE PROGRAM ACCEPTS THE OFFENDER; REQUIRING THE OFFENDER TO PAY A PARTICIPATION FEE; AMENDING SECTIONS 46-18-104 AND 46-18-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Law and Justice Interim Committee examined the efficacy of restorative justice principles and practices within the criminal justice system as requested by Senate Joint Resolution No. 29 from the 2011 legislative session; and

WHEREAS, the Committee found that some Montana judges are referring offenders to restorative justice programs; and

WHEREAS, these programs have been effective in providing an increased sense of justice and safety in communities harmed by crime;

WHEREAS, restorative justice programs depend on victim volunteers who incur training, travel, and per diem expenses; and

WHEREAS, offenders should be held accountable for their offenses by helping cover the cost of restorative justice opportunities.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 46-18-104, MCA, is amended to read:

**"46-18-104. Definitions.** As used in 46-18-101, 46-18-105, 46-18-201, 46-18-225, and this section, unless the context requires otherwise, the following definitions apply:

(1) "Community corrections" or "community corrections facility or program" means a community corrections facility or program as defined in 53-30-303.

(2) (a) "Crime of violence" means:

(i) a crime in which an offender uses or possesses and threatens to use a deadly weapon during the commission or attempted commission of a crime;

(ii) a crime in which the offender causes serious bodily injury or death to a person other than the offender; or

(iii) an offense under:

(A) 45-5-502 for which the maximum potential sentence is life imprisonment or imprisonment in a state prison for a term exceeding 1 year;

(B) 45-5-503, except as provided in subsection (2)(b) of this section; or

(C) 45-5-507 if the victim is under 16 years of age and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing the offense.

(b) In a prosecution under 45-5-503, if the sexual intercourse was without consent based solely on the victim's age, the victim willingly participated, and the offender is not more than 3 years older than the victim, the offense is not a crime of violence for purposes of this section.

(3) "Nonviolent felony offender" means a person who has entered a plea of guilty or nolo contendere to a felony offense other than a crime of violence or who has been convicted of a felony offense other than a crime of violence.

*(4) "Restorative justice" has the meaning provided in 2-15-2013.*"

**Section 2.** Section 46-18-201, MCA, is amended to read:

**"46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a

period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(i) a fine as provided by law for the offense;

(ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in 46-8-113;

(iii) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(iv) commitment of:

(A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), and 45-5-625(4); or

(B) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(v) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(vi) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(vii) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

(viii) any combination of subsections (2) and (3)(a)(i) through (3)(a)(vii).

(b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank program.

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of assigned counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

(n) participation in a day reporting program provided for in 53-1-203;

(o) participation in the sobriety program provided for in Title 44, chapter 4, part 12, for a second or subsequent violation of 61-8-401 or 61-8-406;

*(p) participation in a restorative justice program approved by court order and payment of a participation fee of up to $150 for program expenses if the program agrees to accept the offender;*

~~(p)~~*(q)* any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

~~(q)~~*(r)* any combination of the restrictions or conditions listed in subsections (4)(a) through ~~(4)(p)~~ *(4)(q)*.

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise."

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved April 12, 2013

# CHAPTER NO. 178

[HB 105]

AN ACT GENERALLY REVISING PROVISIONS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM, THE JUDGES' RETIREMENT SYSTEM, THE HIGHWAY PATROL OFFICERS' RETIREMENT SYSTEM,

THE SHERIFFS' RETIREMENT SYSTEM, THE GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM, THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM, THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM, AND THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT; REVISING PROVISIONS RELATED TO RETIREMENT, DISABILITY, AND DEATH BENEFITS AND PAYMENTS; REVISING PROVISIONS RELATED TO OPTIONAL MEMBERSHIP, SERVICE CREDIT, AND REEMPLOYMENT; PROVIDING FOR TRAVEL EXPENSES FOR THE EMPLOYEE INVESTMENT ADVISORY COUNCIL; REVISING DEATH BENEFITS UNDER THE SHERIFFS' RETIREMENT SYSTEM; REVISING CANCELLATION AND REINSTATEMENT OF DISABILITY BENEFITS UNDER THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT; CORRECTING TERMINOLOGY AND INTERNAL REFERENCES; ELIMINATING EXPIRED PROVISIONS; AMENDING SECTIONS 19-2-303, 19-2-403, 19-2-406, 19-2-505, 19-2-706, 19-2-801, 19-2-907, 19-3-412, 19-3-512, 19-3-908, 19-3-1103, 19-3-1106, 19-3-1210, 19-3-1501, 19-3-2133, 19-3-2141, 19-5-601, 19-5-701, 19-5-801, 19-5-802, 19-6-601, 19-7-503, 19-7-601, 19-7-901, 19-7-1001, 19-8-302, 19-8-701, 19-8-801, 19-8-1002, 19-9-710, 19-9-1007, 19-13-104, 19-13-803, AND 19-17-605, MCA; REPEALING SECTION 19-3-1005, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 19-2-303, MCA, is amended to read:

**"19-2-303. Definitions.** Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumptions adopted by the board.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined benefit retirement plan over the present value of future normal costs in that retirement plan.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member of a defined benefit plan to purchase various types of optional service credit as allowed by the applicable retirement plan.

(8) "Annuity" means:

(a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement plan

and as such are not benefits paid by a retirement plan and are not subject to periodic or one-time increases; or

(b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

(9) "Banked holiday time" means the hours reported for work performed on a holiday that the employee may use for equivalent time off or that may be paid to the employee as specified by the employer's policy.

(10) "Benefit" means:

(a) the service retirement benefit, early retirement benefit, or disability retirement or survivorship benefit payment provided by a defined benefit retirement plan; or

(b) a payment or distribution under the defined contribution retirement plan, including a disability payment under 19-3-2141, for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124.

(11) "Board" means the public employees' retirement board provided for in 2-15-1009.

(12) "Contingent annuitant" means:

(a) under option 2 or 3 provided for in 19-3-1501, one natural person designated to receive a continuing monthly benefit after the death of a retired member; or

(b) under option 4 provided for in 19-3-1501, a natural person, charitable organization, estate, or trust that may receive a continuing monthly benefit after the death of a retired member.

(13) "Covered employment" means employment in a covered position.

(14) "Covered position" means a position in which the employee must be a member of the retirement system except as otherwise provided by law.

(15) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

(16) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and that is not a defined benefit plan.

(17) "Department" means the department of administration.

(18) "Designated beneficiary" means the person, charitable organization, estate, or trust for the benefit of a natural person designated by a member or payment recipient to receive any survivorship benefits, lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(19) "Direct rollover" means a payment by the *retirement* plan to the eligible retirement plan specified by the distributee *or a payment from an eligible retirement plan to the retirement plan specified by the distributee*.

(20) "Disability" or "disabled" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(21) "Distributee" means:

(a) a member;

(b) a member's surviving spouse;

(c) a member's spouse or former spouse who is the alternate payee under a family law order as defined in 19-2-907; or

(d) effective January 1, 2007, a member's nonspouse beneficiary who is a designated beneficiary as defined by section 401(a)(9)(E) of the Internal Revenue Code, 26 U.S.C. 401(a)(9)(E).

(22) "Early retirement benefit" means the retirement benefit payable to a member following early retirement and is the actuarial equivalent of the accrued portion of the member's service retirement benefit.

(23) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

(a) an individual retirement account described in section 408(a) of the Internal Revenue Code, 26 U.S.C. 408(a);

(b) an individual retirement annuity described in section 408(b) of the Internal Revenue Code, 26 U.S.C. 408(b);

(c) an annuity plan described in section 403(a) of the Internal Revenue Code, 26 U.S.C. 403(a);

(d) a qualified trust described in section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);

(e) effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b);

(f) effective January 1, 2002, a plan eligible under section 457(b) of the Internal Revenue Code, 26 U.S.C. 457(b), that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from a plan under this title; or

(g) effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code, 26 U.S.C. 408A.

(24) "Eligible rollover distribution":

(a) means any distribution of all or any portion of the balance from a retirement plan to the credit of the distributee, as provided in 19-2-1011;

(b) effective January 1, 2002, includes a distribution to a surviving spouse or to a spouse or former spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p).

(25) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying retirement contributions pursuant to 7-11-105.

(26) "Employer" means a governmental agency participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as responsible for paying retirement contributions pursuant to 7-11-105.

(27) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

(a) the position exists to perform the element;

(b) there are a limited number of employees to perform the element; or

(c) the element is highly specialized.

(28) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

(29) "Inactive member" means a member who terminates service and does not retire or take a refund of the member's accumulated contributions.

(30) "Internal Revenue Code" has the meaning provided in 15-30-2101.

(31) "Member" means either:

(a) a person with accumulated contributions and service credited with a defined benefit retirement plan or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or

(b) a person with a retirement account in the defined contribution plan.

(32) "Membership service" means the periods of service that are used to determine eligibility for retirement or other benefits.

(33) (a) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a defined benefit retirement plan during any year in the future.

(b) Normal cost does not include any portion of the supplemental costs of a retirement plan.

(34) "Normal retirement age" means the age at which a member is eligible to immediately receive a retirement benefit based on the member's age, length of service, or both, as specified under the member's retirement system, without disability and without an actuarial or similar reduction in the benefit.

(35) "Pension" means benefit payments for life derived from contributions to a retirement plan made from state- or employer-controlled funds.

(36) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system or plan in public trust.

(37) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered by the defined contribution plan members that is allocated to the public employees' retirement system's defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member selection of the defined contribution plan.

(38) "Regular contributions" means contributions required from members under a retirement plan.

(39) "Regular interest" means interest at rates set from time to time by the board.

(40) "Retirement" or "retired" means the status of a member who has:

(a) terminated from service; and

(b) received and accepted a retirement benefit from a retirement plan.

(41) "Retirement account" means an individual account within the defined contribution retirement plan for the deposit of employer and member contributions and other assets for the exclusive benefit of a member of the defined contribution plan or the member's beneficiary.

(42) "Retirement benefit" means:

(a) in the case of a defined benefit plan, the periodic benefit payable as a result of service retirement, early retirement, or disability retirement under a defined benefit plan of a retirement system. With respect to a defined benefit plan, the term does not mean an annuity.

(b) in the case of the defined contribution plan, a benefit as defined in subsection (10)(b).

(43) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan under one of the public employee retirement systems enumerated in 19-2-302.

(44) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

(45) "Service" means employment of an employee in a position covered by a retirement system.

(46) "Service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate retirement benefits or survivorship benefits under a defined benefit retirement plan.

(47) "Service retirement benefit" means the retirement benefit that the member may receive at normal retirement age.

(48) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

(49) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.

(50) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.

(51) "Termination of employment", "termination from employment", "terminated employment", "terminated from employment", "terminate employment", or "terminates employment" means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both; and

(b) the member is no longer receiving compensation for covered employment, other than any outstanding lump-sum payment for compensatory leave, sick leave, or annual leave.

(52) "Termination of service", "termination from service", "terminated from service", "terminated service", "terminating service", or "terminates service" means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both for at least 30 days;

(b) no written or verbal agreement exists between employee and employer that the employee will return to covered employment in the future;

(c) the member is no longer receiving compensation for covered employment; and

(d) the member has been paid all compensation for compensatory leave, sick leave, or annual leave to which the member was entitled. For the purposes of

this subsection (52), compensation does not mean compensation as a result of a legal action, court order, or settlement to which the board was not a party.

(53) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

(54) "Vested account" means an individual account within a defined contribution plan that is for the exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions and the income on all contributions in each of the following accounts:

(a) the member's contribution account;

(b) the vested portion of the employer's contribution account; and

(c) the member's account for other contributions.

(55) "Vested member" or "vested" means:

(a) with respect to a defined benefit plan, a member or the status of a member who has at least 5 years of membership service; or

(b) with respect to the defined contribution plan, a member or the status of a member who meets the minimum membership service requirement of 19-3-2116.

(56) "Written application" or "written election" means a written instrument, prescribed by the board or required by law, properly signed and filed with the board, that contains all required information, including documentation that the board considers necessary.

(57) "Written instrument" includes an electronic record containing an electronic signature, as defined in 30-18-102."

**Section 2.** Section 19-2-403, MCA, is amended to read:

**"19-2-403. Powers and duties of board.** (1) The board shall administer the provisions of the chapters enumerated in 19-2-302.

(2) The board may establish rules that it considers proper for the administration and operation of the retirement systems and enforcement of the chapters under which each retirement system is established.

(3) The board shall establish uniform rules that are necessary to determine service credit for fractional years of service.

(4) The board shall determine who are employees within the meaning of each retirement system. The board is the sole authority for determining the conditions under which persons may become members of and receive benefits under the retirement systems. *A person whose job duties require proportional membership in more than one retirement system is subject to the provisions of those systems.*

*(5) If fraud or error results in an employee or member being reported to the incorrect retirement system, the board shall correct the error and adjust contributions as necessary.*

~~(5)~~*(6)* The board shall determine and may modify retirement benefits under the retirement systems. Benefits may be paid only if the board decides, in its discretion, that the applicant is, under the provisions of the appropriate retirement system, entitled to the benefits.

~~(6)~~*(7)* In matters of board discretion under the systems, the board shall treat all persons in similar circumstances in a uniform and nondiscriminatory manner.

~~(7)~~*(8)* The board shall maintain records and accounts it determines necessary for the administration of the retirement systems.

~~(8)~~*(9)* The board shall enter into memoranda of understanding with the teachers' retirement system to exchange retirement system-related confidential information regarding members, former members, or retirees. A memorandum must state that:

(a) the information may be used only for reasons related to verifying appropriate pension plan participation; and

(b) the requesting retirement system agrees to protect the confidentiality of the information and will disclose the requested information only as necessary to conduct official business.

~~(9)~~*(10)* Upon the basis of the findings of the actuary pursuant to 19-2-405, the board shall adopt actuarial rates and rates of regular interest it determines appropriate for the administration of the retirement systems.

~~(10)~~*(11)* The board shall review the sufficiency of benefits paid by the retirement system or plan and recommend to the legislature those changes in benefits in a defined benefit plan or in contributions under the defined contribution plan that may be necessary for members and their beneficiaries to maintain a stable standard of living.

~~(11)~~*(12)* The board may implement third-party mailings under the provisions of 2-6-109. If third-party mailings are implemented, the board shall adopt rules governing means of implementation, including the specification of eligible third parties, appropriate materials, and applicable fees and procedures. Fees generated by third-party mailings must be deposited in the appropriate retirement system fund for the benefit of participants of retirement systems or plans administered by the board.

~~(12)~~*(13)* In discharging duties, the board, a member of the board, or an authorized representative of the board may conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records. Subpoenas must be issued and enforced pursuant to 2-4-104 of the Montana Administrative Procedure Act.

~~(13)~~*(14)* The board may by rule or otherwise delegate to the board's executive director or any other staff member any of the powers or duties conferred by law upon the board except as otherwise provided by law and except for the adoption of rules and the issuance of final orders after hearings held pursuant to subsection ~~(12)~~ *(13)* or the contested case procedure of the Montana Administrative Procedure Act.

~~(14)~~*(15)* The board shall perform other duties and may exercise the powers concerning the defined contribution plan for plan members as provided in chapter 3, part 21, of this title."

**Section 3.** Section 19-2-406, MCA, is amended to read:

**"19-2-406. ~~Determination of disability by board — compliance with federal law — conversion to service retirement benefit~~ *Disability retirement — application — determination — benefit conversion —* rules.** *(1) (a) An active or inactive member may apply for disability retirement in a manner prescribed by the board. However, an application may also be filed on the member's behalf by the head of the office or department in which the member is or was last employed, by any other individual, or by the board.*

*(b) The application must be filed within 4 months after the member's termination from employment unless the member is disabled continuously from the date of termination from employment to the date of the application.*

~~(1)~~*(2)* The board shall determine whether a member has become disabled. In the discharge of its duty regarding determinations, the board, any member of the board, or any authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a claim for disability retirement. Subpoenas must be issued and enforced pursuant to 2-4-104 of the Montana Administrative Procedure Act.

~~(2)~~*(3)* The board shall adopt rules requiring employers to identify and explain the essential elements of a member's position, any accommodations that were or can be made in compliance with the Americans With Disabilities Act of 1990 (42 U.S.C. 12101, et seq.), and the effectiveness of the accommodations.

~~(3)~~*(4)* The board shall retain medical personnel to advise it in assessing the nature and extent of disabling conditions while reviewing claims for disability retirement.

~~(4)~~*(5)* The disability retirement benefit paid to a member of the defined benefit plan must be converted to a service retirement benefit, without recalculation of the monthly benefit amount, when the member has attained normal retirement age. The board shall notify the member in writing as to the change in status."

**Section 4.** Section 19-2-505, MCA, is amended to read:

**"19-2-505. Restrictions on use of funds.** (1) Except as provided in this section, a member or an employee of the board or the board of investments may not:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing from the pension trust funds;

(b) directly or indirectly, for the member or employee or as an agent or partner of others, borrow from the pension trust funds or deposits;

(c) in any manner use the pension trust funds except to make current and necessary payments that are authorized by the board;

(d) become an endorser or surety as to or in any manner an obligor for investments for the pension trust funds; or

(e) engage in a transaction prohibited by section 503(b) of the Internal Revenue Code.

(2) The assets of the retirement systems, including the assets of retirement accounts, may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable administrative expenses of the retirement systems administered by the board.

(3) The assets of the retirement systems remain in trust until a warrant has been negotiated or an electronic funds transfer has been deposited in accordance with law.

(4) Retirement benefits not claimed within 5 years after the member's death are forfeited and revert to the retirement system trust fund.

*(5) The accumulated contributions of a vested or nonvested member that are not claimed within 5 years after the member's death are forfeited and revert to the retirement system trust fund.*

~~(5)~~*(6)* This section does not prevent the administration of an investment alternative within the defined contribution plan to the same extent that all other investment alternatives within the defined contribution plan are managed."

**Section 5.** Section 19-2-706, MCA, is amended to read:

**"19-2-706. Additional service credit for active member involuntarily terminated from employment.** (1) The provisions of subsection (3) apply to an employee of the state or university system if:

(a) the employee is an active member of the public employees' defined benefit plan or the game wardens' and peace officers', sheriffs', firefighters' unified, or highway patrol officers' retirement system;

(b) the employee has involuntarily terminated from employment because of elimination of the employee's position as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature or, in the case of a member who is a legislator, the legislator is terminated from office in either one of the houses of the legislature because of term limits;

(c) the employee is eligible for service retirement or early retirement under the applicable provisions of the retirement system to which the member belongs; and

(d) the employee waives the rights and benefits for which the employee would otherwise be eligible under the State Employee Protection Act.

(2) The cost of each year of service credit purchased under this section is the total actuarial cost of purchasing the service credit based on the most recent actuarial valuation of the retirement system.

(3) The employer of an eligible member under subsection (1) shall pay a portion of the total cost of purchasing up to 3 years of additional service credit that the member was qualified to purchase under 19-3-513, 19-6-804, 19-7-804, 19-8-904, or 19-13-405. The employer-paid portion must be calculated using the formula A x B x C when:

(a) A is equal to a maximum of 3 additional years of service credit that the member is eligible to purchase;

(b) B is equal to the sum of the employer and employee contribution rates in the member's retirement system; and

(c) C is equal to the member's gross compensation paid during the immediate preceding 12 months of membership service. The employer may not be charged more than the total actuarial cost of the service credit purchased.

(4) The member shall pay the difference, if any, between the full actuarial cost of the service credit to be purchased and the contribution required from the employer under subsection (3). The member may elect to purchase less than the full amount of service for which the member is eligible under this section, but the election may not reduce the amount of the employer's contribution as calculated under subsection (3).

(5) The board may allow an employer to pay the contributions required under subsection (3) in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403.

(6) (a) A member who has received additional service credit under this section and who returns to employment for the same jurisdiction for 960 or more hours in a calendar year in any retirement system forfeits the additional service credit. The employer's contribution to purchase that member's additional service credit, minus ~~any~~ *the proportional amount of* retirement benefits *related to the additional service purchased under this section and* already paid, must be credited to the employer.

(b) As used in subsection (6)(a), the term "same jurisdiction" means all agencies of the state, including the university system."

**Section 6.** Section 19-2-801, MCA, is amended to read:

**"19-2-801. Designation of beneficiary.** (1) In the absence of any statutory beneficiaries, designated beneficiaries are the natural persons, charitable organizations, estate of the payment recipient, or trusts for the benefit of natural living persons that the member or payment recipient designates on the membership card or other form provided by the board.

(2) Unless otherwise provided by ~~statute~~ *this title or by a valid temporary restraining order issued pursuant to 40-4-121*, a member or payment recipient may revoke the designation and name different designated beneficiaries by filing with the board a new membership card or other form provided by the board.

(3) If a person returns to covered employment in the same retirement system pursuant to 19-2-603, the board shall reference the membership card executed by the person prior to initial termination of membership for the same purposes as prior to termination. Beneficiaries nominated on that membership card continue until changed as provided in subsection (2) of this section.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), the beneficiary designation on the most recent membership card filed with the board is effective for all purposes until the member retires.

(b) A member may elect to either override or retain the member's existing beneficiary designation when completing a membership card for temporary or secondary employment with another employer within the same Title 19 retirement system.

(c) When a member retires, the designated beneficiaries or contingent annuitants named on the retirement application become effective.

(5) If a statutory or designated beneficiary predeceases the member or payment recipient, the predeceased beneficiary's share must be paid to the remaining statutory or designated beneficiaries in amounts proportional to each remaining statutory or designated beneficiary's original share.

(6) A statutory or designated beneficiary who renounces an interest in the payment rights of a member or payment recipient will be considered, with respect to that interest, as having predeceased the member or payment recipient.

(7) A contingent annuitant of a retired member who elected option 2, 3, or 4 pursuant to 19-3-1501, 19-5-701, 19-7-1001, or 19-8-801 may not renounce the contingent annuitant's interest in the payment rights of the member."

**Section 7.** Section 19-2-907, MCA, is amended to read:

**"19-2-907. Alternate payees — family law orders — rulemaking.** (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "family law order" means a judgment, decree, or order of a court of competent jurisdiction under Title 40 concerning child support, parental support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section and with section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p); and

(b) "participant" means an identified person who is a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(3) A family law order must identify a participant and an alternate payee by full name, current address, date of birth, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) Except as provided in subsection (6)(a), a family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.

(5) With respect to a defined benefit plan, a family law order may provide for payment to an alternate payee only as follows:

(a) Retirement benefit payments or refunds may be apportioned by directing payment of either a percentage of the amount payable or a fixed amount of no more than the amount payable to the participant. Payments to an alternate payee may be limited to a specific amount each month if the number of payments is specified.

(b) The maximum amount of disability or survivorship benefits that may be paid to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death. The maximum amount paid may be zero, depending on the member's age and service credit at the time of disability or death. Conversion of a disability retirement to a service retirement pursuant to 19-2-406~~(4)~~*(5)*, 19-3-1015(2), 19-6-612(2), or 19-8-712(2) does not increase the maximum monthly amount that may be paid to an alternate payee.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be paid as a percentage only if existing benefit payments are paid as a percentage. The adjustments must be paid as a percentage in the same ratio as existing benefit payments.

(d) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system or plan allows for that option.

(6) With respect to a defined contribution plan, a family law order may provide for payment to an alternate payee only as follows:

(a) The vested account of the participant may be apportioned by directing payment of either a percentage or a fixed amount. The total amount paid may not exceed the amount in the participant's vested account. The alternate payee may receive the payment only as a direct payment, rollover, or transfer. The alternate payee's portion must be totally disbursed to the alternate payee as

soon as administratively feasible upon the board's approval of the family law order.

(b) If the participant is receiving periodic payments or an annuity provided under the plan, those payments may be apportioned as a percentage of the amount payable to the participant. Payments to the alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments may not total more than the amount payable to the payee.

(7) The duration of monthly payments paid from a defined benefit or defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate payee, or the life of another specified participant. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(8) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

(9) Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.

(10) The board shall adopt rules to provide for the administration of family law orders."

**Section 8.** Section 19-3-412, MCA, is amended to read:

**"19-3-412. Optional membership.** (1) Except as provided in 5-2-304 and subsection (2) of this section, the following employees and elected officials in covered positions shall elect either to become active members of the retirement system or to decline this optional membership by filing an irrevocable, written application with the board in the manner prescribed in subsection (3):

(a) elected officials of the state or local governments, including individuals appointed to fill the unexpired term of elected officials, who:

(i) are paid on a salary or wage basis rather than on a per diem or other reimbursement basis; or

(ii) were members receiving retirement benefits under the defined benefit plan or a distribution under the defined contribution plan at the time of their election;

(b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered employment with all employers under this chapter in any fiscal year;

(c) employees directly appointed by the governor;

(d) employees working 10 months or less for the legislative branch to perform work related to the legislative session;

(e) the chief administrative officer of any city or county;

(f) employees of county hospitals or rest homes.

(2) A member who is elected to a local government position in which the member works less than 960 hours in a ~~calendar~~ *fiscal* year may, within 90 days of taking office, decline optional membership with respect to the member's elected position.

(3) (a) The board shall prescribe the form of the written application required pursuant to subsection (1) and provide written application forms to each employer.

(b) Each employee or elected official in a position covered under subsection (1) shall obtain the written application form from the employer and complete and return it to the board.

(c) The written application must be filed with the board:

(i) for an employee described in subsection (1)(d), within 90 days of the commencement of the employee's employment; and

(ii) for an employee or elected official described in subsection (1)(a), (1)(b), (1)(c), (1)(e), or (1)(f), within 90 days of the commencement of the employee's or elected official's employment.

(d) The employer shall retain a copy of the employee's or elected official's written application.

(4) If the employee or elected official fails to file the written application required under subsection (1) with the board within the time allowed in subsection (3), the employee or elected official waives membership.

(5) An employee or elected official who declines optional membership may not receive membership service or service credit for the employment for which membership was declined.

(6) An employee or elected official who declined optional membership but later becomes a member may purchase service credit for the period of time beginning with the date of employment in which membership was declined to the commencement of membership. Purchase of service credit pursuant to this subsection must comply with 19-3-505.

(7) Except as provided in subsection (2), membership in the retirement system is not optional for an employee or elected official who is already a member. Upon employment in a position for which membership is optional:

(a) a member who was an active member before the employment remains an active member;

(b) a member who was an inactive member before the employment becomes an active member; and

(c) a member who was a retired member before the employment is subject to part 11 of this chapter.

(8) (a) An employee who declines membership for a position for which membership is optional may not later become a member while still employed with the same employer but in a different optional membership position.

(b) An elected official who declines membership for a position for which membership is optional may not later become a member if reelected to the same optional membership position.

(c) If, after termination from employment for 30 days or more, an employee who was employed in an optional membership position is reemployed in the same position or is employed in a different position for which membership is optional, the employee shall again choose or decline membership.

(d) If the termination from employment is less than 30 days, an employee who declined membership is bound by the employee's original decision to decline membership.

(9) An employee accepting a position that requires membership must become a member even if the employee previously declined membership and did not have a 30-day break in service."

**Section 9.** Section 19-3-512, MCA, is amended to read:

**"19-3-512. Purchase of service credit from other public retirement systems.** (1) Subject to 19-3-514, a member with at least 5 years of membership

service in the public employees' retirement system may purchase service credit for:

(a) public service employment covered under a public retirement system other than a system provided for in Title 19 for which the member received a refund of the member's membership contribution; and

(b) public service employment that occurred before the public employer adopted a public retirement system.

(2) A member may not purchase more than 5 years of service credit under this section. To purchase this service credit, a member shall:

(a) at any time before retirement, file a written application with the board; and

(b) pay the actuarial cost of the service credit in the public employees' retirement system, as determined by the board, based on the system's most recent actuarial valuation.

~~(3) Service credit purchased under this section may not be used to qualify a member to purchase military service under 19-3-503.~~

~~(4)~~*(3)* Service credit purchased under this section may not be used in calculating a member's retirement benefit unless the member's last 5 years of service credit were earned under the public employees' retirement system. If, upon the member's retirement, the member's purchased service credit cannot be used in calculating the member's retirement benefit, the member must receive a refund of the amount paid to purchase the service credit, plus regular interest on that amount."

**Section 10.** Section 19-3-908, MCA, is amended to read:

**"19-3-908. Retirement incentive program — window of eligibility.** (1) Except as provided in subsection (4), a person who is an active member on February 1, 1993, and who voluntarily terminates service or who is involuntarily terminated from service because of a reduction in force on or after June 25, 1993, but before January 1, 1994, and who is eligible for a normal service retirement under 19-3-901 or early retirement under 19-3-902 is entitled to the retirement incentive provided in subsection (2).

(2) (a) The employer of an eligible member under subsection (1) shall pay the total cost of purchasing up to 3 years of additional service credit that the member is qualified to purchase under 19-3-513.

(b) The department of revenue shall pay the cost of purchasing up to 3 years of additional service credit for qualifying county assessors and deputy assessors eligible under subsection (1) whose employing county has not elected for participation in the incentive program as provided in subsection (4).

(c) A member is entitled to a refund for that portion of previously purchased additional service that would otherwise cause the member to be unqualified to receive all or part of the additional service credit provided in this section.

(3) An active member who is involuntarily terminated from service because of a reduction in force on or after March 1, 1993, but before June 25, 1993, and who, if the member had not been terminated from service, would have been eligible under subsection (1) for the retirement incentive is entitled to the retirement incentive under subsection (2) if the member was, at the time of termination from service, eligible for service retirement under 19-3-901 or early retirement under 19-3-902 and retires on or after June 25, 1993.

(4) Subject to subsection (2)(b), a contracting employer's participation in the incentive program described in this section is optional. A contracting employer

may elect to provide the incentive by filing with the board a written notice of election on or before June 1, 1993, and complying with rules adopted pursuant to subsection (6).

(5) County assessors and deputy assessors are eligible for the incentive program even if the employing county has not elected to participate in the incentive program.

(6) The board may allow an employer to pay the contributions required under subsection (2)(a) in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403. The board shall adopt rules to implement the provisions of this section.

(7) A member who has received additional service under this section and who returns to employment for the same jurisdiction for 960 or more hours in a calendar year in a position covered by the public employees' retirement system or for 600 or more hours in a calendar year in a position covered under any other retirement system shall forfeit the additional service. The employer's contributions to purchase that member's additional service credit, minus ~~any~~ *the proportional amount of* retirement benefits *related to the additional service purchased under this section and* already paid, must be refunded to the employer. For purposes of this subsection, all agencies of the state, including the university system, are considered the same jurisdiction and other public employers contracting with the retirement system are each considered separate jurisdictions."

**Section 11.** Section 19-3-1103, MCA, is amended to read:

**"19-3-1103. Disability benefit reduced by earnings.** (1) (a) If the recipient of a disability retirement benefit ~~engages in a gainful occupation during any month other than~~ *is self-employed or employed* in a position *not* covered by the retirement system, *the recipient shall submit to the board an annual earnings statement, and any other documentation requested by the board, covering each month during which the recipient was self-employed or employed in the position.*

*(b)* ~~the~~ *The* amount of the recipient's retirement benefit for ~~that~~ *each* month *of employment* must be reduced to an amount that, when added to the compensation earned by the recipient in that occupation, does not exceed the amount of the recipient's monthly compensation at the time of the recipient's retirement.

~~(b)~~*(c)* The board shall annually adjust the recipient's monthly compensation as it was at the time of retirement by an inflationary factor if the recipient has been receiving a disability retirement benefit for more than 36 consecutive months.

*(d) If the disability benefit recipient fails to submit the documentation as required under subsection (1)(a), the board may suspend the benefit payments until it receives the documentation.*

(2) Benefit adjustments granted by the legislature may not be included in calculations required under this section."

**Section 12.** Section 19-3-1106, MCA, is amended to read:

**"19-3-1106. Limited reemployment — reduction of service retirement benefit upon exceeding limits — reporting obligations — liability — exceptions.** (1) A retired member under 65 years of age who was hired prior to July 1, 2011, who has been terminated from employment for at least 90 days, and who is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system

for a period not to exceed 960 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit. The retirement benefit for any retiree exceeding this 960-hour limitation in any calendar year after retirement must be temporarily reduced $1 for each $1 earned after working 960 hours in that calendar year.

(2) A retired member who is 65 years of age or older but less than 70 1/2 years of age, who has been terminated from employment for at least 90 days, and who returns to employment covered by the retirement system is either subject to the 960-hour limitation of subsection (1) or may earn in any calendar year an amount that, when added to the retiree's current annual retirement benefit, will not exceed the member's annualized highest average compensation, adjusted for inflation as of January 1 of the current calendar year, whichever limitation provides the higher limit on earned compensation to the retiree. Upon reaching the applicable limitation, the retiree's benefits must be temporarily reduced $1 for each $1 of compensation earned in service beyond the applicable limitation during that calendar year.

(3) (a) The employer of a retiree returning to employment covered by the retirement system shall certify to the board the number of hours worked by the retiree and the gross compensation paid to the retiree in that employment during any pay period after retirement. The certification of hours and compensation may be submitted electronically pursuant to rules adopted by the board.

(b) An employer that fails to timely or accurately report the employment of, time worked by, or compensation paid to a retired member as required under subsection (3)(a) is jointly and severally liable with the retired member for repayment to the retirement system of retirement benefits paid to which the member was not entitled, plus interest.

(4) A retiree returning to employment covered by the retirement system may elect to return to active membership at any time during this period of covered employment.

(5) The following members who return to employment covered by the retirement system are not subject to the hour or earnings limitations in subsections (1) and (2) or the reporting requirements in subsection (3):

(a) a retired member who is 70 1/2 years of age or older; or

(b) an elected official in a covered position who, as a retired member, declines optional membership as provided in 19-3-412.

(6) Except as provided in subsection (5), if a retired member is employed by an employer in a position that is reportable to the retirement system and the retired member is concurrently working for the employer in another position that is not reportable to the system, the position that is not reportable is considered to be part of the position that is reportable to the retirement system. All earnings of the retired member that are generated by these positions are reportable to the retirement system.

(7) For the purposes of this section, "employment covered by the retirement system" includes*:*

*(a)* work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor as those terms are defined in 39-8-102*; and*

*(b) services performed by a retiree as an independent contractor for an employer participating in the system*."

**Section 13.** Section 19-3-1210, MCA, is amended to read:

**"19-3-1210. Death payments to designated beneficiaries of retired members.** *(1) When a retired member receiving an option 1 retirement benefit under 19-3-1501 dies, the member's designated beneficiary or, if there is no surviving designated beneficiary, the member's estate must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.*

*(2)* If a retired member *receiving an option 2 or 3 retirement benefit under 19-3-1501* dies ~~without designating a contingent annuitant under 19-3-1501~~ *with no surviving contingent annuitant*, the member's designated beneficiary or, if there is no surviving designated beneficiary, the member's estate must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.

*(3) This section does not apply if the member was receiving a disability benefit.*"

**Section 14.** Section 19-3-1501, MCA, is amended to read:

**"19-3-1501. Optional forms of benefits — designation of contingent annuitant.** (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. *If the member does not elect an optional retirement benefit pursuant to subsection (2), the member's retirement benefit is known as an option 1 benefit.*

*(2)* An optional retirement benefit *under this subsection (2)* is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit, depending on the option selected, to a contingent annuitant as follows:

(a) option 2—a continuation of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant. This option may be the chosen benefit only if the adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:

(i) the excess of the age of the member or designated beneficiary over the age of the nonspouse contingent annuitant based on their ages on their birthdays in a calendar year; or

(ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in subsection ~~(1)(a)(i)~~ *(2)(a)(i)* reduced by the number of years that the member or designated beneficiary is under 70 years of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date.

(b) option 3—a continuation of one-half of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows:

(i) the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:

(A) a 10-year period certain if the member retired at 75 years of age or younger; or

(B) a 20-year period certain if the member retired at 65 years of age or younger;

(ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share-and-share-alike basis;

(iii) if all surviving contingent annuitants die prior to the end of the period certain and the last remaining contingent annuitant has failed to name a designated beneficiary, the remaining payments must be converted to an equivalent lump-sum amount and paid to the estate of the last surviving contingent annuitant.

~~(2)~~*(3)* The member or the designated beneficiary who elects an optional retirement benefit *under subsection (2)* shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

~~(3)~~*(4)* If the member or designated beneficiary or the named contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

~~(4)~~*(5)* If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit *under subsection (2)* is received by the board, then the election is void.

*(6) After the member or designated beneficiary has received and accepted an initial retirement benefit payment, the member may not change the selected option except as provided in subsection (7).*

~~(5)~~*(7)* A retired member receiving an optional retirement benefit pursuant to subsection ~~(1)(a)~~ *(2)(a)* or ~~(1)(b)~~ *(2)(b)* may file a written application with the board to have the member's optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(a) the original contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(b) the member's marriage to the original contingent annuitant has been dissolved and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907. The benefit must then revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the original contingent annuitant.

~~(6)~~*(8)* A member who applies to revert under subsection ~~(5)~~ *(7)* shall, at the time of the application, choose one of the following alternatives:

(a) revert to the member's original *option 1* retirement benefit, increased by the amount of any adjustments received by the member since the effective date of the member's retirement;

(b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or

(c) select a different option *under subsection (2)* and name a new contingent annuitant.

~~(7)~~*(9)* If the member selects an alternative under subsection ~~(6)(b)~~ *(8)(b)* or ~~(6)(c)~~ *(8)(c)*, the member's retirement benefit must be calculated based on the member's and the new contingent annuitant's ages at the time of this election.

~~(8)~~*(10)* A written application pursuant to subsection ~~(5)~~ *(7)* must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

**Section 15.** Section 19-3-2133, MCA, is amended to read:

**"19-3-2133. Employee investment advisory council.** (1) The board shall create an employee investment advisory council. The advisory council shall meet at least four times a year to:

(a) advise the board concerning the operation of the defined contribution plan, including the selection of the initial investment alternatives to be provided pursuant to 19-3-2122;

(b) advise the board about negotiating, contracting, or modifying services for the state deferred compensation plan provided for in chapter 50; and

(c) review existing deferred compensation plans and to advise the board on the administration of the program.

(2) The advisory council is not subject to 2-15-122*, except for payment of travel expenses*."

**Section 16.** Section 19-3-2141, MCA, is amended to read:

**"19-3-2141. Long-term disability plan — benefit amount — eligibility — administration and rulemaking.** (1) For members hired prior to July 1, 2011:

(a) except as provided in subsection (1)(b), a disabled member eligible under the provisions of this section is entitled to a disability benefit equal to one fifty-sixth of the member's highest average compensation, as defined in 19-3-108, multiplied by the member's years of service credit, including any service credit purchased under 19-3-513;

(b) an eligible member with at least 25 years of membership service is entitled to a disability benefit equal to 2% of the member's highest average compensation, as defined in 19-3-108, multiplied by the member's years of service credit, including any service credit purchased under 19-3-513.

(2) For members hired on or after July 1, 2011, the monthly disability benefit payable to a disabled member eligible under the provisions of this section who has:

(a) more than 5 but less than 10 years of membership service is equal to 1.5% of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513;

(b) 10 or more but less than 30 years of membership service is equal to one fifty-sixth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513; or

(c) 30 or more years of membership service is equal to 2% of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513.

(3) Payment of the disability benefit provided in this section is subject to the following:

(a) the member must be vested in the plan as provided in 19-3-2116;

(b) for members hired prior to July 1, 2011:

(i) if the member's disability occurred when the member was 60 years of age or less, the benefit may be paid only until the member reaches 65 years of age; and

(ii) if the member's disability occurred after the member reached 60 years of age, the benefit may be paid for no more than 5 years;

(c) for members hired on or after July 1, 2011:

(i) if the member's disability occurred when the member was less than 65 years of age, the benefit may be paid only until the member reaches 65 years of age; and

(ii) if the member's disability occurred after the member reached 65 years of age, the benefit may be paid for no more than 5 years; and

(d) the member shall satisfy the other applicable requirements of this section and the board's rules adopted to implement this section.

(4) Application for a disability benefit must be made in accordance with ~~19-3-1005~~ *19-2-406*.

(5) The board shall make determinations on disability claims and conduct medical reviews in a manner consistent with the provisions of 19-2-406 and 19-3-1015. A member may seek review of a board determination as provided in rules adopted by the board.

(6) If a member receiving a disability benefit under this section dies, the disability benefit payments cease and the member's beneficiary is entitled to death benefits only as provided for in 19-3-2125.

(7) The board shall establish a long-term disability plan trust fund from which disability benefit costs pursuant to this section must be paid. The trust fund must be entirely separate and distinct from the defined benefit plan trust fund.

(8) The board shall perform the duties, exercise the powers, and adopt reasonable rules to implement the provisions of this section."

**Section 17.** Section 19-5-601, MCA, is amended to read:

**"19-5-601. Disability retirement benefit.** (1) Except as provided in subsections (2) and (3), in the case of the disability of a *vested* member, a disability retirement benefit must be granted the member in an amount actuarially equivalent to the service retirement benefit standing to the member's credit at the time of the member's disability retirement.

(2) ~~If~~ *Except as provided in subsections (1) and (3), in the case of the disability of a vested or nonvested member, if* the disability is a direct result of any service or duty for the Montana judiciary, the member's disability retirement benefit must be the greater of one-half of the member's current salary or one-half of the member's highest average compensation.

(3) If the member was retired at the time of becoming disabled, the member must continue to receive the same retirement benefit previously elected."

**Section 18.** Section 19-5-701, MCA, is amended to read:

**"19-5-701. Optional forms of benefits — designation of contingent annuitant.** (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. *If the member does not elect an optional retirement benefit pursuant to subsection (2), the member's retirement benefit is known as an option 1 benefit.*

*(2)* An optional retirement benefit *under this subsection (2)* is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit, depending on the option selected, to a contingent annuitant as follows:

(a) option 2—a continuation of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant. This option may be the chosen benefit only if the adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:

(i) the excess of the age of the member or designated beneficiary over the age of the nonspouse contingent annuitant based on their ages on their birthdays in a calendar year; or

(ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in subsection ~~(1)(a)(i)~~ *(2)(a)(i)* reduced by the number of years that the member or designated beneficiary is under 70 years of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date.

(b) option 3—a continuation of one-half of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows:

(i) the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:

(A) a 10-year period certain if the member retired at 75 years of age or younger; or

(B) a 20-year period certain if the member retired at 65 years of age or younger;

(ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share-and-share-alike basis;

(iii) if all surviving contingent annuitants die prior to the end of the period certain and the last remaining contingent annuitant has failed to name a designated beneficiary, the remaining payments must be converted to an equivalent lump-sum amount and paid to the estate of the last surviving contingent annuitant.

~~(2)~~*(3)* The member or designated beneficiary who elects an optional retirement benefit *under subsection (2)* shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

~~(3)~~*(4)* If the member or designated beneficiary or the named contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

~~(4)~~*(5)* If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit *under subsection (2)* is received by the board, the election is void.

*(6) After the member or designated beneficiary has received and accepted an initial retirement benefit payment, the member may not change the selected option except as provided in subsection (7).*

~~(5)~~*(7)* A retired member receiving an optional retirement benefit pursuant to subsection ~~(1)(a)~~ *(2)(a)* or ~~(1)(b)~~ *(2)(b)* may file a written application with the board to have the member's optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(a) the original contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(b) the member's marriage to the original contingent annuitant has been dissolved and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907. The benefit must then revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the original contingent annuitant.

~~(6)~~*(8)* A member who applies to revert under subsection ~~(5)~~ *(7)* shall, at the time of the application, choose one of the following alternatives:

(a) revert to the member's original *option 1* retirement benefit, increased by the amount of any adjustments received by the member since the effective date of the member's retirement;

(b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or

(c) select a different option *under subsection (2)* and name a new contingent annuitant.

~~(7)~~*(9)* If the member selects an alternative under subsection ~~(6)(b)~~ *(8)(b)* or ~~(6)(c)~~ *(8)(c)*, the member's retirement benefit must be calculated based on the member's and the new contingent annuitant's ages at the time of this election.

~~(8)~~*(10)* A written application pursuant to subsection ~~(5)~~ *(7)* must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

**Section 19.** Section 19-5-801, MCA, is amended to read:

**"19-5-801. Payments upon employment-related death.** (1) Except as provided in subsection (3), if the board finds that a member died as a direct and proximate result of injury received in the course of the member's service or duty, a survivorship benefit must be paid to the member's designated beneficiary.

(2) The survivorship benefit is the member's service retirement benefit standing to the member's credit on the date of death.

(3) If the member was retired at the time of death, the provisions of 19-5-701 *and 19-5-802(2) through (4)* apply."

**Section 20.** Section 19-5-802, MCA, is amended to read:

**"19-5-802. Payments ~~in case of~~ *upon* death from other ~~causes~~ *than employment-related cause.*** (1) If *an active vested member dies before reaching normal retirement age, the member's designated beneficiary is entitled to a monthly survivorship benefit that is the actuarial equivalent of the retirement benefit provided in 19-5-502.*

*(2) When* a retired member not covered under 19-5-901 *and receiving an option 1 retirement under 19-5-701* dies ~~without designating a contingent annuitant under 19-5-701(2)~~, the member's designated beneficiary must be paid

the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account. At the designated beneficiary's request, the lump sum may be paid as an actuarially equivalent annuity that will not be subject to increases for any purpose.

~~(2)~~*(3)* ~~If~~ *When* a retired member covered under 19-5-901 *and receiving an option 1 retirement benefit under 19-5-701* dies ~~without designating a contingent annuitant under 19-5-701(2)~~, the member's designated beneficiary must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.

~~(3) If a vested member dies before reaching normal retirement age, the member's designated beneficiary is entitled to a monthly survivorship benefit that is the actuarial equivalent of the involuntary retirement benefit provided in 19-5-503.~~

*(4) If a retired member who elected an option 2 or 3 benefit under 19-5-701 dies with no surviving contingent annuitant, the member's estate must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.*

*(5) This section does not apply if the member was receiving a disability benefit.*"

**Section 21.** Section 19-6-601, MCA, is amended to read:

**"19-6-601. Disability retirement benefit.** (1) ~~A~~ *Except as provided in subsections (2) and (3), a vested* member who becomes disabled must be granted a disability retirement benefit that is the actuarial equivalent of the service retirement benefit under 19-6-502 standing to the member's credit at the time of the member's disability retirement.

(2) ~~A~~ *Except as provided in subsections (1) and (3), a vested or nonvested* member who becomes disabled as a direct result of the member's service in the line of duty:

(a) before completing 20 years of membership service must receive a disability retirement benefit equal to one-half the member's highest average compensation; or

(b) after completing 20 years or more of membership service must receive a disability retirement benefit equal to 2.5% of the member's highest average compensation for each year of service credit.

(3) Upon the death of a member receiving a disability retirement benefit under this section, the member's surviving spouse or dependent child is eligible for benefits as provided in 19-6-505."

**Section 22.** Section 19-7-503, MCA, is amended to read:

**"19-7-503. Service retirement benefit.** (1) The amount of any service retirement benefit granted to a member is 2.5% of the member's highest average compensation for each year of service credit.

*(2) When a retired member receiving an option 1 retirement benefit under 19-7-1001 dies, the member's designated beneficiary or, if there is no surviving designated beneficiary, the member's estate must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.*

~~(2)~~*(3)* If a retired member ~~dies without designating a contingent annuitant under 19-7-1001~~ *who elected an option 2 or 3 benefit under 19-7-1001 dies with no surviving contingent annuitant*, the member's ~~designated beneficiary~~ *estate* must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.

*(4) This section does not apply if the member was receiving a disability benefit.*"

**Section 23.** Section 19-7-601, MCA, is amended to read:

**"19-7-601. Disability retirement benefit.** (1) ~~A~~ *Except as provided in subsection (2), a vested* member who becomes disabled must be granted a disability retirement benefit that is the actuarial equivalent of the service retirement benefit under 19-7-503 standing to the member's credit at the time of the member's disability retirement.

(2) A *vested or nonvested* member who becomes disabled as a direct result of the member's service in the line of duty:

(a) before completing 20 years of membership service must receive a disability retirement benefit equal to one-half the member's highest average compensation; or

(b) after completing 20 years or more of membership service must receive a disability retirement benefit equal to 2.5% of the member's highest average compensation for each year of service credit."

**Section 24.** Section 19-7-901, MCA, is amended to read:

**"19-7-901. Payments in case of death before retirement.** If a member dies before retirement, the member's designated beneficiary may elect one of the following options for which the member qualified and for which the designated beneficiary qualifies:

(1) a lump-sum payment of the accumulated contributions standing to the member's credit at the member's death;

(2) a survivorship benefit equal to 2.5% of the member's highest average compensation for each year of service credit actuarially reduced from age ~~65~~ *60* or the date on which the member would have completed 20 years of membership service, whichever provides a larger retirement benefit; or

(3) a survivorship benefit that is no less than one-half of the member's highest average compensation if the board finds that the member died as a direct and proximate result of injuries received in the course of employment."

**Section 25.** Section 19-7-1001, MCA, is amended to read:

**"19-7-1001. Optional forms of benefits — designation of contingent annuitant.** (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. *If the member does not elect an optional retirement benefit pursuant to subsection (2), the member's retirement benefit is known as an option 1 benefit.*

*(2)* An optional retirement benefit *under this subsection (2)* is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit, depending on the option selected, to a contingent annuitant, as follows:

(a) option 2—a continuation of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named

contingent annuitant. This option may be the chosen benefit only if the adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:

(i) the excess of the age of the member or designated beneficiary over the age of the nonspouse contingent annuitant based on their ages on their birthdays in a calendar year; or

(ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in subsection ~~(1)(a)(i)~~ *(2)(a)(i)* reduced by the number of years that the member or designated beneficiary is under 70 years of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date.

(b) option 3—a continuation of one-half of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows:

(i) the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:

(A) a 10-year period certain if the member retired at 75 years of age or younger; or

(B) a 20-year period certain if the member retired at 65 years of age or younger;

(ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share-and-share-alike basis;

(iii) if all surviving contingent annuitants die prior to the end of the period certain and the last remaining contingent annuitant has failed to name a designated beneficiary, the remaining payments must be converted to an equivalent lump-sum amount and paid to the estate of the last surviving contingent annuitant.

~~(2)~~*(3)* The member or the designated beneficiary who elects an optional retirement benefit *under subsection (2)* shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

~~(3)~~*(4)* If the member or designated beneficiary or the named contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

~~(4)~~*(5)* If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit *under subsection (2)* is received by the board, the election is void.

*(6) After the member or designated beneficiary has received and accepted an initial retirement benefit payment, the member may not change the selected option except as provided in subsection (7).*

~~(5)~~*(7)* A retired member receiving an optional retirement benefit pursuant to subsection ~~(1)(a)~~ *(2)(a)* or ~~(1)(b)~~ *(2)(b)* may file a written application with the board to have the member's optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(a) the original contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(b) the member's marriage to the original contingent annuitant has been dissolved and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907. The benefit must revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the contingent annuitant.

~~(6)~~*(8)* A member who applies to revert under subsection ~~(5)~~ *(7)* shall, at the time of the application, choose one of the following alternatives:

(a) revert to the member's original *option 1* retirement benefit, increased by the amount of any adjustments received by the member since the effective date of the member's retirement;

(b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or

(c) select a different option *under subsection (2)* and name a new contingent annuitant.

~~(7)~~*(9)* If the member selects an alternative under subsection ~~(6)(b)~~ *(8)(b)* or ~~(6)(c)~~ *(8)(c)*, the member's retirement benefit must be calculated based on the member's and the new contingent annuitant's ages at the time of the election.

~~(8)~~*(10)* A written application pursuant to subsection ~~(5)~~ *(7)* must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

**Section 26.** Section 19-8-302, MCA, is amended to read:

**"19-8-302. Public employees' retirement system — transfer of membership.** (1) Except as provided in subsection (3), an eligible peace officer must become a member of the game wardens' and peace officers' retirement system on the first day of service.

(2) A person who is a member of the game wardens' and peace officers' retirement system assigned to law enforcement who transfers to a position involving duties other than law enforcement within the same state agency may retain membership in the game wardens' and peace officers' retirement system by filing a written election with the board no later than ~~30~~ *90* days after transfer to the new position.

(3) A person who is a member of the public employees' retirement system who transfers to a position covered by the game wardens' and peace officers' retirement system may elect to become a member of the retirement system or may continue membership in the public employees' retirement system by filing a written election with the board no later than ~~30~~ *90* days after transfer to the new position."

**Section 27.** Section 19-8-701, MCA, is amended to read:

**"19-8-701. Disability retirement benefit.** (1) ~~A~~ *Except as provided in subsection (2), a vested* member who becomes disabled must be granted a disability retirement benefit that is the actuarial equivalent of the service retirement benefit under 19-8-603 standing to the member's credit at the time of the member's disability retirement.

(2) A *vested* member ~~who has at least 5 years of membership service and~~ who becomes disabled as a direct result of the member's service in the line of duty:

(a) before completing 20 years of membership service must receive a disability retirement benefit equal to one-half the member's highest average compensation; or

(b) after completing 20 years or more of membership service must receive a disability retirement benefit equal to 2.5% of the member's highest average compensation for each year of service credit."

**Section 28.** Section 19-8-801, MCA, is amended to read:

**"19-8-801. Optional forms of benefits — designation of contingent annuitant.** (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. *If the member does not elect an optional retirement benefit pursuant to subsection (2), the member's retirement benefit is known as an option 1 benefit.*

*(2)* An optional retirement benefit *under this subsection (2)* is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit, depending on the option selected, to a contingent annuitant as follows:

(a) option 2—a continuation of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant. This option may be the chosen benefit only if the adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:

(i) the excess of the age of the member or designated beneficiary over the age of the nonspouse contingent annuitant based on their ages on their birthdays in a calendar year; or

(ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in subsection ~~(1)(a)(i)~~ *(2)(a)(i)* reduced by the number of years that the member or designated beneficiary is under 70 years of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date.

(b) option 3—a continuation of one-half of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows:

(i) the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:

(A) a 10-year period certain if the member retired at 75 years of age or younger; or

(B) a 20-year period certain if the member retired at 65 years of age or younger;

(ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share-and-share-alike basis;

(iii) if all surviving contingent annuitants die prior to the end of the period certain and the last remaining contingent annuitant has failed to name a designated beneficiary, the remaining payments must be converted to an

equivalent lump-sum amount and paid to the estate of the last surviving contingent annuitant.

~~(2)~~*(3)* The member or the designated beneficiary who elects an optional retirement benefit *under subsection (2)* shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

~~(3)~~*(4)* If the member or designated beneficiary or the named contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

~~(4)~~*(5)* If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit *under subsection (2)* is received by the board, the election is void.

*(6) After the member or designated beneficiary has received and accepted an initial retirement benefit payment, the member may not change the selected option except as provided in subsection (7).*

~~(5)~~*(7)* A retired member receiving an optional retirement benefit pursuant to subsection ~~(1)(a)~~ *(2)(a)* or ~~(1)(b)~~ *(2)(b)* may file a written application with the board to have the member's optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(a) the original contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(b) the member's marriage to the original contingent annuitant has been dissolved and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907. The benefit must then revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the original contingent annuitant.

~~(6)~~*(8)* A member who applies to revert under subsection ~~(5)~~ *(7)* shall, at the time of the application, choose one of the following alternatives:

(a) revert to the member's original *option 1* retirement benefit, increased by the amount of any adjustments received by the member since the effective date of the member's retirement;

(b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or

(c) select a different option *under subsection (2)* and name a new contingent annuitant.

~~(7)~~*(9)* If the member selects an alternative under subsection ~~(6)(b)~~ *(8)(b)* or ~~(6)(c)~~ *(8)(c)*, the member's retirement benefit must be calculated based on the member's and the new contingent annuitant's ages at the time of the election.

~~(8)~~*(10)* A written application pursuant to subsection ~~(5)~~ *(7)* must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

**Section 29.** Section 19-8-1002, MCA, is amended to read:

**"19-8-1002. Postretirement death payments.** *(1) When a retired member receiving an option 1 retirement benefit under 19-8-801 dies, the member's designated beneficiary or, if there is no surviving designated beneficiary, the member's estate must be paid the amount, if any, of the member's accumulated*

*contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.*

*(2)* If a *retired* member who ~~retires on or after July 1, 1997, dies without designating a contingent annuitant~~ *elected an option 2 or 3 retirement benefit* under 19-8-801 *dies with no surviving contingent annuitant*, the member's ~~designated beneficiary~~ *estate* must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.

*(3) This section does not apply if the member was receiving a disability benefit.*"

**Section 30.** Section 19-9-710, MCA, is amended to read:

**"19-9-710. Member's contribution.** (1) Except as provided in subsection (2), the regular contribution as a percentage of compensation of each active member first employed by an employer as a police officer:

~~(a) on or before June 30, 1975, is 5.8%;~~

~~(b)~~*(a)* after June 30, 1975, *but before July 1, 1979,* is 7%;

~~(c)~~*(b)* after June 30, 1979, but before July 1, 1997, is 8.5%; and

~~(d)~~*(c)* on and after July 1, 1997, is 9%.

(2) A member covered under 19-9-1009*,* ~~or~~ 19-9-1010*, or 19-9-1013* shall contribute 9% of the member's compensation.

(3) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsections (1) and (2) for service rendered after June 30, 1985.

(4) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(5) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages as defined in 19-1-102 and in the member's compensation as defined in 19-9-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

**Section 31.** Section 19-9-1007, MCA, is amended to read:

**"19-9-1007. Minimum benefit adjustment.** (1) The benefits that are paid in each fiscal year to a retired member or the member's survivors and that are not covered by 19-9-1009 may not be less than one-half of the compensation that will be paid to newly confirmed police officers in the current fiscal year in the city or town from which the member retired.

(2) If the compensation of a ~~newly confirmed~~ *new* police officer *who has been confirmed pursuant to 7-32-4113* has not been set for the current fiscal year in time to make minimum benefit adjustments effective July 1, the board shall make any retroactive adjustments necessary to individual minimum benefits after the current compensation has been determined.

(3) If more than one dependent child is entitled to benefits under this section by virtue of the death of a common parent, the minimum benefit paid to the dependent children under this section must be determined as if there were one dependent child and the benefits must be paid to the dependent children collectively."

**Section 32.** Section 19-13-104, MCA, is amended to read:

**"19-13-104. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) Any reference to "city" or "town" includes those jurisdictions that, before the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban firefighting services, or the entire county included in the county-municipal consolidation.

(2) "Compensation" means:

(a) for a full-paid firefighter, the remuneration paid from funds controlled by an employer in payment for the member's services before any pretax deductions allowed by state and federal law are made;

(b) for a part-paid firefighter employed by a city of the second class:

(i) 15% of the regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

(ii) if that city does not employ a full-paid firefighter, 15% of the average regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the second class.

(c) Compensation for full-paid and part-paid firefighters does not include:

(i) overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave; and

(ii) maintenance, allowances, and expenses.

(3) "Dependent child" means a child of a deceased member who is:

(a) unmarried and under 18 years of age; or

(b) unmarried, under 24 years of age, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(4) "Employer" means:

(a) any city that is of the first or second class or that elects to join this retirement system under 19-13-211;

(b) a city or a rural fire district referred to in 19-13-210(3);

(c) with respect to firefighters covered in the retirement system pursuant to 19-13-210(2), the department of military affairs established in 2-15-1201; and

(d) any other statutorily allowed entity that elects to join this retirement system pursuant to 19-13-210.

(5) "Firefighter" means a person employed as a full-paid or part-paid firefighter by an employer.

(6) "Full-paid firefighter" means a person appointed *pursuant to 7-33-4106* by an employer as a firefighter ~~under~~ *meeting* the standards provided in ~~7-33-4106 and~~ 7-33-4107.

(7) "Highest average compensation" means the monthly compensation of a member averaged over the highest consecutive 36 months of the member's active service or, in the event a member has not served at least 36 consecutive months, the total compensation earned divided by the number of months of service. Lump-sum payments for annual leave paid to the member upon termination of employment may be used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of highest average compensation.

(8) "Minimum retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member reaches both 50 years of age or older and completes 5 or more years of membership service.

*(9) "Newly confirmed firefighter" means a new member of a fire department appointed pursuant to 7-33-4106 and meeting the standards of 7-33-4107.*

~~(9)~~*(10)* "Part-paid firefighter" means a person *other than a full-paid firefighter* employed ~~under 7-33-4109~~ *by a second class city* who receives compensation in excess of $300 a year for service as a firefighter and who is appointed by an employer as a firefighter under the standards provided in 7-33-4106 and 7-33-4107.

~~(10)~~*(11)* "Prior plan" means the fire department relief association plan of a city that elects to join the retirement system under 19-13-211 or the fire department relief association plan of a city of the first or second class.

~~(11)~~*(12)* "Retirement date" means the date on which the first payment of benefits is payable.

~~(12)~~*(13)* "Retirement system" means the firefighters' unified retirement system provided for in this chapter.

~~(13)~~*(14)* "Surviving spouse" means the spouse married to a member at the time of the member's death."

**Section 33.** Section 19-13-803, MCA, is amended to read:

**"19-13-803. Amount of disability retirement benefit.** (1) A member who becomes disabled:

(a) before completing 20 years of membership service must receive a disability retirement benefit equal to one-half the member's highest average compensation;

(b) after completing 20 years or more of membership service must receive a disability retirement benefit equal to 2.5% of the member's highest average compensation for each year of service credit, but no less than one-half of the member's highest average compensation.

(2) Upon the death of a member receiving a disability retirement benefit under this section, the member's surviving spouse or dependent child is eligible for *the* benefits ~~as~~ provided ~~in 19-13-104~~ *pursuant to 19-13-704(3).*"

**Section 34.** Section 19-17-605, MCA, is amended to read:

**"19-17-605. Cancellation ~~and reinstatement~~ of disability benefits.** (1) The board may cancel a member's disability benefit if:

(a) the board determines, as provided in 19-17-604, that the member is no longer disabled; *or*

(b) the member refuses to submit to a medical examination under 19-17-604~~; or~~

~~(c) the member engages in a gainful occupation during the previous year and earns compensation exceeding $5,500~~.

(2) The cancellation of a disability benefit under this section does not prejudice any right of a member to other pension benefits payable under the Volunteer Firefighters' Compensation Act.

~~(3) If the member's earnings in any year after the cancellation of disability benefits under subsection (1)(c) are less than $5,500, the disability benefit must be reinstated.~~"

**Section 35. Repealer.** The following section of the Montana Code Annotated is repealed:

19-3-1005. Application for disability retirement benefit.

**Section 36. Effective date.** [This act] is effective July 1, 2013.

Approved April 12, 2013

# CHAPTER NO. 179

[HB 210]

AN ACT APPROPRIATING MONEY FOR THE MONTANA DIGITAL ACADEMY; PROVIDING FOR A REVERSION OF FUNDS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Funding.** There is appropriated from the general fund to the office of public instruction $300,000 for the fiscal year ending June 30, 2013, solely for the Montana digital academy. Any remaining funds that are unencumbered as of June 30, 2013, must revert to the general fund.

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 12, 2013

# CHAPTER NO. 180

[HB 291]

AN ACT CLARIFYING CANAL AND DITCH EASEMENT LAW; AMENDING SECTION 70-17-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 70-17-112, MCA, is amended to read:

**"70-17-112. Interference with canal or ditch easements prohibited.** (1) A person with a canal or ditch easement has a secondary easement to enter, inspect, repair, and maintain a canal or ditch *or to operate the appropriation works*.

(2) ~~No~~ *A* person may *not* encroach upon or otherwise impair any easement for a canal or ditch used for irrigation or any other lawful domestic or commercial purpose, including carrying return water.

(3) The provisions of subsection (2) do not apply if the holder of the canal or ditch easement consents in writing to the encroachment or impairment.

(4) Each canal or ditch easement obtained by prescription or conveyance is included within the scope of this section. Nothing in this section establishes a secondary easement where none existed prior to April 14, 1981. This section does not affect contracts or agreements concluded prior to April 14, 1981.

(5) If a legal action is brought to enforce the provisions of this section, the prevailing party is entitled to costs and reasonable attorney's fees."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 12, 2013

# CHAPTER NO. 181

[HB 328]

AN ACT ALLOWING NOTIFICATION OF SPECIAL WILD BUFFALO HUNTING LICENSE RECIPIENTS AS TO WHERE WILD BUFFALO OR BISON ARE LOCATED; AND AMENDING SECTION 87-2-730, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 87-2-730, MCA, is amended to read:

**"87-2-730. Special wild buffalo license — regulation.** (1) The public hunting of wild buffalo or bison that have been designated as a species in need of disease control under 81-2-120 is permitted only when authorized by the department of livestock under the provisions set forth in 81-2-120.

(2) The department may issue special licenses to hunt wild buffalo or bison designated as a species in need of disease control when authorized by the department of livestock.

(3) The department shall adopt rules in cooperation with the department of livestock. The rules must provide for:

(a) license drawing procedures;

(b) drawing and application fees consistent with 87-2-113;

(c) notification of license recipients as to when and where they may hunt~~, but notification may not include information regarding the actual physical location of a wild buffalo or bison other than the prescribed hunting district where the animal may be taken~~;

(d) fair chase hunting of wild buffalo or bison, including requirements that hunting be conducted on foot and away from public roads and that there be no designation of specific wild buffalo or bison to be hunted;

(e) means of taking and handling of carcasses in the field, which must include provisions for public safety because of the potential for the spread of infectious disease;

(f) the use of bows and arrows and other hunting arms;

(g) tagging requirements for carcasses, skulls, and hides;

(h) possession limits;

(i) requirements for transportation and exportation; and

(j) requirements and criteria for authorization by the state veterinarian and the department of livestock of any public hunting."

Approved April 12, 2013

# CHAPTER NO. 182

[HB 335]

AN ACT PROVIDING AUTHORITY TO DISTRICT COURTS TO DESIGNATE SEX OFFENDERS AS LEVEL 1, 2, OR 3 WHEN THOSE SEX OFFENDERS

DO NOT HAVE A DESIGNATION; AMENDING SECTION 46-23-509, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 46-23-509, MCA, is amended to read:

**"46-23-509. Sexual offender evaluations and designations — rulemaking authority.** (1) The department shall adopt rules for the qualification of sexual offender evaluators who conduct sexual offender and sexually violent predator evaluations and for determinations by sexual offender evaluators of the risk of a repeat offense and the threat that an offender poses to the public safety.

(2) Prior to sentencing of a person convicted of a sexual offense, the department or a sexual offender evaluator shall provide the court with a sexual offender evaluation report recommending one of the following levels of designation for the offender:

(a) level 1, the risk of a repeat sexual offense is low;

(b) level 2, the risk of a repeat sexual offense is moderate;

(c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual offender evaluator believes that the offender is a sexually violent predator.

(3) Upon sentencing the offender, the court shall:

(a) review the sexual offender evaluation report, any statement by a victim, and any statement by the offender;

(b) designate the offender as level 1, 2, or 3; and

(c) designate a level 3 offender as a sexually violent predator.

(4) An offender designated as a level 2 offender or given a level designation by another state, the federal government, or the department under subsection (6) that is determined by the court to be similar to level 2 may petition the sentencing court or the district court for the judicial district in which the offender resides to change the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either the prison's sexual offender treatment program or of an equivalent program approved by the department. After considering the petition, the court may change the offender's risk level designation if the court finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in this section.

(5) ~~If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual offender who is required to register under this part and who was sentenced prior to October 1, 1997, the department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.~~ *If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual offender who is required to register under this part and who was sentenced prior to October 1, 1997, the department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.*

(6) If an offense is covered by 46-23-502(9)(b), the offender registers under 46-23-504(1)(c), and the offender was given a risk level designation after conviction by another state or the federal government, the department of justice may give the offender the risk level designation assigned by the other state or the federal government.

(7) The lack of a fixed residence is a factor that may be considered by the sentencing court or by the department in determining the risk level to be assigned to an offender pursuant to this section.

*(8) Upon obtaining information that indicates that a sexual offender who is required to register under this part does not have a level 1, 2, or 3 designation, the attorney general, the county attorney that prosecuted the offender and obtained a conviction for a sexual offense, or the county attorney for the county in which the offender resides may, at any time, petition the district court that sentenced the offender for a sexual offense or the district court for the judicial district in which the offender resides to designate the offender as level 1, 2, or 3. Upon the filing of the petition, the court may order a sexual offender evaluation report at the petitioner's expense. The court shall provide the offender with an opportunity for a hearing prior to designating the offender. The petitioner shall provide the offender with notice of the petition and notice of the hearing.*"

**Section 2. Applicability.** [This act] applies to proceedings begun on or after [the effective date of this act].

Approved April 12, 2013

# CHAPTER NO. 183

[HB 362]

AN ACT GENERALLY REVISING LIMITED LIABILITY COMPANY LAWS; AUTHORIZING THE CREATION OF SERIES OF MEMBERS WITHIN A LIMITED LIABILITY COMPANY; PROVIDING THAT EACH SERIES OF MEMBERS MAY HAVE SEPARATE MEMBERS, MANAGERS, ASSETS, LIABILITIES, AND BUSINESS PURPOSES OR INVESTMENT OBJECTIVES; AND AMENDING SECTIONS 35-8-102, 35-8-107, 35-8-108, 35-8-202, 35-8-205, 35-8-208, 35-8-304, 35-8-307, 35-8-503, 35-8-803, 35-8-804, 35-8-901, AND 35-8-902, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 35-8-102, MCA, is amended to read:

**"35-8-102. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Articles of organization" means articles filed pursuant to 35-8-201 and those articles as amended or restated. In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed under the laws of the state or country where it is organized.

(2) "At-will company" means a limited liability company other than a term company.

(3) "Authorized agent" means any individual granted permission by an entity to execute a document on behalf of the entity. The entity is responsible for maintaining a record of the permission granted to an authorized agent.

(4) "Business" includes every trade, occupation, profession, or other lawful purpose, whether or not carried on for profit.

(5) "Corporation" means a corporation formed under the laws of this state or a foreign corporation.

(6) "Court" includes every court having jurisdiction in the case.

(7) "Debtor in bankruptcy" means a person who is the subject of an order for relief under Title 11 of the United States Code or a comparable order under federal, state, or foreign law governing insolvency.

(8) "Disqualified person" means any person or entity that for any reason is or becomes ineligible under this chapter to become a member in a professional limited liability company.

(9) "Distribution" means a transfer of money, property, or other benefit to a member in that member's capacity as a member of a limited liability company or to a transferee of a member's distributional interest.

(10) "Distributional interest" means all of a member's interest in the distributions of a limited liability company.

(11) "Event of dissociation" means an event that causes a person to cease to be a member.

(12) "Foreign corporation" means a corporation that is organized under the laws of a state other than Montana or under the laws of any foreign country.

(13) "Foreign limited liability company" means an entity that is:

(a) an unincorporated entity;

(b) organized under laws of a state other than Montana or under the laws of any foreign country;

(c) organized under a statute pursuant to which an entity may be formed that affords to each of its members limited liability with respect to the liabilities of the entity; and

(d) not required to be registered or organized under any statute of this state other than this chapter.

(14) "Foreign limited partnership" means a limited partnership formed under the laws of any state other than Montana or under the laws of any foreign country.

(15) "Foreign professional limited liability company" means a limited liability company organized for the purpose of rendering professional services under the laws of any state other than Montana.

(16) "Licensing authority" means an officer, board, agency, court, or other authority in this state that has the power to issue a license or other legal authorization to render a professional service.

(17) "Limited liability company" or "domestic limited liability company" means an organization that is formed under this chapter.

(18) "Limited partnership" means a limited partnership formed under the laws of this state or a foreign limited partnership.

(19) "Manager" means a person who, whether or not a member of a manager-managed company, is vested with authority under 35-8-301.

(20) "Manager-managed company" means a limited liability company that is so designated in its articles of organization.

(21) "Member" means a person who has been admitted to membership in a limited liability company, as provided in 35-8-703, and who has not dissociated from the limited liability company.

(22) "Member-managed company" means a limited liability company other than a manager-managed company.

(23) "Operating agreement" means an agreement, including amendments, as to the conduct of the business and affairs of a limited liability company and the relations among the members, managers, and the company that is binding upon all of the members.

(24) "Person" means an individual, a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, or any other legal or commercial entity.

(25) "Professional limited liability company" means a limited liability company designating itself as a professional limited liability company in its articles of organization.

(26) "Professional service" means a service that may lawfully be rendered only by persons licensed under a licensing law of this state and that may not be lawfully rendered by a limited liability company that is not a professional limited liability company.

(27) "Qualified person" means a natural person, limited liability company, general partnership, or professional corporation eligible under this chapter to own shares issued by a professional limited liability company.

(28) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is recoverable in a perceivable form.

*(29) "Series of members" means a group or collection of members of a limited liability company who share interests and have separate rights, powers, or duties with respect to property, obligations, or profits and losses associated with property or obligations and who are specified in the articles of organization or operating agreement of the limited liability company or are specified by one or more members or managers of the limited liability company or other persons as provided in the articles of organization or operating agreement.*

~~(29)~~*(30)* "Sign" means to identify a record by means of a signature, mark, or other symbol with the intent to authenticate it.

~~(30)~~*(31)* "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

~~(31)~~*(32)* "Surviving limited liability company" means the constituent entity surviving the merger, as identified in the articles of merger provided for in 35-8-1201.

~~(32)~~*(33)* "Term company" means a limited liability company designated as a term company in its articles of organization."

**Section 2.** Section 35-8-107, MCA, is amended to read:

**"35-8-107. Powers — *scope.*** *(1)* A limited liability company may:

~~(1)~~*(a)* sue, be sued, complain, and defend in all courts;

~~(2)~~*(b)* transact its business, carry on its operations, and have and exercise the powers granted by this section in any state; in any territory, district, or possession of the United States; and in any foreign country;

~~(3)~~*(c)* make contracts and guarantees, incur liabilities, and borrow money;

~~(4)~~*(d)* sell, lease, exchange, transfer, convey, mortgage, pledge, and otherwise dispose of any of its assets;

~~(5)~~*(e)* acquire by purchase or in any other manner, take, receive, own, hold, improve, and otherwise deal with any interest in real or personal property, wherever located;

~~(6)~~*(f)* issue notes, bonds, and other obligations and secure any of them by mortgage, deed of trust, or security interest of any of its assets;

~~(7)~~*(g)* purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of and otherwise use and deal in and with stock or other interests in and obligations of

domestic and foreign corporations, associations, general or limited partnerships, limited liability companies, business trusts, and individuals;

~~(8)~~*(h)* invest its surplus funds, lend money from time to time in any manner that may be appropriate to enable it to carry on the operations or fulfill the purposes set forth in its articles of organization, and take and hold real property and personal property as security for the payment of funds loaned or invested;

~~(9)~~*(i)* elect or appoint agents and define their duties and fix their compensation;

~~(10)~~*(j)* sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

~~(11)~~*(k)* be a promoter, stockholder, partner, member, associate, or agent of any corporation, partnership, domestic or foreign limited liability company, joint venture, trust, or other enterprise;

~~(12)~~*(l)* indemnify and hold harmless any member, agent, or employee from and against any claims and demands whatsoever, except in the case of action or failure to act by the member, agent, or employee that constitutes willful misconduct or recklessness, and subject to the standards and restrictions, if any, set forth in the articles of organization or operating agreement;

~~(13)~~*(m)* cease its activities and dissolve;

~~(14)~~*(n)* pay pensions and establish pension plans, pension trusts, profit-sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any of its current or former directors, officers, employees, and agents;

~~(15)~~*(o)* make donations for the public welfare or for charitable, religious, scientific, or educational purposes and, in time of war, make donations in aid of war activities; and

~~(16)~~*(p)* do every other act not inconsistent with law that is appropriate to promote and further the business and affairs of the limited liability company.

*(2) This section applies to a limited liability company that has one or more series of members.*"

**Section 3.** Section 35-8-108, MCA, is amended to read:

**"35-8-108. Registered name of foreign limited liability company — registration renewal.** (1) A foreign limited liability company may register its name or its name with any addition required by 35-8-103 if the name is distinguishable from names that are not available under 35-8-103(2).

(2) A foreign limited liability company shall register its name or its name with any addition required by 35-8-103 by delivering to the secretary of state for filing an application:

(a) setting forth:

(i) its name or its name with any addition required by 35-8-103;

(ii) the state or country where it was organized;

(iii) the date of its organization; ~~and~~

(iv) a brief description of the nature of its business; *and*

*(v) if applicable, a statement that it has one or more series of members and whether the debts or liabilities of a series of members are enforceable against the assets of that series of members only and not against the assets of the company generally or another series of members;*

(b) accompanied by a certificate of existence or a similar document from the state or country where it was organized.

(3) The name, if accepted by the secretary of state, is registered for the applicant's exclusive use as of the date the application is filed with the secretary of state.

(4) A foreign limited liability company may annually renew its registration for successive years by delivering to the secretary of state a renewal application that complies with the requirements of subsection (2). The renewal application must be received by the secretary of state for filing between October 1 and December 31 of the year preceding the year for which a renewal is sought. The renewal is effective until December 31 of the following year.

(5) A foreign limited liability company has the right to use its registered name until the registration of the name is canceled as a result of it consenting to the use of the registered name by another business entity authorized to do business in this state or until the foreign limited liability company applies for and receives a certificate of authority to transact business in this state or it organizes as a domestic limited liability company in this state. A foreign limited liability company receiving a certificate of authority to transact business in this state or that organizes as a domestic limited liability company may use the canceled registered name as its business name."

**Section 4.** Section 35-8-202, MCA, is amended to read:

**"35-8-202. Articles of organization.** (1) The articles of organization must set forth:

(a) the name of the limited liability company that satisfies the requirements of 35-8-103;

(b) whether the company is a term company and, if so, the term specified;

(c) the complete business mailing address of its principal office, wherever located;

(d) the information required by 35-7-105(1);

(e) (i) if the limited liability company is to be managed by a manager or managers, a statement that the company is to be managed in that fashion and the names and business mailing addresses of managers who are to serve as managers until the first meeting of members or until their successors are elected;

(ii) if the management of a limited liability company is reserved to the members, a statement that the company is to be managed in that fashion and the names and business mailing addresses of the initial members;

(f) whether one or more members of the company are to be liable for the limited liability company's debts and obligations under 35-8-304(3);

(g) if the limited liability company is a professional limited liability company, a statement to that effect and a statement of the professional service or services it will render; ~~and~~

*(h) if the limited liability company has one or more series of members, the operating agreement of each series of members in writing;*

*(i) if the limited liability company has one or more series of members, a statement of whether the debts or liabilities of any series of members are to be enforceable against the assets of that series of members only and not against the assets of another series of members or the limited liability company generally;*

*(j) if the limited liability company has one or more series of members, a statement setting forth the relative rights, powers, and duties of each series of members or indicating that the relative rights, powers, and duties of each series*

*of members will be set forth in the operating agreement or established as provided in the operating agreement; and*

~~(h)~~*(k)* any other provision, not inconsistent with law, that the members elect to set out in the articles, including but not limited to a statement of whether there are limitations on the authority of members or management to bind the limited liability company.

(2) It is not necessary to set out in the articles of organization any of the powers enumerated in 35-8-107.

(3) The articles of organization may not vary the nonwaivable provisions set out in 35-8-109. As to all other matters, if any provision of an operating agreement is inconsistent with the articles of organization:

(a) the operating agreement controls as to managers, members, and a member's transferee; and

(b) the articles of organization control as to a person, other than a manager, member, and member's transferee, that reasonably relies on the articles of organization to that person's detriment.

*(4) The articles of organization or operating agreement may provide that the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a particular series of members are enforceable against the assets of that series of members only and not against the assets of the limited liability company generally or any other series of members.*"

**Section 5.** Section 35-8-205, MCA, is amended to read:

**"35-8-205. Filing with secretary of state.** (1) The articles of organization or any other document required to be filed pursuant to this chapter must be delivered to the secretary of state. If the secretary of state determines that the documents conform to the filing provisions of this chapter and that all required filing fees have been paid, the secretary of state shall:

(a) endorse on the signed document the word "filed" and the date and time of accepting the document for filing;

(b) retain the signed document in the secretary of state's files; and

(c) send a certification letter to the person who filed the document or to the person's representative.

(2) If the secretary of state is unable to make the determination required for filing by subsection (1) at the time any documents are delivered for filing, the documents are considered to have been filed at the time of delivery if the secretary of state subsequently determines that the documents as delivered conform to the filing provisions of 35-8-201 through 35-8-211.

*(3) All documents filed with the secretary of state must reflect the name of the limited liability company and all series of members within the limited liability company if the limited liability company has one or more series of members.*"

**Section 6.** Section 35-8-208, MCA, is amended to read:

**"35-8-208. Annual report for secretary of state.** (1) A limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report that sets forth:

(a) the name of the limited liability company and the jurisdiction under whose law it is organized;

(b) the information required by 35-7-105(1);

(c) the business mailing address of its principal office, wherever located;

(d) (i) if the limited liability company is managed by a manager or managers, a statement that the company is managed in that fashion and the names and business mailing addresses of the managers;

(ii) if the management of a limited liability company is reserved to the members, a statement to that effect and the names and business mailing addresses of the members;

*(e) that the management of a series of members is vested in the members associated with the series of members;*

~~(e)~~*(f)* if the limited liability company is a professional limited liability company, a statement that all of its members and not less than one-half of its managers are qualified persons with respect to the limited liability company.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic limited liability company is organized or a foreign limited liability company is authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to the limited liability company for correction.

(5) The annual report must be executed by at least one member of the limited liability company or by the authorized agent.

(6) A domestic professional limited liability company or a foreign professional limited liability company authorized to transact business in this state shall annually file before April 15, with each licensing authority having jurisdiction over a professional service of a type described in its articles of organization, a statement of qualification setting forth the names and addresses of the members and managers of the company and additional information that the licensing authority may by rule prescribe as appropriate in determining whether the company is complying with the provisions of part 13 of this chapter and rules promulgated under part 13 of this chapter. The licensing authority may charge a fee to cover the cost of filing a statement of qualification."

**Section 7.** Section 35-8-304, MCA, is amended to read:

**"35-8-304. Liability of members*,* ~~and~~ managers*, and series of members* to third parties.** (1) Except as provided in 39-51-1105 and subsection (3) of this section, a person who is a member or manager, or both, of a limited liability company is not liable, solely by reason of being a member or manager, or both, under a judgment, decree or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company, whether arising in contract, tort, or otherwise or for the acts or omissions of any other member, manager, agent, or employee of the limited liability company.

(2) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers of the limited liability company.

(3) All or specified members of a limited liability company are liable in their capacity as members for all or specified debts, obligations, or liabilities of the company if:

(a) a provision to that effect is contained in the articles of organization; and

(b) a member named as liable has consented in writing to the adoption of the provision or to be bound by the provision.

*(4) The debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a particular series of members are enforceable against the assets of that series of members only and not against the assets of the company generally or any other series of members if:*

*(a) separate and distinct records are maintained for the series of members and the assets associated with the series of members are held, directly or indirectly, including through a nominee or otherwise, and accounted for separately from the other assets of the company and any other series of members; and*

*(b) unless otherwise provided in the articles of organization or operating agreement, debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the company generally or another series of members are not enforceable against the assets of the series of members.*"

**Section 8.** Section 35-8-307, MCA, is amended to read:

**"35-8-307. Management and voting.** (1) Unless the articles of organization or the operating agreement provide otherwise, in a member-managed company:

(a) each member has equal rights in the management and conduct of the company's business; and

(b) except as provided in subsection (3), any matter relating to the business of the company may be decided by a majority of the members.

(2) Unless the articles of organization or the operating agreement provide otherwise, in a manager-managed company:

(a) each manager has equal rights in the management and conduct of the company's business;

(b) except as provided in subsection (3), any matter relating to the business of the company may be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers; and

(c) a manager:

(i) must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of a majority of the members; and

(ii) holds office until a successor has been elected and qualified, unless the manager sooner resigns or is removed.

(3) Unless the articles of organization or the operating agreement provide otherwise, the only matters of a member-managed or manager-managed company's business requiring the consent of all of the members are:

(a) the amendment of the operating agreement under 35-8-109;

(b) the authorization or ratification of acts or transactions under 35-8-109(3)(b)(ii) that would otherwise violate the duty of loyalty;

(c) an amendment to the articles of organization under 35-8-203;

(d) the compromise of an obligation to make a contribution under 35-8-502;

(e) the compromise, as among members, of an obligation to make a contribution or return money or other property paid or distributed in violation of this chapter;

(f) the making of interim distributions under 35-8-601, including the redemption or repurchase of an interest;

(g) the admission of a new member;

(h) the use of the company's property to redeem an interest subject to a charging order;

(i) the consent to dissolve the company under 35-8-901;

(j) a waiver of the right to have the company's business wound up and the company terminated under 35-8-901;

(k) the consent of members to merge with another entity under 35-8-1201; and

(l) the sale, lease, exchange, or other disposal of all, or substantially all, of the company's property with or without goodwill.

*(4) Unless the articles of organization or the operating agreement provide otherwise, the management of a series of members is vested in the members associated with the series in proportion to their contribution to the capital of the series as adjusted from time to time to reflect properly any additional contributions or withdrawals from the assets or income of the series by the members associated with the series.*

~~(4)~~*(5)* Action requiring the consent of members or managers under this chapter may be taken without a meeting.

~~(5)~~*(6)* A member or manager may appoint a proxy to vote or otherwise act for the member or manager by signing an appointment instrument, either personally or by the member's or manager's attorney-in-fact.

*(7) (a) The articles of organization or operating agreement of a limited liability company may:*

*(i) create one or more series of members; or*

*(ii) vest authority in one or more members or managers of the company or in other persons to create one or more series of members that may include, without limitation, rights, powers, and duties senior to any existing series of members.*

*(b) The articles of organization or operating agreement may provide that any member associated with a series of members has no voting rights or has voting rights that differ from other members or other series of members.*

*(c) A series of members may have separate powers, rights, or duties with respect to specified property or obligations of the company or profits and losses associated with specified property or obligations, and any series of members may have a separate business purpose or investment objective.*"

**Section 9.** Section 35-8-503, MCA, is amended to read:

**"35-8-503. Sharing of profits and losses.** *(1)* Unless otherwise provided in the articles of organization or a written operating agreement, each member must be repaid that member's contributions to capital and share equally in the profits, losses, and surpluses remaining after all liabilities, including those to members, are satisfied.

*(2) A distribution of the contributions and profits of a series of members of a limited liability company may not be made if, after giving the distribution effect:*

*(a) the limited liability company would not be able to pay the debts of the series of members from assets of the series of members as debts of the series become due in the usual course of business; or*

*(b) except as otherwise specifically permitted by the articles of organization or operating agreement, the total assets of the series of members would be less than the sum of the total liabilities of the series.*"

**Section 10.** Section 35-8-803, MCA, is amended to read:

**"35-8-803. Events causing member's dissociation.** *(1)* A member is dissociated from a limited liability company upon the occurrence of any of the following events:

~~(1)~~*(a)* the company's having notice of the member's express will to withdraw upon the date of notice or on a later date if specified by the member;

~~(2)~~*(b)* an event agreed to in the operating agreement as causing the member's dissociation;

~~(3)~~*(c)* upon transfer of all of a member's distributional interest, other than a transfer for security purposes or pursuant to a court order charging the member's distributional interest that has not been foreclosed;

~~(4)~~*(d)* the member's expulsion pursuant to the operating agreement;

~~(5)~~*(e)* the member's expulsion by unanimous vote of the other members if:

~~(a)~~*(i)* it is unlawful to carry on the company's business with the member;

~~(b)~~*(ii)* there has been a transfer of substantially all of the member's distributional interest, other than a transfer for security purposes or pursuant to a court order charging the member's distributional interest, which has not been foreclosed;

~~(c)~~*(iii)* within 90 days after the company notifies a corporate member that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the member fails to obtain a revocation of the certificate of dissolution or a reinstatement of its charter or its right to conduct business; or

~~(d)~~*(iv)* a partnership or a limited liability company that is a member has been dissolved, and its business is being wound up;

~~(6)~~*(f)* on application by the company or another member, the member's expulsion by judicial determination because the member:

~~(a)~~*(i)* engaged in wrongful conduct that adversely and materially affected the company's business;

~~(b)~~*(ii)* willfully or persistently committed a material breach of the operating agreement or of a duty owed to the company or the other members under 35-8-310; or

~~(c)~~*(iii)* engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the business with the member;

~~(7)~~*(g)* the member's:

~~(a)~~*(i)* becoming a debtor in bankruptcy;

~~(b)~~*(ii)* executing an assignment for the benefit of creditors;

~~(c)~~*(iii)* seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of all or substantially all of the member's property; or

~~(d)~~*(iv)* failing, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the member or of all or substantially all of the member's property obtained without the member's consent or acquiescence or failing within 90 days after the expiration of stay to have the appointment vacated;

~~(8)~~*(h)* in the case of a member who is an individual:

~~(a)~~*(i)* the member's death;

~~(b)~~*(ii)* the appointment of a guardian or general conservator for the member; or

~~(e)~~*(iii)* a judicial determination that the member has otherwise become incapable of performing the member's duties under the operating agreement;

~~(9)~~*(i)* in the case of a member that is a trust or is acting as a member by virtue of being a trustee of a trust, distribution of the trust's entire rights to receive distributions from the company, except that this subsection does not apply to the substitution of a successor trustee;

~~(10)~~*(j)* in the case of a member that is an estate or is acting as a member by virtue of being a personal representative of an estate, distribution of the estate's entire rights to receive distributions from the company, but not merely the substitution of a successor personal representative; or

~~(11)~~*(k)* termination of the existence of a member if the member is not an individual, estate, or trust other than a business trust.

*(2) (a) Unless otherwise provided in the articles of organization or operating agreement, any event described in this chapter or in the articles of organization or operating agreement that causes a manager to cease to be a manager with respect to a series of members does not, in itself, cause the manager to cease to be a manager with respect to the limited liability company or with respect to any other series of members.*

*(b) Unless otherwise provided in the articles of organization or operating agreement, any event described in this chapter or in the articles of organization or operating agreement that causes a manager to cease to be associated with a series of members does not, in itself, cause any member to cease to be associated with any other series of members, terminate the continued membership of any member in the limited liability company, or cause the termination of the series of members, regardless of whether the member was the last remaining member associated with the series.*"

**Section 11.** Section 35-8-804, MCA, is amended to read:

**"35-8-804. Member's power to dissociate — wrongful dissociation.** (1) Unless otherwise provided in the operating agreement, a member has the power to dissociate from a limited liability company at any time, rightfully or wrongfully, pursuant to ~~35-8-803(1)~~ *35-8-803(1)(a)*.

(2) If the operating agreement has not eliminated a member's power to dissociate, the member's dissociation from a limited liability company is wrongful only if:

(a) it is in breach of an express provision of the agreement; or

(b) before the expiration of the specified term of a term company:

(i) the member withdraws by express will;

(ii) the member is expelled by judicial determination under ~~35-8-803(6)~~ *35-8-803(1)(f)*;

(iii) the member is dissociated by becoming a debtor in bankruptcy; or

(iv) in the case of a member that is not an individual, trust, other than a business trust, or estate, the member is expelled or otherwise dissociated because it willfully dissolved or terminated its existence.

(3) A member that wrongfully dissociates from a limited liability company is liable to the company and to the other members for damages caused by the dissociation. The liability is in addition to any other obligation of the member to the company or to the other members.

(4) If a limited liability company does not dissolve and wind up its business as a result of a member's wrongful dissociation under subsection (2), damages

sustained by the company for the wrongful dissociation must be offset against distributions otherwise due the member after the dissociation."

**Section 12.** Section 35-8-901, MCA, is amended to read:

**"35-8-901. Dissolution.** (1) A limited liability company is dissolved and its affairs must be wound up when one of the following occurs:

(a) at the time or upon the occurrence of events specified in writing in the articles of organization or operating agreement;

(b) consent of the number or percentage of members specified in the operating agreement;

(c) an event that makes it unlawful for all or substantially all of the business of the company to be continued, but any cure of illegality within 90 days after notice to the company of the event is effective retroactively to the date of the event for purposes of this section;

(d) the expiration of the term specified in the articles of organization; or

(e) entry of a decree of judicial dissolution under 35-8-902.

(2) Subject to subsection (3), a limited liability company continues after dissolution only for the purpose of winding up its business.

(3) At any time after the dissolution of a limited liability company and before the winding up of its business is completed, the members, including a dissociated member whose dissociation caused the dissolution, may unanimously waive the right to have the company's business wound up and the company terminated. In that case:

(a) the limited liability company resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the company or a member after the dissolution and before the waiver is determined as if the dissolution had never occurred; and

(b) the rights of a third party accruing under the provisions of 35-8-904(1) or arising out of conduct by the third party in reliance on the dissolution before the third party knew or received a notification of the waiver are not adversely affected.

*(4) The affairs of a series of members of a limited liability company must be wound up:*

*(a) at the time, if any, specified in the articles of organization;*

*(b) upon the occurrence of an event specified in the operating agreement;*

*(c) unless otherwise provided in the articles of organization or operating agreement, upon the affirmative vote or written agreement of all the members associated with the series of members; or*

*(d) upon entry of a decree of judicial termination of the series of members pursuant to 35-8-902.*

*(5) (a) Unless otherwise provided in the articles of organization or operating agreement, upon the occurrence of an event requiring the affairs of a series of members to be wound up, a manager of the series who has not wrongfully terminated the series or, if there is not a manager, the members associated with the series, or a person approved by all of the members of the series may wind up the affairs of the series.*

*(b) Unless otherwise provided in the articles of organization or operating agreement, the person or persons winding up the affairs of a series of members:*

*(i) may take all actions necessary or proper to wind up the affairs of the series; and*

*(ii) shall distribute the assets of the series of members to the creditors of the series and the members associated with the series.*"

**Section 13.** Section 35-8-902, MCA, is amended to read:

**"35-8-902. Judicial dissolution.** (1) On application by or for a member or a dissociated member, a district court may order dissolution of a limited liability company, or other appropriate relief, when:

(a) the economic purpose of the company is likely to be unreasonably frustrated;

(b) another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member remaining as a member;

(c) it is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement;

(d) the company failed to purchase the petitioner's distributional interest as required by 35-8-805; or

(e) the members or managers in control of the company have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner.

(2) On application by a transferee of a member's interest, a district court may determine that it is equitable to wind up the company's business:

(a) after the expiration of the specified term, if the company was for a specified term at the time that the applicant became a transferee by member dissociation, transfer, or entry of a charging order that gave rise to the transfer; or

(b) at any time, if the company was at will at the time that the applicant became a transferee by member dissociation, transfer, or entry of a charging order that gave rise to the transfer.

*(3) Whenever it is not reasonably practicable to carry on the business of a series of members in conformity with the articles of organization or operating agreement and upon application by or for a member of the series of members, a district court may decree only the termination of the series of members and may not decree the dissolution of the limited liability company.*"

Approved April 12, 2013

# CHAPTER NO. 184

[HB 402]

AN ACT GENERALLY REVISING LAWS RELATED TO THE DIRECT SHIPMENT OF TABLE WINE TO INDIVIDUAL CONSUMERS; PROVIDING FOR A DIRECT SHIPMENT ENDORSEMENT TO WINERIES FOR SELLING DIRECTLY TO INDIVIDUAL CONSUMERS IN MONTANA; PROVIDING REQUIREMENTS AND FEES FOR A WINERY WITH A DIRECT SHIPMENT ENDORSEMENT; PROVIDING PENALTIES; EXTENDING RULEMAKING AUTHORITY; REVISING THE CONNOISSEUR'S LICENSE TO ELIMINATE ITS APPLICATION TO WINE; AND AMENDING SECTIONS 16-1-411, 16-3-402, 16-3-411, 16-4-107, 16-4-901, 16-4-902, 16-4-903, 16-4-906, AND 16-6-301, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Direct shipment endorsement for wineries — definition.** (1) A winery licensed or registered in Montana under 16-4-107 may sell and ship under a direct shipment endorsement up to 18 9-liter cases of table wine annually to an individual in Montana who is at least 21 years of age for the individual's personal use and not for resale.

(2) The shipment of table wine directly to an individual in Montana from a winery that does not possess a current direct shipment endorsement is prohibited and penalties may be assessed as provided in [section 3].

(3) The shipment of table wine directly to an individual in Montana under a direct shipment endorsement that is not conspicuously labeled as required under [section 2(2)] is prohibited and subject to penalties as provided in [section 3].

(4) For the purposes of [sections 2 and 3] and this section, a "direct shipment endorsement" is permission issued by the department to a winery licensed or registered pursuant to 16-4-107 under which the winery is allowed to sell and ship table wine directly to an individual in Montana.

**Section 2. Requirements for direct shipment endorsements — fee — labeling — taxes — recordkeeping.** (1) A winery licensed or registered under 16-4-107 shall before shipping table wine directly to an individual in Montana:

(a) remit an annual direct shipment endorsement fee of $50;

(b) submit to the department a written statement acknowledging that the winery will contract only with common carriers that agree that any delivery of table wine will be made only to an individual in Montana who is at least 21 years of age and who signs a form acknowledging receipt of the table wine; and

(c) receive from the department a direct shipment endorsement.

(2) A shipment of table wine under [sections 1 through 3] must be conspicuously labeled with the words "Contains Alcohol: Signature of Person Age 21 or Older Required for Delivery".

(3) (a) In addition to maintaining records required under 16-3-411 or 16-4-107, a winery with a direct shipment endorsement shall maintain records of any sales or shipments to an individual in Montana.

(b) The winery shall, by the 15th day of each month following a month in which a shipment was made, report to the department in the manner and form prescribed by the department information on direct shipments in the preceding month and pay the tax required under 16-1-411(1)(a). The information reported to the department must include the names and addresses of the individual to whom the table wine was shipped and any other information that the department determines is necessary to verify that direct shipment of table wine conforms to the requirements of Title 16. Failure to pay taxes or file the information required in this subsection subjects the winery holding the direct shipment endorsement to the penalties and interest provided for in 15-1-216.

(4) A winery with a direct shipment endorsement shall allow the department to perform an audit of the record of shipments made under [section 1]. The shipment records must be retained for 3 years.

(5) If a winery with a direct shipment endorsement uses a bonded wine warehouse to fill table wine orders shipped to an individual in Montana, the winery shall provide written notice to the department of the name and the address of the bonded wine warehouse. The winery is responsible for compliance with [sections 1 through 3].

**Section 3. Enforcement — penalty — rulemaking.** (1) Subject to a right to a hearing and the appeal process provided by the Montana Administrative

Procedure Act in Title 2, chapter 4, the department may enforce the requirements of [sections 1 through 3] by suspending or revoking the direct shipment endorsement or imposing a civil penalty not to exceed $1,500.

(2) A winery that has a direct shipment endorsement is considered to have consented to the jurisdiction of the department or any other state agency and the Montana courts concerning enforcement of [sections 1 through 3] and related rules or regulations.

(3) The owner of a winery is guilty of a misdemeanor if the winery makes a direct shipment without having a direct shipment endorsement.

(4) The department may adopt rules to implement [sections 1 through 3].

**Section 4.** Section 16-1-411, MCA, is amended to read:

**"16-1-411. Tax on wine and hard cider — penalty and interest.** (1) (a) A tax of 27 cents per liter is imposed on table wine, except hard cider, imported by a table wine distributor or the department *and on table wine shipped directly by a winery with a direct shipment endorsement*.

(b) A tax of 3.7 cents per liter is imposed on hard cider imported by a table wine distributor or the department.

(2) The tax imposed in subsection (1) must be paid by the *winery with a direct shipment endorsement or a* table wine distributor by the 15th day of the month following *shipment by the winery with the direct shipment endorsement or* sale of the table wine or hard cider from the table wine distributor's warehouse. Failure to file a tax return or failure to pay the tax required by this section subjects the *winery with the direct shipment endorsement or the* table wine distributor to the penalties and interest provided for in 15-1-216.

(3) The tax paid by a *winery with a direct shipment endorsement or by a* table wine distributor in accordance with subsection (2) must, in accordance with the provisions of 17-2-124, be distributed as follows:

(a) 69% to the state general fund; and

(b) 31% to the state special revenue fund to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency.

(4) The tax computed and paid in accordance with this section is the only tax imposed by the state or any of its subdivisions, including cities and towns.

(5) For purposes of this section, "table wine" has the meaning assigned in 16-1-106, but does not include hard cider."

**Section 5.** Section 16-3-402, MCA, is amended to read:

**"16-3-402. Importation of wine — records.** (1) Except as provided in 16-3-411 and ~~16-4-901~~ *[sections 1 through 3]*, all table wine manufactured outside of Montana and shipped into Montana must be consigned to and shipped to a licensed table wine distributor and be unloaded by the distributor into the distributor's warehouse in Montana or subwarehouse in Montana. The distributor shall distribute the table wine from the warehouse or subwarehouse.

(2) The distributor shall keep records at the distributor's principal place of business of all table wine, including the name or kind received, on hand, sold, and distributed. The records may at all times be inspected by the department.

(3) Table wine that has been shipped into Montana in violation of this code must be seized by any peace officer or representative of the department and may be confiscated in the manner as provided for the confiscation of intoxicating liquor."

**Section 6.** Section 16-3-411, MCA, is amended to read:

**"16-3-411. Winery.** (1) A winery located in Montana and licensed pursuant to 16-4-107 may:

(a) import in bulk, bottle, produce, blend, store, transport, or export wine it produces;

(b) sell wine it produces at wholesale to wine distributors;

(c) sell wine it produces at retail at the winery directly to the consumer for consumption on or off the premises;

(d) provide, without charge, wine it produces for consumption at the winery;

(e) purchase from the department or its licensees brandy or other distilled spirits for fortifying wine it produces;

(f) obtain a special event permit under 16-4-301;

(g) perform those operations and cellar treatments that are permitted for bonded winery premises under applicable regulations of the United States department of the treasury; ~~or~~

(h) sell wine at the winery to a licensed retailer who presents the retailer's license or a photocopy of the license*; or*

*(i) obtain a direct shipment endorsement to ship table wine as provided in [sections 1 through 3] directly to an individual in Montana who is at least 21 years of age*.

(2) (a) A winery licensed pursuant to 16-4-107 may sell and deliver wine produced by the winery directly to licensed retailers if the winery:

(i) uses the winery's own equipment, trucks, and employees to deliver the wine and the wine delivered pursuant to this subsection (2)(a)(i) does not exceed 4,500 cases a year;

(ii) contracts with a licensed table wine distributor to ship and deliver the winery's wine to the retailer; or

(iii) contracts with a common carrier to ship and deliver the winery's wine to the retailer and:

(A) the wine shipped and delivered by common carrier is shipped directly from the producer's winery or bonded warehouse;

(B) individual shipments delivered by common carrier are limited to three cases a day for each licensed retailer; and

(C) the shipments delivered by common carrier do not exceed 4,500 cases a year.

(b) A winery making sales to retail licensees under the provisions of this subsection (2) is considered a table wine distributor for the purposes of collecting taxes on table wine, as provided in 16-1-411.

(c) If a winery uses a common carrier for delivery of the wine to licensed table wine distributors and retailers, the shipment must be:

(i) in boxes that are marked with the words: "Wine Shipment From Montana-Licensed Winery to Montana Licensee";

(ii) delivered to the premises of a licensed table wine distributor or licensed retailer who is in good standing; and

(iii) signed for by the wine distributor or retailer or its employee or agent.

(d) In addition to any records required to be maintained under 16-4-107, a winery that distributes wine within the state under this subsection (2) shall maintain records of all sales and shipments. The winery shall, on or before the 15th day of each month, in the manner and form prescribed by the department, make a return reporting the amount of wine that it shipped in the state during

the preceding month, names and addresses of consignees or retailers, and other information that the department may determine to be necessary to ensure that distribution of table wines within this state conforms to the requirements of this code."

**Section 7.** Section 16-4-107, MCA, is amended to read:

**"16-4-107. Winery license — winery and importer registration.** (1) (a) Wine, other than for personal consumption in conformity with federal exemptions from holding a basic permit as a bonded winery, may be manufactured or directly distributed to retailers within the state only by a licensed winery *and table wine may be shipped directly by a winery with a direct shipment endorsement as provided in [section 1] to an individual in Montana who is at least 21 years of age*. An application for a winery license must be accompanied by a fee of $400, which constitutes the first annual license fee, and a licensee shall in each succeeding year pay an annual fee as provided in 16-4-501. Winery licensees located in Montana must hold the appropriate basic permit required by the United States department of the treasury and be qualified for a license in accordance with the provisions of 16-4-401(4). Winery licensees located in another state must hold the appropriate basic permit required by the United States department of the treasury and the appropriate license to manufacture wine from the state in which the winery is located and shall provide all other information required by the department.

(b) A winery located in Montana that is licensed to do business in the state shall, each quarter and in the manner and form prescribed by the department, report to the department the amount of wine manufactured or imported by the winery in the previous quarter and the winery's inventory. The department may at any time examine a winery's books.

(2) *(a)* A winery that is not located in the state or an importer of table wines that holds the appropriate license from the United States department of the treasury and that desires to distribute its table wines within this state through licensed table wine distributors ~~only~~ shall apply to the department of revenue for registration on forms to be prepared and furnished by the department.

*(b)* Each winery shall furnish the department with a copy of each container label currently used by the winery on its products imported into Montana. The department shall require the winery or importer to agree to furnish monthly and other reports concerning quantities and prices of table wine that it ships into the state, names and addresses of consignees, and any other information that the department may determine to be necessary to ensure that importation and distribution of table wines within this state conform to the requirements of this code.

*(c)* A winery or importer of table wines may not ship table wines into this state until the registration is granted by the department. The registration may be canceled or suspended by the department upon a finding after notice and hearing that the registrant has not complied with the terms of its registration.

*(3) A winery that is not located in Montana, that holds the appropriate license from the United States department of the treasury, that is not already registered with the department, and that desires to sell and ship table wine directly to individuals in Montana who are at least 21 years of age shall apply to the department for registration pursuant to subsection (2) and for a direct shipment endorsement pursuant to [section 1].*"

**Section 8.** Section 16-4-901, MCA, is amended to read:

**"16-4-901. Connoisseur's licenses — application — fees.** (1) A person in this state desiring to receive direct shipments of beer ~~only, wine only, or both beer and wine~~ from an out-of-state brewery ~~or winery~~ for the person's own consumption and not for resale shall file with the department an application for a connoisseur's license. The application must be accompanied by a registration fee in the amount of~~:~~

~~(a)~~ $50 for a beer connoisseur's license~~;~~

~~(b) $50 for a wine connoisseur's license; or~~

~~(c) $100 for a beer and wine connoisseur's license~~.

(2) Each application for a license must be on a form prescribed by the department and must set forth the name of the applicant, the applicant's home or business address, proof that the applicant is at least 21 years of age, and other information that the department may require.

(3) A connoisseur's license expires on June 30 of each calendar year. A licensee may annually renew a license with the department by paying a $25 renewal fee for a beer connoisseur's license ~~or a wine connoisseur's license and a $50 renewal fee for a beer and wine connoisseur's license~~.

(4) The holder of a connoisseur's license may not sell beer ~~or wine~~ to the public.

(5) The department shall adopt rules to provide procedures for the application for and the provision of a connoisseur's license."

**Section 9.** Section 16-4-902, MCA, is amended to read:

**"16-4-902. Payment of taxes — authority of department.** (1) A person holding a connoisseur's license shall pay, on June 30 and December 31, the beer ~~and wine~~ taxes imposed by Title 16, chapter 1, part 4, on beer ~~or wine~~ that is received by direct shipment from an out-of-state brewery ~~or winery~~ during the previous 6-month period.

(2) Each holder of a connoisseur's license shall file with the department a return, on a form provided by the department, and pay the tax for shipments received."

**Section 10.** Section 16-4-903, MCA, is amended to read:

**"16-4-903. Direct shipment of beer ~~or wine~~ — limitations.** (1) Subject to the provisions of 16-4-901, the holder of a connoisseur's license may receive up to ~~144 bottles or 12 cases of wine or 288 bottles or~~ *288 bottles or* 12 cases of beer from an out-of-state brewery ~~or winery~~ during a 12-month period for personal use and not for resale. ~~A person wishing to receive both wine and beer under this section must possess a beer and wine connoisseur's license.~~

(2) A licensee under this section shall forward to the out-of-state brewery ~~or winery~~ a distinctive address label, provided by the department, clearly identifying any package that is shipped as a legal direct-shipment package to the holder of a connoisseur's license.

(3) A licensee shall report to the department, on June 30 and December 31, the total amount of beer ~~or wine~~ received from an out-of-state brewery ~~or winery~~ and pay all applicable excise taxes, as provided for in Title 16, chapter 1, part 4, imposed on the receipt of beer ~~or wine~~ during the previous 6 months."

**Section 11.** Section 16-4-906, MCA, is amended to read:

**"16-4-906. Out-of-state brewery ~~or winery~~ registration — limitation on shipping — penalty.** (1) Each out-of-state brewery ~~or winery~~ desiring to ship beer ~~or wine~~ to a person holding a connoisseur's license shall register with the department on forms provided by the department.

(2) The annual limit on out-of-state shipments to all connoisseur's license holders is~~:~~

~~(a)~~ 1,440 bottles or 60 cases of beer ~~for breweries; and~~

~~(b) 720 bottles or 60 cases of wine for wineries~~.

(3) For any shipment into the state that exceeds the limits provided for in subsection (2), the out-of-state brewery ~~or winery~~ may:

(a) distribute the brewery's ~~or winery's~~ product through a licensed wholesale distributor;

~~(b) distribute through direct shipment to licensed retailers in accordance with the provisions of 16-3-411 if the winery is licensed pursuant to 16-4-107;~~ or

~~(c)~~*(b)* distribute as a brewery in accordance with the provisions of 16-3-214.

(4) An out-of-state brewery ~~or winery~~ that violates the provisions of this section is subject to the penalties provided for in 16-6-302."

**Section 12.** Section 16-6-301, MCA, is amended to read:

**"16-6-301. Transfer, sale, and possession of alcoholic beverages — when unlawful.** (1) Except as provided by this code, a person or the person's agents or employees may not:

(a) expose or keep an alcoholic beverage for sale;

(b) directly or indirectly or upon any pretense or upon any device, sell or offer to sell an alcoholic beverage; or

(c) in consideration of the purchase or transfer of any property or for any other consideration or at the time of the transfer of any property, give to any other person an alcoholic beverage.

(2) A person may not have or keep any alcoholic beverage that has not been purchased within the state of Montana.

(3) This code does not prohibit:

(a) a person entering this state from another state or foreign country from having in the person's actual physical possession an amount not to exceed 3 gallons of alcoholic beverage that was purchased in another state or foreign country;

(b) possession of beer produced for personal or family use and not intended for sale that meets the exemptions of 26 U.S.C. 5053(e) and regulations implementing that section, including the brewing of beer, for personal or family use, on premises other than those of the person brewing the beer;

(c) possession of beer ~~or wine~~ purchased from an out-of-state brewery ~~or winery~~ if the person possessing the beer ~~or wine~~ holds a connoisseur's license as provided for in 16-4-901 *or possession of table wine purchased from a winery that has a direct shipment endorsement as provided in [section 1]*;

(d) possession of alcoholic beverages by brewers, distillers, and other persons duly licensed by the United States for the manufacture of those alcoholic beverages;

(e) possession of proprietary or patent medicines or of any extracts, essences, tinctures, or preparations if the possession is authorized by this code; or

(f) possession by a sheriff or bailiff of alcoholic beverages seized under execution or other judicial or extrajudicial process or sales under executions or other judicial or extrajudicial process to the department or a licensee.

(4) Except as provided in this code, a person or the person's agents or employees may not:

(a) attempt to purchase any alcoholic beverage;

(b) directly or indirectly or upon any pretense or device, purchase any alcoholic beverage; or

(c) in consideration of the sale or transfer of any property or for any other consideration or at the time of the transfer of any property, take or accept from any other person any alcoholic beverage."

**Section 13. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 16, chapter 4, and the provisions of Title 16, chapter 4, apply to [sections 1 through 3].

Approved April 12, 2013

# CHAPTER NO. 185

[HB 455]

AN ACT REVISING LAWS RELATING TO REISSUANCE OF CERTIFICATE OF TITLE FOR ABANDONED, WRECKED, AND DISABLED VEHICLES; AND AMENDING SECTION 61-8-913, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-8-913, MCA, is amended to read:

**"61-8-913. Notice to owner — payment of removal and storage costs — request for reissuance of certificate of title.** (1) Within 15 days after the date that a wrecked or disabled vehicle is removed from a public roadway by a qualified tow truck operator at the request of a law enforcement officer under 61-8-908, the qualified tow truck operator shall send a certified letter to the vehicle owner or lienholder, as shown in the department's records, notifying the owner or lienholder that the vehicle has been towed and is being stored by the qualified tow truck operator. The certified letter must be sent return receipt requested and postage prepaid to the owner or lienholder at the latest address shown in the department's records.

(2) The owner or lienholder of the vehicle may not reclaim the vehicle until the owner, the lienholder, or the owner's or lienholder's insurance provider has paid the costs incurred by the qualified tow truck operator in removing and storing the vehicle.

(3) If the removal and storage costs have not been paid within ~~60~~ *30* days after the date that the notice provided for in subsection (1) was postmarked, the qualified tow truck operator may request, on a form provided by the department, that the department cancel the vehicle's certificate of title, remove any perfected security interest, and reissue the certificate of title to the qualified tow truck operator. In the request, the qualified tow truck operator shall certify that the notice required in subsection (1) was sent and that the owner or lienholder has not made payment as required in subsection (2). A copy of the notice required in subsection (1) must be attached to the request.

(4) Upon receipt of a valid request as provided in subsection (3), the department shall cancel the certificate of title to the vehicle and reissue the certificate of title to the qualified tow truck operator. The qualified tow truck operator shall pay all required fees on the vehicle. After the department has reissued the certificate of title, the former owner or lienholder has no further right, title, claim, or interest in or to the vehicle."

Approved April 12, 2013

# CHAPTER NO. 186

[HB 462]

AN ACT REVISING MONTANA'S AGISTERS' LIEN ENFORCEMENT LAWS TO CONFORM WITH THE DUE PROCESS PROVISIONS OF THE MONTANA AND THE UNITED STATES CONSTITUTIONS; PROVIDING THAT THE PERSON WHO OWNS PROPERTY THAT IS SUBJECT TO THE LIEN BE PROVIDED A PROCESS FOR NOTICE AND AN OPPORTUNITY TO BE HEARD PRIOR TO THE PROPERTY BEING SOLD; AMENDING SECTION 71-3-1203, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, Article II, section 17, of the Montana Constitution provides "No person shall be deprived of life, liberty, or property without due process of law" and Section 1 of the Fourteenth Amendment to the United States Constitution provides "nor shall any State deprive any person of life, liberty, or property, without due process of law"; and

WHEREAS, in light of these constitutional due process provisions, the United States District Court for the District of Montana in Cox v. Yellowstone County, 795 F. Supp. 2d 1128 (2011), held that the Court "can conceive of no set of circumstances under which Montana's agisters' lien statute could pass constitutional muster in view of procedural due process requirements. Particularly, the need to provide a meaningful opportunity to be heard prior to a government deprivation of property"; and

WHEREAS, the Court in Cox v. Yellowstone County further held that "the enforcement provision of Montana's agisters' lien statute, Mont. Code Ann. § 71-3-1203, is unconstitutional as written"; and

WHEREAS, this Act revises Montana's agisters' lien enforcement laws to conform with the due process provisions of the Montana and United States Constitutions.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 71-3-1203, MCA, is amended to read:

**"71-3-1203. Enforcement of lien — sale.** If payment for work, labor, or services performed or feed or material furnished is not made within 30 days after the performance of the work, labor, or services or furnishing of the feed or material, the ~~person entitled to a lien~~ *lienor* under the provisions of this part may enforce the lien in the following manner:

*(1) The lienor may file a lien enforcement action in the district court of the county in which the:*

*(a) contract between the lienor and the owner of the property was entered into;*

*(b) owner resided at the time the lien enforcement action commenced; or*

*(c) property is located.*

*(2) When a claim is made under this section, an affidavit must be made by the lienor claiming the property or by someone on the lienor's behalf, stating:*

*(a) the facts that the lienor performed a service for the property owner entitling the lienor to a lien on the owner's property pursuant to 71-3-1201;*

*(b) that the service described in subsection (2)(a) was performed at the written or verbal request of the owner or owner's agent;*

*(c) a particular property upon which the lien is claimed; and*

*(d) an itemized list of the charges that are due and unpaid under the lien.*

*(3) (a) If satisfactory, the court shall order the owner of the property to show cause why the property should not be sold pursuant to the procedures in this section. The order must include the date and time for a hearing. The hearing may not be held more than 20 working days after the date of the issuance of the order.*

*(b) The court order provided for in subsection (3)(a) must be served pursuant to the Montana Rules of Civil Procedure on the owner at least 5 days before the hearing date.*

~~(1)~~*(4)* The ~~person~~ *lienor* shall deliver to the sheriff ~~or a constable~~ of the county in which the property is located *a copy of the court's lien enforcement judgment* ~~an affidavit of the amount of the person's claim against the property, a description of the property, and the name of the owner of the property or of the person at whose request the work, labor, or services were performed or the feed or material was furnished~~.

~~(2)~~*(5)* Upon receipt of the ~~affidavit~~ *court's lien enforcement judgment*, the sheriff ~~or constable~~ shall ~~proceed to~~ advertise and sell at public auction as much of the property covered by the lien as will satisfy the lien.

~~(3)~~*(6)* The sale must be advertised, conducted, and held in the same manner as prescribed in 25-13-701(1)(b).

*(7) The owner of the property may request a hearing in district court to contest any matter regarding the sale of the property.*

~~(4) Before the sheriff or constable sells the property at public auction, the sheriff or constable shall give notice of the sale to the owner or person at whose request the work, labor, or services were performed or the feed or material was furnished.~~

~~(a) Notice to the owner must be given at least 10 days before the sale.~~

~~(b) The notice must state:~~

~~(i) the time and place of the sale;~~

~~(ii) the amount of the claim against the property;~~

~~(iii) a description of the property;~~

~~(iv) the name of the owner or person who contracted for the services or materials; and~~

~~(v) the name of the person claiming the lien.~~

~~(c) The notice may be given by personal service or by mailing by certified mail a copy of the notice to the last-known post-office address of the owner or person who contracted for the work, labor, or services performed or the feed or material furnished.~~

~~(d) If the sheriff or constable is not able to effect personal service or service by mail because the location and mailing address of the owner or the contracting person are unknown, the sheriff or constable may give notice by posting notice of the sale in three public places in the county in which the property is located.~~

~~(5)~~*(8)* The sheriff shall apply the proceeds of the sale to the discharge of the lien and the cost of the proceedings in selling the property and enforcing the lien, and the remainder, if any, or a part that is required to discharge the claims, must be turned over by the sheriff to the holders, in the order of their precedence, of the chattel mortgages or other lien claimants of record against the property, and the balance of the proceeds must be turned over to the owner of the property.

~~(6) However, before seizing any property under the provisions of this section, the sheriff may require an indemnity bond from the lienor that may not~~

~~exceed double the amount of the claim against the property. The bond and the surety or sureties on the bond must be approved by the sheriff.~~"

**Section 2. Effective date.** [This act] is effective July 1, 2013.

**Section 3. Applicability.** [This act] applies to all proceedings and actions initiated on or after [the effective date of this act].

Approved April 12, 2013

# CHAPTER NO. 187

[SB 48]

AN ACT PROVIDING A PROCESS FOR REGIONAL AUTHORITIES TO ESTABLISH AND CHANGE RATES, FEES, AND CHARGES FOR PROVIDING WATER AND WASTEWATER SERVICES; AND AMENDING SECTIONS 7-13-2275, 7-13-2301, 7-13-4307, 69-7-111, 75-6-304, AND 75-6-326, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-13-2275, MCA, is amended to read:

**"7-13-2275. Procedure relating to ordinances and resolutions — rates, fees, and charges established.** (1) The ayes and noes must be taken upon the passage of all ordinances or resolutions and entered upon the journal of the proceedings of the board of directors. An ordinance or resolution may not be passed or become effective without the affirmative votes of at least a majority of the total members of the board.

(2) The enacting clause of all ordinances passed by the board must be in these words: "Be it ordained by the board of directors of _____ district as follows:"

(3) All resolutions and ordinances must be signed by the president of the board and attested by the secretary.

(4) (a) Except as provided in ~~subsection~~ *subsections* (5) *and (6)*, prior to the passage or enactment of an ordinance or resolution imposing, establishing, changing, or increasing rates, fees, or charges for services or facilities, the board shall order a public hearing.

(b) Notice of the public hearing must be published as provided in 7-1-2121. The published notice must contain:

(i) the date, time, and place of the hearing;

(ii) a brief statement of the proposed action; and

(iii) the address and telephone number of a person who may be contacted for further information regarding the hearing.

(c) The notice must also be mailed to all persons who own property in the district and to all customers of the district at least 7 days and not more than 30 days prior to the public hearing. The mailed notice must contain an estimate of the amount that the property owner or customer will be charged under the proposed ordinance or resolution.

(d) Any interested person, corporation, or company may be present, represented by counsel, and testify at the hearing.

(e) The hearing may be continued by the board as necessary. After the public hearing, the board may, by resolution, impose, establish, change, or increase rates, fees, or charges.

(5) A public hearing is not required for a cumulative rate increase of less than or equal to 5% within a 12-month period if the board provides notification of the increase to persons within the district on whom the rate will be imposed at least 10 days prior to the passage or enactment of the ordinance or resolution implementing the increase.

*(6) (a) If the establishment of or change in rates, fees, or charges proposed by a regional authority requires the authority to hold a public hearing pursuant to 75-6-326 and requires an increase to the rates, fees, or charges imposed by the district greater than the increase provided in subsection (5), the board shall:*

*(i) mail notice of the public hearing to be held by the authority to all customers of the district system at least 15 days prior to the public hearing; and*

*(ii) provide notification of the change to customers of the district system on whom the increased rates, fees, or charges will be imposed at least 10 days prior to the passage or enactment of the ordinance or resolution implementing the increase.*

*(b) The district is not required to hold a public hearing on the increase.*"

**Section 2.** Section 7-13-2301, MCA, is amended to read:

**"7-13-2301. Establishment of charges for services — payment of charges.** (1) The board of directors shall fix all water and sewer rates and shall, through the general manager, collect the sewer charges and the charges for the sale and distribution of water to all users.

(2) (a) The board, in furnishing water, sewer service, other services, and facilities, shall review, at least once every year, and set, as required, the rate, fee, toll, rent, tax, or other charge for the services, facilities, and benefits directly afforded by the facilities, taking into account services provided and direct benefits received. Taking into account the collections of any special assessments levied pursuant to 7-13-2280 through 7-13-2290 and any property taxes that will be levied to pay debt service on general obligation bonds authorized pursuant to 7-13-2331, the amount to be collected and appropriated must be sufficient in each year to provide income and revenue adequate for the:

(i) payment of the reasonable expense of operation and maintenance of the facilities;

(ii) administration of the district;

(iii) payment of principal and interest on any bonded or other indebtedness of the district; ~~and~~

(iv) establishment or maintenance of any required reserves, including reserves needed for expenditures for depreciation and replacement of facilities, as may be determined necessary from time to time by the board or as covenanted in the ordinance or resolution authorizing the outstanding bonds of the district*; and*

*(v) payment of rates, fees, and charges levied by a regional authority established pursuant to Title 75, chapter 6, part 3.*

(b) A portion of the rate, fee, toll, rent, tax, or other charge provided for in subsection (2)(a) may be charged to the owner of an undeveloped lot, tract, or parcel to pay a share of the principal of and interest on bonded indebtedness issued to finance the capital cost of improvements to an existing water or sewer system, so long as the board makes findings in a resolution or ordinance of the district that demonstrate that the improvements to the existing system to be financed by the bonded indebtedness confer a direct benefit on the lot, tract, or parcel.

(3) A person or entity may not use any facility without paying the rate established for the facility. In the event of nonpayment, the board may order the discontinuance of water or sewer service, or both, to the property and may require that all delinquent charges, interest, penalties, and deposits be paid before restoration of the service.

(4) (a) If the board has ordered discontinuance of service as provided in subsection (3) and the person or entity who received the service has not made full payment of all delinquent charges, interest, penalties, and deposits, then a district may elect to have its delinquent charges for water or sewer services collected as a tax against the property by following the procedures of this subsection (4). If a charge for services is due and payable in a fiscal year and is not paid by the end of the fiscal year, the general manager shall, by July 15 of the succeeding fiscal year, give notice to the owners of the property to which the service was provided. The notice must be in writing and:

(i) must specify the charges owed, including any interest and penalty;

(ii) must specify that the amount due must be paid by August 15 or it will be levied as a tax against the property;

(iii) must state that the district may institute suit in any court of competent jurisdiction to recover the amount due; and

(iv) may be served on the owner personally or by letter addressed to the post-office address of the owner as recorded in the county assessor's office.

(b) On September 1 of each year, the general manager shall certify and file with the county assessor a list of all property, including legal descriptions, on which arrearages remain unpaid. The list must include the amount of each arrearage, including interest and penalty. The county assessor shall assess the amount owed as a tax against each lot or parcel with an arrearage. If the property on which arrearages remain unpaid contains a mobile home, the amount owed must be assessed as a tax against the owner of the mobile home. If the mobile home for which arrearages remain unpaid is no longer on the property, the amount owed must be assessed as a tax against the property.

(5) In addition to collecting delinquent charges in the same manner as a tax, a district may bring suit in any court of competent jurisdiction to collect amounts due as a debt owed to the district.

(6) Notwithstanding any other section of part 22 or this part or any limitation imposed in part 22 or this part, when the board has applied for and received from the federal government any money for the construction, operation, and maintenance of facilities, the board may adopt a system of charges and rates to require that each recipient of facility services pays its proportionate share of the costs of operation, maintenance, and replacement and may require industrial users of facilities to pay the portion of the cost of construction of the facilities that is allocable to the treatment of that industrial user's wastes."

**Section 3.** Section 7-13-4307, MCA, is amended to read:

**"7-13-4307. Establishment of amount of charges.** The rates and charges established for the services and facilities afforded by this system ~~shall~~ *must* be sufficient in each year to provide income and ~~revenues~~ *revenue* adequate for the*:*

*(1)* payment of the reasonable expense of operation and maintenance*;* ~~and for the~~

*(2)* payment of the sums required to be paid into the sinking fund*;* ~~and for the~~

*(3)* accumulation of ~~such~~ reserves*;*

*(4) payment of rates, fees, and charges levied by a regional authority established pursuant to Title 75, chapter 6, part 3;* and ~~the making of such~~

*(5) payment of* expenditures for depreciation and replacement of ~~said~~ *the* system as ~~shall be~~ determined necessary ~~from time to time~~ by the governing body or as ~~shall have been~~ covenanted in the ordinances and resolutions authorizing the outstanding bonds."

**Section 4.** Section 69-7-111, MCA, is amended to read:

**"69-7-111. Municipal rate hearing required — notice.** (1) Except as provided in 75-5-516*,* ~~and~~ 75-6-108, *and subsection (6),* if the governing body of a municipality considers it advisable to regulate, establish, or change rates, charges, or classifications imposed on its customers, it shall order a hearing to be held before it at a time and place specified.

(2) Notice of the hearing ~~shall~~ *must* be published in a newspaper as provided in 7-1-4127.

(3) (a) The notice ~~shall~~ *must* be published three times with at least 6 days separating each publication. The first publication may be no more than 28 days prior to the hearing, and the last publication may be no less than 3 days prior to the hearing.

(b) The notice must also be mailed at least 7 days and not more than 30 days prior to the hearing to persons served by the utility. The notice must be mailed within the prescribed time period. This notice must contain an estimate of the amount the customer's average bill will increase.

(4) The published notice must contain:

(a) the date, time, and place of the hearing;

(b) a brief statement of the proposed action; and

(c) the address and telephone number of a person who may be contacted for further information regarding the hearing.

(5) Notice of all hearings shall be mailed first class, postage prepaid, to the Montana consumer counsel.

*(6) (a) If the proposed increase in the rates, fees, or charges imposed by the municipality is the result of the establishment of or change in rates, fees, or charges imposed by a regional authority of which the municipality is a customer and the authority is required to hold a public hearing pursuant to 75-6-326, the governing body of the municipality shall:*

*(i) mail notice of the public hearing to be held by the authority to all persons served by the municipality at least 15 days before the public hearing; and*

*(ii) provide notification to all persons served by the municipality at least 10 days prior to the enactment of the ordinance or adoption of the resolution implementing the increase.*

*(b) The municipality is not required to hold a public hearing in connection with the increase.*

*(7) If a regional authority is not required to hold a public hearing as provided in 75-6-326(9), the municipality is subject to the hearing requirements of this section.*"

**Section 5.** Section 75-6-304, MCA, is amended to read:

**"75-6-304. Definitions.** For the purposes of this part, the following definitions apply:

(1) "Authority" means any regional water authority, regional wastewater authority, or regional water and wastewater authority organized pursuant to the provisions of this part.

*(2) "District customer" means a county water and/or sewer district that is afforded the use or the availability of service from an authority.*

*(3) "Municipal customer" means a municipality that is afforded the use or the availability of service from an authority.*

~~(2)~~*(4)* "Public agency" means any municipality, county, water and sewer district, or other political subdivision of this state.

*(5) "Rural customer" means a customer who is afforded the use or the availability of service from an authority and is neither a district customer nor a municipal customer.*"

**Section 6.** Section 75-6-326, MCA, is amended to read:

**"75-6-326. Rates*, fees,* and charges — *establishment and changes.*** *(1)(a)* The governing body shall by appropriate resolution make provisions for the payment of bonds issued pursuant to this part by taxing rates, fees, and charges, for the use of all services rendered by the authority.

*(b) The governing body of the authority shall review at least annually the rates, fees, and charges for services, facilities, and benefits directly afforded by the facilities, taking into account services provided and direct benefits received.*

*(c)* The rates, fees, and charges*, in addition to grants or any other revenue,* must be sufficient to*:*

*(i)* pay the costs of operation, improvement, and maintenance of the authority's water supply or wastewater transportation or treatment system~~,~~*;*

*(ii)* provide an adequate depreciation fund~~,~~*;*

*(iii)* provide an adequate sinking fund to retire any bonds and pay interest on the bonds when due~~, and~~*;*

*(iv)* create reasonable reserves for the enumerated purposes~~. The rates, fees, or charges must be sufficient to~~*; and*

*(v)* allow for miscellaneous and emergency or unforeseen expenses.

*(2)* The resolution of the governing body authorizing the issuance of revenue bonds may include agreements, covenants, or restrictions considered necessary or advisable by the governing body to effect the efficient operation of the system, to safeguard the interests of the holders of the revenue bonds, and to secure the payment of the bonds and the interest on the bonds.

*(3) Except as provided in subsection (9), prior to adopting a resolution to establish or change rates, fees, or charges, the governing body of the authority shall hold a public hearing.*

*(4) Notice of the public hearing must be published as provided in 7-1-2121 in each county or counties in which customers of the authority are located. The published notice must contain:*

*(a) the date, time, and place of the hearing;*

*(b) a brief statement of the proposed action; and*

*(c) the address and telephone number of a person at the authority who may be contacted for information regarding the hearing.*

*(5) (a) The notice must be mailed to each rural customer and to the governing bodies of district customers or municipal customers at least 25 days and not more than 40 days prior to the public hearing.*

*(b) The mailed notice must contain an estimate of the amount that a customer would be charged under the proposed resolution.*

*(6) If the establishment or change in rates, fees, or charges proposed by the authority requires an increase in the rates, fees, or charges imposed by district customers or municipal customers, district customers and municipal customers shall comply with the provisions of 7-13-2275 or 69-7-111.*

*(7) Any interested person, corporation, governmental body, or company may be present, be represented by counsel, and testify at the public hearing of the authority.*

*(8) (a) The hearing may be continued by the governing body of the authority as necessary. After the public hearing, the governing body of the authority may, by resolution, impose, establish, change, or increase rates, fees, or charges.*

*(b) Within 10 days after adoption of a resolution establishing or changing rates, fees, or charges of the authority, an officer of the authority shall send a copy of the resolution to each governing body of an affected district or municipal customer.*

*(9) The authority is not required to hold a public hearing for a cumulative rate increase of less than or equal to 5% within a 12-month period if the governing body of the authority provides notification of the increase to rural customers and to the governing bodies of district customers and municipal customers on whom the rate will be imposed at least 10 days prior to the passage or enactment of the ordinance or resolution implementing the increase.*"

Approved April 12, 2013

# CHAPTER NO. 188

[SB 116]

AN ACT REVISING SPECIAL FUEL USER PERMIT LAWS; REPEALING THE SPECIAL FUEL USER'S PERMIT; PROVIDING THAT CERTAIN NONRESIDENTS OBTAIN CERTAIN SPECIAL FUEL USER'S TEMPORARY PERMITS; CLARIFYING THE APPLICABILITY OF THE TAX ON SPECIAL FUEL AND VOLATILE LIQUIDS; AMENDING SECTIONS 15-70-301, 15-70-311, 15-70-314, 15-70-321, 15-70-330, 15-70-356, AND 15-70-372, MCA; REPEALING SECTIONS 7-5-2316, 7-5-4316, 15-70-302, 15-70-303, 15-70-304, 15-70-305, 15-70-306, 15-70-307, 15-70-317, 15-70-323, 15-70-325, 15-70-327, 15-70-328, 15-70-329, 15-70-331, 15-70-332, 15-70-333, 15-70-334, 15-70-335, 15-70-336, 20-6-630, AND 60-2-118, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-70-301, MCA, is amended to read:

**"15-70-301. Definitions.** As used in this part, the following definitions apply:

(1) "Agricultural use" means use of special fuel by a person who earns income while engaging in the business of farming or ranching and who files farm or income reports for tax purposes as required by the United States internal revenue service.

(2) (a) "Biodiesel" means a fuel produced from monoalkyl esters of long-chain fatty acids derived from vegetable oils, renewable lipids, animal fats, or any combination of those ingredients. The fuel must meet the requirements of ASTM D6751, also known as the Standard Specification for Biodiesel Fuel

(B100) Blend Stock for Distillate Fuels, as adopted by the American society for testing and materials.

(b) Biodiesel is also known as "B-100".

~~(3) "Biodiesel blend" means a blend of biodiesel and petroleum diesel fuel that is at least 2% biodiesel.~~

~~(4) "Bond" means:~~

~~(a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or~~

~~(b) a deposit with the department by the special fuel user, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.~~

~~(5)~~*(3)* "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.

~~(6)~~*(4)* "Cardtrol" or "keylock" means a unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

~~(7)~~*(5)* "Department" means the department of transportation.

~~(8)~~*(6)* (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;

(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or

(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.

(c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.

~~(9)~~*(7)* (a) "Distributor" means:

(i) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;

(ii) an importer who imports special fuel for sale, use, or distribution;

(iii) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and

(iv) an exporter.

(b) The term does not include a special biodiesel fuel producer who produces biodiesel from waste vegetable oil feedstock in this state for the operation of

motor vehicles owned or controlled by the person upon the public roads and highways of the state.

~~(10)~~*(8)* "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

~~(11)~~*(9)* "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

~~(12)~~*(10)* "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.

~~(13)~~*(11)* "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.

~~(14)~~*(12)* "Improperly imported fuel" means special fuel that is:

(a) consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana special fuel distributor license as required in 15-70-341; or

(b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

~~(15)~~*(13)* "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

~~(16)~~*(14)* "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

~~(17)~~*(15)* "Public roads and highways of this state" means all streets, roads, highways, and related structures:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or

(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state.

~~(18)~~*(16)* "Special biodiesel fuel producer" means a person who produces less than 2,500 gallons annually of biodiesel fuel from waste vegetable oil feedstock for the operation of motor vehicles owned or controlled by the person upon the public roads and highways of the state.

~~(19)~~*(17)* "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes biodiesel and additives of all types when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

~~(20)~~*(18)* "Special fuel dealer" means:

(a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

(b) a person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtrol, keylock, or similar device; or

(c) a person who provides a facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

~~(21)~~*(19)* (a) "Special fuel user" means a person who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

(b) The term does not include:

(i) the U.S. government, a state, a county, an incorporated city or town, or a school district of this state; or

(ii) a special biodiesel fuel producer who produces biodiesel from waste vegetable oil feedstock for the operation of motor vehicles owned or controlled by the person upon the public roads and highways of the state.

~~(22)~~*(20)* "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state.

~~(23)~~*(21)* "Waste vegetable oil" means used cooking oil gathered from restaurants or commercial food processors."

**Section 2.** Section 15-70-311, MCA, is amended to read:

**"15-70-311. ~~Special~~ *Nonresident special* fuel user's temporary trip permits — nonresident agricultural harvesting equipment special fuel permit — *nonresident* special fuel user's agricultural product temporary trip permit.** (1) Any *nonresident* person operating a special fuel-powered vehicle over 26,000 pounds gross vehicle weight or registered gross vehicle weight upon the public roads and highways of this state ~~who fails or neglects to carry in the vehicle a valid special fuel vehicle permit, as provided by 15-70-302,~~ *who is not covered under the International Fuel Tax Agreement provided for in 15-70-121* is required to purchase a special fuel user's temporary trip permit. The permits must be issued by motor carrier services division employees, Montana highway patrol officers, and other enforcing agents that the department may prescribe by order or rule.

(2) Any nonresident *person* upon entering the state with agricultural harvesting equipment that is over 26,000 pounds gross vehicle weight or registered gross vehicle weight and that is powered by special fuel and operating upon the public roads and highways of this state who ~~fails or neglects to carry in or on equipment a valid special fuel vehicle permit, as provided by 15-70-302,~~ *is not covered under the International Fuel Tax Agreement provided for in 15-70-121* is required to purchase a nonresident agricultural harvesting equipment special fuel permit. The permit must be issued by motor carrier services division employees, Montana highway patrol officers, and other enforcing agents that the department may prescribe by order or rule.

(3) Any *nonresident* person operating a special fuel-powered vehicle over 26,000 pounds gross vehicle weight or registered gross vehicle weight upon the public roads and highways of this state who is using the vehicle for the movement of that person's agricultural products, as defined in 80-11-101, and ~~who fails or neglects to carry in the vehicle a valid special fuel vehicle permit, as provided by 15-70-302,~~ *who is not covered under the International Fuel Tax*

*Agreement provided for in 15-70-121* is required to purchase a special fuel user's agricultural product temporary trip permit. The permit is not valid for contract custom haulers. The permit is valid for a radius of 70 miles from a point specified on the permit. The permit must be issued by motor carrier services division employees, Montana highway patrol officers, and other enforcing agents that the department may prescribe by order or rule. A permit application may be submitted electronically, and the permit may be subsequently issued when the appropriate fee required in 15-70-312(3) is received by the permit issuer. Any costs associated with the electronic application process may be added to the total cost of the permit."

**Section 3.** Section 15-70-314, MCA, is amended to read:

**"15-70-314. Penalty for operation without temporary permit — compliance bond — policy continued.** (1) Any ~~unlicensed~~ user of special fuel vehicles operating within the state of Montana ~~without making~~ *who does not make* application for ~~said~~ *a* temporary permit *required by 15-70-311* and ~~paying~~ *pay* the specified fee ~~shall be~~ *is* guilty of committing a misdemeanor and upon conviction *shall* be fined $50.

(2) Nothing contained ~~herein shall affect~~ *in this section affects* the existing policy of accepting a compliance bond to be retained for use by the department and to be imposed at the discretion of the enforcing agency."

**Section 4.** Section 15-70-321, MCA, is amended to read:

**"15-70-321. Tax on special fuel and volatile liquids.** (1) The department shall, under the provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor vehicles a tax, as provided in subsection ~~(2)~~ *(3)*:

(a) for each gallon of undyed special fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test ~~when actually~~ sold or used to produce motor power to operate motor vehicles upon the public roads and highways of this state; *and*

*(b) for each gallon of dyed special fuel delivered into the fuel supply tank of a diesel-powered highway vehicle, regardless of weight, operating upon the public roads and highways of this state.*

~~(b)~~*(2)* ~~for each gallon of~~ *All* special fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test ~~when actually~~ sold or used in motor vehicles, motorized equipment, and the internal combustion of any engines, including stationary engines, *and* used in connection with any work performed under any contracts pertaining to the construction, reconstruction, or improvement of any highway or street and their appurtenances awarded by any public agencies, including federal, state, county, municipal, or other political subdivisions~~; and~~*, must be undyed fuel on which state fuel tax has been paid.*

~~(c) for each gallon of dyed special fuel delivered into the fuel supply tank of a diesel-powered highway vehicle, regardless of weight, operating upon the public roads and highways of this state.~~

~~(2)~~*(3)* The tax imposed in subsection (1) is 27 3/4 cents per gallon.

~~(3) Material used for construction, reconstruction, or improvement in connection with work performed under a contract as provided in subsection (1)(b) must be produced using special fuel on which state fuel tax has been paid.~~

*(4) Material used for construction, reconstruction, or improvement in connection with work performed under a contract as provided in subsection (2) must be produced using special fuel on which state fuel tax has been paid.*"

**Section 5.** Section 15-70-330, MCA, is amended to read:

**"15-70-330. Special fuel penalties.** (1) ~~In the case of a special fuel user who refuses or fails to file a return required by this part within the time prescribed by 15-70-103 and 15-70-325, there is imposed a penalty of $25 or a sum equal to 10% of the tax due, whichever is greater, together with interest at the rate of 1% on the tax due for each calendar month or fraction of a month during which the refusal or failure continues. However, if any special fuel user establishes to the satisfaction of the department that the failure to file a return within the time prescribed was due to reasonable cause, the department shall waive the penalty provided by this section.~~

~~(2)~~ Whenever a special fuel user files a return but fails to pay in whole or in part the tax due under this part, interest at the rate of 1% a month or fraction of a month from the date on which the tax was due to the date of payment in full must be added to the amount due and unpaid.

~~(3)~~*(2)* (a) A ~~special fuel user~~ *person* may not use dyed special fuel to operate a motor vehicle upon the public roads and highways of this state unless the use is permitted pursuant to rules adopted under subsection ~~(3)(b)~~ *(2)(b)*. The purposeful or knowing use of dyed special fuel in a motor vehicle operating upon the public roads and highways of this state in violation of this subsection is subject to the civil penalty imposed under 15-70-372(2). Each use is a separate offense.

(b) The department shall adopt and enforce reasonable rules for the movement of off-highway vehicles traveling from one location to another on public highways, public roads, or streets when using dyed fuel or nontaxed fuel.

~~(4)~~*(3)* The operator of the vehicle is liable for the tax imposed in 15-70-321. If the operator refuses or fails to pay the tax, in whole or in part, the seller of the special fuel is jointly and severally liable for the tax imposed under 15-70-321 and for the penalties described in this section if the seller knows or has reason to know that the fuel will be used for a taxable purpose."

**Section 6.** Section 15-70-356, MCA, is amended to read:

**"15-70-356. Refund or credit authorized.** (1) A person who purchases and uses any special fuel on which the Montana special fuel license tax has been paid for operating stationary special fuel engines used off the public highways and streets or for any commercial use other than operating vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the special fuel used if the person has records, as provided in ~~15-70-323~~ *15-70-361*, to prove nontaxable use. The refund may not exceed the tax paid or to be paid to the state.

(2) (a) The United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state is entitled to a refund of the taxes paid on special fuel regardless of the use of the special fuel.

(b) (i) A nonpublic school may use dyed special fuel in buses that are owned by the nonpublic school if the buses are used for the transportation of pupils solely for nonsectarian school-related purposes.

(ii) For the purposes of this subsection (2)(b), nonpublic schools are those schools that have been accredited pursuant to 20-7-102.

(3) A distributor who pays the special fuel license tax to this state erroneously is allowed a credit or refund of the amount of tax paid.

(4) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of special fuel with a tax liability of $200 or greater for which the

distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor shall have declared the accounts of the purchaser worthless not more than once during a 3-year period and claimed those accounts as bad debts for federal or state income tax purposes.

(b) If a credit has been granted under subsection (4)(a), any amount collected on the accounts declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(5) A person who purchases and exports for sale, use, or consumption outside Montana any special fuel on which the Montana special fuel tax has been paid is entitled to a credit or refund of the amount of tax paid unless the person is not licensed and is not paying the tax to the state where fuel is destined. Upon completion of the reports required under 15-70-351, the department shall authorize the credit or refund."

**Section 7.** Section 15-70-372, MCA, is amended to read:

**"15-70-372. Civil penalties.** (1) Except as provided in subsection (2), the department may, after giving notice and holding a hearing, if requested, pursuant to Title 2, chapter 4, part 6, impose a civil penalty not to exceed $100 for any violation of this part. The civil penalty may be in addition to the criminal penalties imposed under ~~15-70-330, 15-70-336, and~~ 15-70-366.

(2) The department shall, after giving notice and holding a hearing, if requested, impose a civil penalty not to exceed $1,000 for the first offense and $5,000 for the second offense for using dyed special fuel in violation of the provisions of ~~15-70-317 and~~ 15-70-330~~(3)~~*(2)*."

**Section 8. Repealer.** The following sections of the Montana Code Annotated are repealed:

7-5-2316. Listing special fuel permit number.
7-5-4316. Listing special fuel permit number.
15-70-302. Special fuel user's permits required — exceptions.
15-70-303. Application for permit.
15-70-304. Bonding, release of surety, and additional bond.
15-70-305. Issuance of permit — grounds for refusal — hearing.
15-70-306. Revocation, suspension, and cancellation.
15-70-307. Surrender of permit upon use discontinuance.
15-70-317. Use of dyed special fuel allowed for certain projects — temporary permit — tax and penalty imposed for unauthorized use — grounds for refusal — rules.
15-70-323. Special fuel user's records.
15-70-325. Returns.
15-70-327. Payment.
15-70-328. Credits.
15-70-329. Procedures for credits — deadline.
15-70-331. Deficiency.
15-70-332. Determination if no return made.
15-70-333. Fraudulent return — penalty.

15-70-334. Warrant for distraint.
15-70-335. Statute of limitation.
15-70-336. Criminal penalties.
20-6-630. Listing special fuel permit number.
60-2-118. Listing special fuel permit number.

**Section 9. Effective date.** [This act] is effective on passage and approval.

Approved April 12, 2013

# CHAPTER NO. 189

[SB 165]

AN ACT ALLOWING A SCHOOL TO MAINTAIN A STOCK SUPPLY OF EPINEPHRINE TO BE USED IN THE EVENT OF AN ACTUAL OR PERCEIVED ANAPHYLAXIS EMERGENCY; AMENDING SECTION 20-5-420, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-5-420, MCA, is amended to read:

**"20-5-420. Self-administration or possession of asthma, severe allergy, or anaphylaxis medication.** (1) As used in *[section 2] and* this section, the following definitions apply:

(a) "Anaphylaxis" means a systemic allergic reaction that can be fatal in a short time period and is also known as anaphylactic shock.

(b) "Asthma" means a chronic disorder or condition of the lungs that requires lifetime, ongoing~~,~~ medical intervention.

(c) "Medication" means a medicine, including inhaled bronchodilators, inhaled corticosteroids, and autoinjectable epinephrine, prescribed by a licensed physician as defined in 37-3-102, a physician assistant who has been authorized to prescribe medications as provided in 37-20-404, or an advanced practice registered nurse with prescriptive authority as provided in 37-8-202(1)(h).

(d) "Self-administration" means a pupil's discretionary use of the medication prescribed for the pupil.

(e) "Severe allergies" means a life-threatening hypersensitivity to a specific substance such as food, pollen, or dust.

(2) A school, whether public or nonpublic, shall permit the possession or self-administration of medication, as prescribed, by a pupil with asthma, severe allergies, or anaphylaxis if the parents or guardians of the pupil provide to the school:

(a) written authorization, acknowledging and agreeing to the liability provisions in subsection (4), for the possession or self-administration of medication, as prescribed;

(b) a written statement from the pupil's physician, physician assistant, or advanced practice registered nurse containing the following information:

(i) the name and purpose of the medication;

(ii) the prescribed dosage; and

(iii) the time or times at which or the special circumstances under which the medication is to be administered, as prescribed;

(c) documentation that the pupil has demonstrated to the health care practitioner and the school nurse, if available, the skill level necessary to self-administer the asthma, severe allergy, or anaphylaxis medication as prescribed; and

(d) documentation that the pupil's physician, physician assistant, or advanced practice registered nurse has formulated a written treatment plan for managing asthma, severe allergies, or anaphylaxis episodes of the pupil and for medication use, as prescribed, by the pupil during school hours.

(3) The information provided by the parents or guardians must be kept on file in the office of the school nurse or, in the absence of a school nurse, the school's administrator.

(4) The school district or nonpublic school and its employees and agents are not liable as a result of any injury arising from the self-administration of medication by the pupil unless an act or omission is the result of gross negligence, willful and wanton conduct, or an intentional tort. The parents or guardians of the pupil must be given a written notice and sign a statement acknowledging that the school district or nonpublic school may not incur liability as a result of any injury arising from the self-administration of medication by the pupil and that the parents or guardians shall indemnify and hold harmless the school district or nonpublic school and its employees and agents against any claims, except a claim based on an act or omission that is the result of gross negligence, willful ~~and~~ *or* wanton ~~conduct~~ *misconduct*, or an intentional tort.

(5) The permission for self-administration of asthma, severe allergy, or anaphylaxis medication is effective for the school year for which it is granted and must be renewed each subsequent school year or, if the medication expires or the dosage, frequency of administration, or other conditions change, upon fulfillment of the requirements of this section.

(6) If the requirements of this section are fulfilled, a pupil with asthma, severe allergies, or anaphylaxis may possess and use the pupil's medication, as prescribed:

(a) while in school;

(b) while at a school-sponsored activity;

(c) while under the supervision of school personnel;

(d) before or after normal school activities, such as while in before-school or after-school care on school-operated property; or

(e) while in transit to or from school or school-sponsored activities.

(7) If provided by the parent, an individual who has executed a caretaker relative educational authorization affidavit pursuant to 20-5-503, an individual who has executed a caretaker relative medical authorization affidavit pursuant to 40-6-502, or a guardian and in accordance with documents provided by the pupil's physician, physician assistant, or advanced practice registered nurse, asthma, severe allergy, or anaphylaxis medication may be kept by the pupil and backup medication must be kept at a pupil's school in a predetermined location or locations to which the pupil has access in the event of an asthma, severe allergy, or anaphylaxis emergency.

(8) Immediately after using epinephrine during school hours, a student shall report to the school nurse or other adult at the school who shall provide followup care, including making a 9-1-1 emergency call.

(9) Youth correctional facilities are exempt from this section and shall adopt policies related to access and use of asthma, severe allergy, or anaphylaxis medications."

**Section 2. Emergency use of epinephrine in a school setting.** A school, whether public or nonpublic, may maintain a stock supply of autoinjectable epinephrine to be administered by a school nurse or other authorized personnel to any student or nonstudent as needed for actual or perceived anaphylaxis. A school that intends to obtain an order for emergency use of epinephrine in a school setting or at related activities shall adhere to the following requirements:

(1) A school that stocks an epinephrine autoinjector shall develop a protocol related to the training of school employees, the maintenance and location of the epinephrine autoinjector, and immediate and long-term followup to the administration of the medication, including making a 9-1-1 emergency call.

(2) The epinephrine autoinjector must be prescribed by a physician, advanced practice registered nurse, or physician assistant. The school must be designated as the patient, and each prescription for an epinephrine autoinjector must be filled by a licensed pharmacy.

(3) The school shall provide training to authorized personnel. The training must include causes of anaphylaxis, recognition of signs and symptoms of anaphylaxis, indications for the administration of epinephrine, administration technique, and the need for immediate access to a certified emergency responder. Training must be provided by a school nurse, certified emergency responder, or other health care professional.

(4) The epinephrine autoinjector must be kept in a secure and easily accessible location.

(5) A school nurse or other authorized personnel may, in good faith, administer the epinephrine to any student or nonstudent who is experiencing a potential life-threatening anaphylactic reaction based on the protocol developed by the school.

(6) If a school stocks an epinephrine autoinjector that has been prescribed to the school, that school shall inform parents or guardians about the potential use of the epinephrine autoinjector in an anaphylactic emergency. The school shall make the protocol available upon request.

(7) In accordance with the provisions of 27-1-714, a school district or nonpublic school and its employees and agents are not liable as a result of any injury arising from the administration of epinephrine to a student or nonstudent unless an act or omission is the result of gross negligence, willful or wanton misconduct, or an intentional tort.

**Section 3. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 20, chapter 5, part 4, and the provisions of Title 20, chapter 5, part 4, apply to [section 2].

**Section 4. Effective date.** [This act] is effective July 1, 2013.

Approved April 12, 2013

# CHAPTER NO. 190

[SB 176]

AN ACT GENERALLY REVISING VOTING REQUIREMENTS AND PROCEDURES FOR NONPROFIT ORGANIZATIONS; PROVIDING FOR

ELECTRONIC AND REMOTE COMMUNICATIONS TO BE USED FOR ATTENDING MEETINGS AND VOTING; AND AMENDING SECTIONS 35-2-114, 35-2-115, 35-2-119, 35-2-233, 35-2-520, 35-2-526, 35-2-527, 35-2-533, 35-2-535, 35-2-539, 35-2-542, AND 35-2-911, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 35-2-114, MCA, is amended to read:

**"35-2-114. Definitions.** As used in this chapter, the following definitions apply:

(1) "Approved by the members" means approved and ratified by the affirmative vote:

(a) of a majority of the votes represented and voting:

(i) at a meeting at which a quorum is present and the affirmative votes constitute a majority of the required quorum;

(ii) by a written ballot or written consent in conformity with this chapter; or

(iii) by the affirmative vote, written ballot, or written consent of the majority; and

(b) that includes the votes of all the members of any class, unit, or grouping that may be required by the articles, bylaws, or this chapter for any specified member action.

(2) "Articles of incorporation" or "articles" include amended and restated articles of incorporation and articles of merger.

*(3) "Authenticated electronic identification" includes any e-mail address or other electronic identification designated by a user, including a corporation, for electronic communications.*

~~(3)~~*(4)* "Board" or "board of directors" means the board of directors except that a person or group of persons is not the board of directors because of powers delegated to that person or group pursuant to 35-2-414.

~~(4)~~*(5)* "Bylaws" means the code, codes, or rules, other than the articles, adopted pursuant to this chapter for the regulation or management of the affairs of the corporation, regardless of the name or names by which the code, codes, or rules are designated.

~~(5)~~*(6)* "Class" refers to a group of memberships that have the same rights with respect to voting, dissolution, redemption and transfer. For the purpose of this section, rights must be considered the same if they are determined by a formula applied uniformly.

~~(6)~~*(7)* "Corporation" means a public benefit corporation, mutual benefit corporation, or religious corporation.

~~(7)~~*(8)* "Delegates" means those persons elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters.

~~(8) "Deliver" includes mail.~~

*(9) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission, except that delivery to the secretary of state means actual receipt in a manner authorized by the secretary of state.*

~~(9)~~*(10)* "Directors" means individuals:

(a) designated in the articles or bylaws or elected by the incorporators and their successors; and

(b) elected or appointed by any other name or title to act as members of the board.

~~(10)~~*(11)* "Distribution" means the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers.

~~(11)~~*(12)* "Domestic corporation" means a corporation.

~~(12)~~*(13)* "Effective date of notice" has the meaning provided in 35-2-115(5).

*(14) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.*

~~(13)~~*(15)* "Employee" does not include an officer or director who is not otherwise employed by the corporation.

~~(14)~~*(16)* "Entity" includes:

(a) a corporation and foreign corporation;

(b) a business corporation and foreign business corporation;

(c) a profit and nonprofit unincorporated association;

(d) a corporation sole;

(e) a business trust, an estate, a partnership, a trust, and two or more persons having a joint or common economic interest; and

(f) a state, the United States, and a foreign government.

*(17) "External communications" includes any communication with the secretary of state, the attorney general, a state, or the United States.*

~~(15)~~*(18)* "File", "filed", or "filing" means filed in the office of the secretary of state.

~~(16)~~*(19)* "Foreign corporation" means a corporation that is organized under a law other than the law of this state and that would be a nonprofit corporation if formed under the laws of this state.

~~(17)~~*(20)* "Governmental subdivision" includes an authority, county, district, and municipality.

~~(18)~~*(21)* "Includes" denotes a partial definition.

~~(19)~~*(22)* "Individual" includes the estate of an incompetent individual.

*(23) "Internal communications" includes any notice, vote, written consent, written ballot, demand, record, member list, corporate record, or any other communication between members, directors, delegates, proxies, third persons under 35-2-232, or the corporate secretary.*

~~(20)~~*(24)* "Means" denotes a complete definition.

~~(21)~~*(25)* (a) "Member" means, without regard to what a person is called in the articles or bylaws, a person or persons who, on more than one occasion and pursuant to a provision of a corporation's articles or bylaws, have the right to vote for the election of a director or directors.

(b) A person is not a member by virtue of any of the following:

(i) any rights the person has as a delegate;

(ii) any rights the person has to designate a director or directors; or

(iii) any rights the person has as a director.

~~(22)~~*(26)* "Membership" refers to the rights and obligations a member or members have pursuant to a corporation's articles, bylaws, and this chapter.

~~(23)~~*(27)* "Mutual benefit corporation" means a domestic corporation designated as a mutual benefit corporation.

~~(24)~~*(28)* "Notice" means that term as described in 35-2-115.

~~(25)~~*(29)* "Person" includes any individual or entity.

~~(26)~~*(30)* "Principal office" means the office, in the state or out of the state, that is designated in the annual report filed pursuant to 35-2-904 as the place where the principal office of a domestic or foreign corporation is located.

*(31) "Present" or "presence" includes any form of electronic, virtual, or digital presence authorized by a corporation's articles or bylaws.*

~~(27)~~*(32)* "Proceeding" includes a civil suit and a criminal, administrative, and investigatory action.

~~(28)~~*(33)* "Public benefit corporation" means a domestic corporation designated as a public benefit corporation.

*(34) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.*

~~(29)~~*(35)* "Record date" means the date established under part 5 on which a corporation determines the identity of its members for the purposes of this chapter.

~~(30)~~*(36)* "Religious corporation" means a domestic corporation designated as a religious corporation.

*(37) "Remote communication" includes communication made by conference telephone call, internet, electronic, remote technology, or similar communication through which all participants in the meeting have the opportunity to read or hear the proceedings substantially concurrently with their occurrence, vote on matters submitted to the members, pose questions, and make comments.*

~~(31)~~*(38)* "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under 35-2-439(2) for custody of the minutes of the directors' and members' meetings and for authenticating the records of the corporation.

*(39) "Sign" or "signed" means, with present intent to authenticate or adopt a record:*

*(a) to execute or adopt a tangible symbol; or*

*(b) to attach to or logically associate with the record an electronic sound, symbol, or process.*

~~(32)~~*(40)* "State", when referring to a part of the United States, includes:

(a) a state and commonwealth and their agencies and governmental subdivisions; and

(b) a territory and insular possession, their agencies, and governmental subdivisions of the United States.

~~(33)~~*(41)* "United States" includes a district, an authority, a bureau, a commission, a department, and any other agency of the United States.

~~(34)~~*(42)* "Vote" *or "voting"* includes *but is not limited to* ~~authorization by written ballot and written consent~~ *the giving of consent in the form of a record provided electronically or by written ballot and written consent*.

~~(35)~~*(43)* (a) "Voting power" means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made.

(b) The term excludes a vote that is contingent upon the happening of a condition or event that has not occurred at the time.

(c) When a class is entitled to vote as a class for directors, the determination of voting power of the class must be based on the percentage of the number of

directors the class is entitled to elect out of the total number of authorized directors.

*(44) "Written" or "in writing" means:*

*(a) with respect to internal communications, any record in tangible or electronic form or any form allowed under Title 30, chapter 18, part 1; and*

*(b) with respect to external communications, tangible records or any form authorized by the external party.*"

**Section 2.** Section 35-2-115, MCA, is amended to read:

**"35-2-115. Notice.** (1) Notice under this chapter must be in writing unless oral notice is reasonable under the circumstances.

(2) (a) Notice may be communicated in person; by telephone, telegraph, teletype, facsimile, or other form of *electronic,* wire*,* or wireless communication; or by mail or private carrier.

(b) If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where it is published or by radio, television, or other form of public broadcast communication.

(3) Written notice by a domestic or foreign corporation to its members, if in a comprehensible form, is effective when *delivered or* mailed if it is mailed postpaid and correctly addressed to the member's address shown in the corporation's current record of members.

(4) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to:

(a) its registered agent; or

(b) the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(5) Except as provided in subsections (3) and (4), written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) when received;

(b) 5 days after its deposit in the United States mail, as evidenced by the postmark, if it is mailed postpaid and with correct postage; or

(c) on the date shown on the return receipt, if it is sent by certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Oral notice is effective when communicated if it is communicated in a comprehensible manner.

(7) If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If the articles of incorporation or bylaws prescribe notice requirements that are consistent with this section or other provisions of this chapter, those requirements govern."

**Section 3.** Section 35-2-119, MCA, is amended to read:

**"35-2-119. Filing requirements.** All of the following requirements must be met before a document may be filed under this section by the secretary of state:

(1) A document that is required or permitted by this chapter to be filed in the office of the secretary of state must satisfy the requirements of this section and of any other section that adds to or varies these requirements.

(2) The document must contain the information required by this chapter. The document may contain other information as well.

(3) The document must be typewritten or printed *unless an electronic form is allowed by the secretary of state*.

(4) The document must be in the English language. However, a corporate name does not need to be in English if it is written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign corporations does not need to be in English if it is accompanied by a reasonably authenticated English translation.

(5) (a) Except as provided in subsection (5)(b), the document must be executed:

(i) by the presiding officer of the corporation's board of directors, its president, or another of its officers;

(ii) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(iii) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(b) (i) A corporation's annual report may be executed as provided in subsection (5)(a) or by the corporation's authorized agent.

(ii) For the purposes of this subsection (5)(b), "authorized agent" means any individual granted permission by an entity to execute a document on behalf of the entity. The entity is responsible for maintaining a record of the permission granted to an authorized agent.

(6) The person executing the document shall sign the document and state beneath or opposite the signature the person's name and the capacity in which the person signs. The document may but does not need to contain the corporate seal, an attestation by the secretary or an assistant secretary, or an acknowledgment, verification, or proof.

(7) The document must be in or on the prescribed form if the secretary of state has prescribed a mandatory form for a document under 35-2-1108.

(8) The document must be delivered to the office of the secretary of state for filing and must be accompanied by:

(a) the correct filing fee; and

(b) any franchise tax, license fee, or penalty required by this chapter, rules promulgated under this chapter, or other law."

**Section 4.** Section 35-2-233, MCA, is amended to read:

**"35-2-233. Amendment terminating members or redeeming or canceling memberships.** (1) Any amendment to the articles or bylaws of a public benefit corporation or mutual benefit corporation that would terminate all members or any class of members or redeem or cancel all memberships or any class of memberships must meet the requirements of this chapter.

(2) Before adopting a resolution proposing an amendment described in subsection (1), the board of a mutual benefit corporation shall give notice of the general nature of the amendment to the members.

(3) After adopting a resolution proposing an amendment described in subsection (1), the notice to members proposing the amendment must include one statement of up to 500 words opposing the proposed amendment if the statement is submitted by any five members or members having 3% or more of the voting power, whichever is less, not later than 20 days after the board has voted to submit the amendment to the members for their approval. In public

benefit corporations, the production*,* ~~and~~ mailing*, or electronic transaction* costs must be paid by the corporation.

(4) Any amendment under this section must be approved by the members by two-thirds of the votes cast by each class.

(5) The provisions of 35-2-520 do not apply to any amendment that meets the requirements of this chapter."

**Section 5.** Section 35-2-520, MCA, is amended to read:

**"35-2-520. Termination, expulsion, and suspension.** (1) A member of a public benefit corporation or mutual benefit corporation may not be expelled or suspended and membership in these corporations may not be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith.

(2) A procedure is fair and reasonable when either:

(a) the articles or bylaws set forth a procedure that provides:

(i) not less than 15 days' prior written notice of the expulsion, suspension, or termination and the reasons for it; and

(ii) an opportunity for the member to be heard, orally or in writing, not less than 5 days before the effective date of the expulsion, suspension, or termination by a person or persons authorized to decide that the proposed expulsion, termination, or suspension not take place; or

(b) it takes into consideration all relevant facts and circumstances.

(3) *(a)* ~~A~~ *Except as provided in subsection (3)(b), a* written notice given by mail must be given by first-class or certified mail sent to the last address of the member shown on the corporation's records.

*(b) Written notice may be given to any authenticated electronic identification as shown on the corporation's records.*

(4) A proceeding that challenges an expulsion, suspension, or termination, including a proceeding in which defective notice is alleged, must be commenced within 1 year after the effective date of the expulsion, suspension, or termination.

(5) A member who has been expelled or suspended may be liable to the corporation for dues, assessments, or fees as a result of obligations incurred or commitments made prior to the expulsion or suspension."

**Section 6.** Section 35-2-526, MCA, is amended to read:

**"35-2-526. Annual and regular meetings.** (1) A corporation with members shall hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws.

(2) A corporation with members may hold regular membership meetings at the times stated in or fixed in accordance with the bylaws.

(3) Annual and regular membership meetings may be held in the state or out of the state, at the place stated in or fixed in accordance with the bylaws. If a place is not stated in or fixed in accordance with the bylaws, annual and regular meetings must be held at the corporation's principal office. *To the extent authorized in the articles or bylaws, the board may determine that an annual meeting of members will be held solely by means of remote communication.*

(4) At the annual meeting:

(a) the president and chief financial officer shall report on the activities and financial condition of the corporation; and

(b) the members shall consider and act upon other matters that are raised consistent with the notice and voting requirements of 35-2-530 and 35-2-538(2).

(5) At regular meetings, the members shall consider and act upon matters raised consistent with the notice and voting requirements of 35-2-530 and 35-2-538(2).

(6) The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

(7) If ~~the corporation has 50 or fewer members and if~~ permitted by the bylaws, members may participate in a meeting of the members by means of a conference telephone call or similar *remote* communication ~~equipment through which all persons participating in the meeting can hear each other at the same time~~. ~~Participation~~ *Unless otherwise provided in the articles or bylaws, participation* in this manner constitutes presence in person at a meeting."

**Section 7.** Section 35-2-527, MCA, is amended to read:

**"35-2-527. Special meeting.** (1) A corporation with members shall hold a special meeting of members:

(a) on the call of its board or of the person authorized to do so by the articles or bylaws; or

(b) except as provided in the articles or bylaws of a religious corporation, if the holders of at least 5% of the voting power of any corporation sign, date, and deliver to any corporate officer one or more written demands for the meeting that describe the purpose or purposes for which it is to be held.

(2) For purposes of determining whether the 5% requirement of subsection (1) has been met, the record date is at the close of business on the 30th day before delivery of the demand or demands for a special meeting to any corporate officer.

(3) If a notice for a special meeting demanded under subsection (1)(b) is not given pursuant to 35-2-530 within 30 days after the date the written demand is delivered to a corporate officer, regardless of the requirements of subsection (4), a person signing the demand or demands may set the time and place of the meeting and give notice pursuant to 35-2-530.

(4) Special meetings of members may be held in the state or out of the state, at the place stated in or fixed in accordance with the bylaws. If a place is not stated or fixed in accordance with the bylaws, special meetings must be held at the corporation's principal office. *Member participation and presence at a special meeting must be the same as allowed under 35-2-526(7).*

(5) Only those matters that are within the purpose or purposes described in the meeting notice required by 35-2-530 may be conducted at a special meeting of members."

**Section 8.** Section 35-2-533, MCA, is amended to read:

**"35-2-533. Action by written ballot.** (1) Unless prohibited or limited by the articles or bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

*(2) A corporation may deliver a written ballot by electronic communication as long as a member gives consent. Consent by a member to receive notice by electronic communication in a certain manner constitutes consent to receive a ballot by electronic communication in the same manner.*

~~(2)~~*(3)* A written ballot must:

(a) set forth each proposed action; and

(b) provide an opportunity to vote for or against each proposed action.

~~(3)~~*(4)* Approval by written ballot pursuant to this section is valid only when:

(a) the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action; and

(b) the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

~~(4)~~*(5)* All solicitations for votes by written ballot must:

(a) indicate the number of responses needed to meet the quorum requirements;

(b) state the percentage of approvals necessary to approve each matter other than election of directors; and

(c) specify the time by which a ballot must be received by the corporation in order to be counted.

~~(5)~~*(6)* Except as otherwise provided in the articles or bylaws, a written ballot may not be revoked."

**Section 9.** Section 35-2-535, MCA, is amended to read:

**"35-2-535. Members' list for meeting.** (1) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address *or authenticated electronic identification* and number of votes each member is entitled to vote at the meeting. The corporation shall prepare, on a current basis through the time of the membership meeting, a list of members, if any, who are entitled to vote at the meeting but not entitled to notice of the meeting. This list must be prepared on the same basis and be part of the list of members.

(2) The list of members must be available:

(a) for inspection by any member for the purpose of communication with other members concerning the meeting, beginning 2 business days after notice is given of the meeting for which the list was prepared and continuing through the meeting; and

(b) at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. A member, a member's agent, or a member's attorney is entitled, on written demand, to inspect and, subject to the limitations of 35-2-907(3) and 35-2-910, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

(3) The corporation shall make the list of members available at the meeting, and any member, a member's agent, or a member's attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a member, a member's agent, or a member's attorney to inspect the list of members before or at the meeting or to copy the list as permitted by subsection (2), the district court for the judicial district of the county where a corporation's principal office is located or, if the principal office is not located in this state, in Lewis and Clark County, on application of the member, may summarily order the inspection or copying at the corporation's expense, may postpone the meeting for which the list was prepared until the inspection or copying is complete, and may order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order.

(5) Unless a written demand to inspect and copy a membership list has been made under subsection (2) prior to the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.

(6) The articles or bylaws of a religious corporation may limit or abolish the rights of a member under this section to inspect and copy any corporate record."

**Section 10.** Section 35-2-539, MCA, is amended to read:

**"35-2-539. Proxies.** (1) Unless the articles or bylaws prohibit or limit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form, either personally or by an attorney-in-fact.

(2) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months unless a different period is expressly provided in the appointment form. However, a proxy is not valid for more than 3 years from its date of execution.

(3) An appointment of a proxy is revocable by the member.

(4) The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(5) Appointment of a proxy is revoked by the person appointing the proxy:

(a) ~~attending~~ *being present at* any meeting and voting ~~in person~~; or

(b) signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

(6) Subject to 35-2-542 and any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member who made the appointment."

**Section 11.** Section 35-2-542, MCA, is amended to read:

**"35-2-542. Corporation's acceptance of votes.** (1) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a member *or is the authenticated electronic identification of a member*, the corporation, if acting in good faith, is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.

(2) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name of a member *or is not the authenticated electronic identification of a member*, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member if:

(a) the member is an entity and the name signed *or electronic identification used* purports to be that of an attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment;

(b) the name signed *or electronic identification used* purports to be that of an attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member

has been presented with respect to the vote, consent, waiver, or proxy appointment;

(c) two or more persons hold the membership as cotenants or fiduciaries and:

(i) the name signed *or electronic identification used* purports to be the name of at least one of the coholders; and

(ii) the person signing *or using the electronic identification* appears to be acting on behalf of all the coholders; or

(d) in the case of a mutual benefit corporation:

(i) the name signed *or electronic identification used* purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment; or

(ii) the name signed *or electronic identification used* purports to be that of a receiver or trustee in bankruptcy of the member and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

(3) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature *or electronic identification* ~~on it~~ or about the signatory's authority to sign for the member.

(4) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the member for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise."

**Section 12.** Section 35-2-911, MCA, is amended to read:

**"35-2-911. Financial statements for members.** Upon the written request of any member of the corporation, the corporation shall ~~mail~~ *deliver* to the member its most recent financial statements showing in reasonable detail its assets and liabilities and the results of the operations."

Approved April 12, 2013

## CHAPTER NO. 191

[SB 185]

AN ACT REVISING VETERANS' PREFERENCE HIRING LAWS; ALLOWING PUBLIC EMPLOYERS TO EXTEND A JOB INTERVIEW TO A VETERAN FOR EXISTING JOB VACANCIES FOR WHICH THE VETERAN QUALIFIES; INCLUDING A DISABLED VETERAN AS A PERSON WITH A DISABILITY; CLARIFYING THE ORDER OF PREFERENCES BETWEEN DISABLED VETERANS, PEOPLE WITH DISABILITIES, AND OTHERS ELIGIBLE FOR A HIRING PREFERENCE; EXTENDING RULEMAKING; AND AMENDING SECTIONS 39-29-102, 39-29-103, 39-29-112, 39-30-103, 39-30-107, AND 39-30-201, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 39-29-102, MCA, is amended to read:

**"39-29-102. Point preference or alternative preference in initial hiring for certain applicants — substantially equivalent selection procedure.** (1) Subject to the restrictions in subsections (2) and (3), whenever a public employer uses a scored procedure, an applicant for an initial hiring, as defined in 39-30-103, must have added to the applicant's score the following percentage points of the total possible points that may be granted in the scored procedure:

(a) 5 percentage points if the applicant is a veteran; and

(b) 10 percentage points if the applicant is a disabled veteran or an eligible relative.

(2) A veteran, disabled veteran, or eligible relative may not receive the percentage points provided for in subsection (1) unless the person:

(a) is a United States citizen; and

(b) meets the minimum qualifications required for the position. If no applicant meets the minimum qualifications and the public employer fills a training position, veterans' preference must be applied.

(3) A disabled veteran who receives 10 percentage points under subsection (1)(b) may not receive an additional 5 percentage points under subsection (1)(a).

(4) Whenever a public employer uses a selection procedure other than a scored procedure, the public employer shall give preference to a disabled veteran, *a person with a disability, a veteran, an* eligible relative *as defined in 39-29-101, and an eligible spouse as defined in 39-30-103*, ~~or veteran,~~ in that order, over any nonpreferred applicant holding substantially equal qualifications, as defined in 39-30-103.

*(5) The preference under this section may include a guaranteed job interview for a veteran who meets the required qualifications for the position and has requested a preference, as provided in 39-29-103, if the public employer provides for a job interview preference by rule or ordinance. The guarantee of a job interview is not part of the preference claim that may be enforced as provided in 39-29-104.*"

**Section 2.** Section 39-29-103, MCA, is amended to read:

**"39-29-103. Notice and claim of preference.** (1) A public employer shall, by posting or on the application form, give notice of the preference provided in 39-29-102.

(2) A job applicant who believes that the applicant is eligible to receive a preference shall claim the preference in writing before the time for filing applications for the position involved has passed. Failure to make a timely preference claim for a position is a complete defense to an action instituted by an applicant under 39-29-104 with regard to that position.

(3) If an applicant for a position makes a timely written preference claim, the public employer*:*

*(a) may, under an existing rule or ordinance implementing this subsection (3)(a), guarantee to a veteran a job interview for a position for which the veteran meets the required qualifications and has submitted a preference claim; and*

*(b)* shall give written notice of its hiring decision to the applicant claiming preference."

**Section 3.** Section 39-29-112, MCA, is amended to read:

**"39-29-112. Adoption of rules.** The department of administration shall adopt rules implementing this chapter*, except that the decision of whether to*

*guarantee a job interview to a veteran is a decision that may be made by a local government by ordinance*. The department's rules apply to all local and state public employers."

**Section 4.** Section 39-30-103, MCA, is amended to read:

**"39-30-103. Definitions.** For the purposes of this chapter, the following definitions apply:

(1) "Eligible spouse" means the spouse of a person with a disability determined by the department of public health and human services to have a 100% disability and who is unable to use the employment preference because of the person's disability.

(2) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the ranks of the current employees of:

(i) a department, as defined in 2-15-102, for a position within the executive branch;

(ii) a legislative agency for a position within the legislative branch;

(iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;

(iv) a city or town for a municipal position, including a city or municipal court position; and

(v) a county for a county position, including a justice's court position.

(b) A personnel action limited to current employees of a specific public entity identified in this subsection (2), current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in this subsection (2), or current participants in a federally authorized employment program is not an initial hiring.

(3) (a) "Mental impairment" means:

(i) a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or

(ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge.

(4) "Person with a disability" means*:*

*(a)* an individual certified by the department of public health and human services to have a physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability to obtain, retain, or advance in employment*; or*

*(b) any disabled veteran as defined in 39-29-101, except that the disabled veteran must be discharged under honorable conditions as defined in 39-29-101.*

(5) "Position" means a position occupied by a permanent or seasonal employee as defined in 2-18-101 for the state or a position occupied by a similar permanent or seasonal employee with a public employer other than the state. However, the term does not include:

(a) a position occupied by a temporary employee as defined in 2-18-101 for the state or a similar temporary employee with a public employer other than the state;

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal adviser, court reporter, or administrative, legislative, or other immediate or first-line aide;

(d) appointment by an elected official to a body such as a board, commission, committee, or council;

(e) appointment by an elected official to a public office if the appointment is provided for by law;

(f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government;

(g) engagement as an independent contractor or employment by an independent contractor; or

(h) a position occupied by a student intern, as defined in 2-18-101.

(6) (a) "Public employer" means:

(i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of Montana; and

(ii) any county, city, or town.

(b) The term does not include a school district, a vocational-technical program, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

(7) "Substantially equal qualifications" means the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons."

**Section 5.** Section 39-30-107, MCA, is amended to read:

**"39-30-107. Certification of persons with disabilities.** ~~The~~ *Except for a disabled veteran, who must be certified as disabled by the U.S. department of veterans affairs, the* department of public health and human services shall certify persons with disabilities for the purpose of employment preference as provided in this chapter."

**Section 6.** Section 39-30-201, MCA, is amended to read:

**"39-30-201. Employment preference in initial hiring.** (1) ~~(a)~~ Except as provided in 10-2-402 *and subsection (3) of this section*, in an initial hiring for a position, if a job applicant who is a person with a disability or eligible spouse meets the eligibility requirements contained in 39-30-202 and claims a preference as required by 39-30-206, a public employer shall hire the applicant over any other applicant with substantially equal qualifications who is not a preference-eligible applicant.

~~(b) In an initial hiring, a public employer shall hire a person with a disability over any other preference-eligible applicant with substantially equal qualifications.~~

(2) The employment preference provided for in subsection (1) does not apply to a personnel action described in 39-30-103(2)(b) or to any other personnel action that is not an initial hiring.

*(3) To minimize confusion between 39-29-102 and this section, if a public employer in an initial hiring for a position uses a scoring procedure, the employer shall follow the guidelines in 39-29-102 if an applicant requests a veterans' or disabled veterans' preference. If a scoring procedure is not used, the employer shall provide preference first to a disabled veteran, then to a person with a disability, a veteran, an eligible relative as defined in 39-29-101, and an eligible spouse as defined in 39-30-103, in that order, over any applicant that does not have preference eligibility and that has substantially equal qualifications.*"

Approved April 12, 2013

## CHAPTER NO. 192

[SB 194]

AN ACT PROVIDING THAT STRIP SEARCHES AND BODY CAVITY SEARCHES MAY BE DONE ONLY WHEN REASONABLE SUSPICION EXISTS.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Reasonable suspicion required before strip search.** A person arrested or detained for a traffic offense or an offense that is not a felony may not be subjected to a strip search or a body cavity search by a peace officer or law enforcement employee unless there is reasonable suspicion to believe the person is concealing a weapon, contraband, or evidence of the commission of a crime.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 46, chapter 5, and the provisions of Title 46, chapter 5, apply to [section 1].

Approved April 12, 2013

## CHAPTER NO. 193

[SB 259]

AN ACT ALLOWING A COURT TO VACATE CERTAIN CONVICTIONS WHEN THE OFFENDER WAS A VICTIM OF TRAFFICKING FOR COMMERCIAL SEXUAL ACTIVITY.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Motion to vacate prostitution conviction — trafficking victims.** (1) On the motion of a person, a court may vacate the person's conviction of the offense of prostitution under 45-5-601 if the court finds that the person's participation in the offense was a result of having been a victim of trafficking for commercial sexual activity under 45-5-306 or of sex trafficking under the federal Trafficking Victims Protection Act, 22 U.S.C. 7103 through 7112.

(2) The motion must:

(a) be made within a reasonable time after the person ceased to be involved in trafficking for commercial sexual activity or sought services for trafficking victims, subject to reasonable concerns for the safety of the person, family members of the person, or other victims of trafficking who could be jeopardized by filing a motion under this section; and

(b) state why the facts giving rise to the motion were not presented to the court during the prosecution of the person.

(3) Official documentation from a local government or a state or federal agency of the person's status as a victim of trafficking for commercial sexual activity creates a rebuttable presumption that the person's participation in the offense of prostitution was a result of having been a victim of trafficking for commercial sexual activity.

(4) If a court vacates a conviction of prostitution under this section, the court shall:

(a) send a copy of the order vacating the conviction to the prosecutor and the department of justice accompanied by a form prepared by the department of justice and containing identifying information about the person; and

(b) inform the person whose conviction has been vacated under this section that the person may be eligible for certain state and federal programs and services and provide the person with information for contacting appropriate state and federal victim services organizations. After the conviction is vacated, all records and data relating to the conviction are confidential criminal justice information, as defined in 44-5-103, and the public access to the information may be obtained only by district court order upon good cause shown.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 46, chapter 18, and the provisions of Title 46, chapter 18, apply to [section 1].

Approved April 12, 2013

# CHAPTER NO. 194

[SB 314]

AN ACT REVISING DRIVER LICENSING LAWS; AUTHORIZING DRIVER'S TEST WAIVERS PURSUANT TO A RECIPROCITY AGREEMENT WITH A FOREIGN COUNTRY; CLARIFYING PROCEDURES FOR ANATOMICAL GIFT OR LIVING WILL DECLARATIONS ON DRIVER'S LICENSES AND IDENTIFICATION CARDS; CLARIFYING REPORTING STANDARDS FOR TRAFFIC CONVICTIONS; AMENDING SECTIONS 61-5-110, 61-5-301, AND 61-11-101, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-5-110, MCA, is amended to read:

**"61-5-110. Records check of applicants — examination of applicants — cooperative driver testing programs — *reciprocal agreement with foreign country.*** (1) Prior to examining an applicant for a driver's license, the department shall conduct a check of the applicant's driving record by querying the national driver register, established under 49 U.S.C. 30302, and the commercial driver's license information system, established under 49 U.S.C. 31309.

(2) (a) The department shall examine each applicant for a driver's license or motorcycle endorsement, except as otherwise provided in this section. The examination must include a test of the applicant's eyesight, a knowledge test examining the applicant's ability to read and understand highway signs and the applicant's knowledge of the traffic laws of this state, and, except as provided in 61-5-118, a road test or a skills test demonstrating the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle

or motorcycle. The road test or skills test must be performed by the applicant in a motor vehicle that the applicant certifies is representative of the class and type of motor vehicle for which the applicant is seeking a license or endorsement.

(b) The knowledge test, road test, or skills test may be waived by the department ~~upon~~*:*

*(i) upon* certification of the applicant's successful completion of the test by a certified cooperative driver testing program~~,~~ as provided in subsection (3) or by a certified third-party commercial driver testing program as provided in 61-5-118*; or*

*(ii) in accordance with a driver's license reciprocity agreement between the department and a foreign country*.

(3) The department is authorized to certify as a cooperative driver testing program any state-approved high school traffic education course offered by or in cooperation with a school district that employs an approved instructor who has current endorsement from the superintendent of public instruction as a teacher of traffic education or any motorcycle safety training course approved by the board of regents and that employs an approved instructor of motorcycle safety training and who agrees to:

(a) administer standardized knowledge and road tests or skills tests required by the department to students participating in the district's high school traffic education courses or motorcycle safety training courses approved by the board of regents;

(b) certify the test results to the department; and

(c) comply with regulations of the department, the superintendent of public instruction, and the board of regents.

(4) (a) Except as otherwise provided by law, ~~a resident~~ *an applicant* who has a valid driver's license issued by another jurisdiction may surrender that license for a Montana license of the same class, type, and endorsement upon payment of the required fees and successful completion of a vision examination. In addition, ~~a resident~~ *an applicant* surrendering a commercial driver's license issued by another jurisdiction shall successfully complete any examination required by federal regulations before being issued a commercial driver's license by the department.

(b) The department may require an applicant who surrenders a valid driver's license issued by another jurisdiction to submit to a knowledge and road or skills test if:

(i) the applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the surrendered license does not include readily discernible adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify a restriction imposed on the surrendered license.

(c) When a license from another jurisdiction is surrendered, the department shall notify the issuing agency from the other jurisdiction that the applicant has surrendered the license. If the applicant wants to retain the license from another jurisdiction for identification or other nondriving purposes, the department shall place a distinctive mark on the license, indicating that the license may be used for nondriving purposes only, and return the marked license to the applicant.

*(5) The department may enter into a reciprocity agreement with a foreign country to provide for the mutual recognition and exchange of a valid driver's license issued by this state or the foreign country if the department determines that the licensing standards of the foreign country are comparable to those of this state. The agreement may not include the reciprocal exchange of a commercial driver's license.*"

**Section 2.** Section 61-5-301, MCA, is amended to read:

**"61-5-301. Indication on driver's license *or identification card* of intent to make anatomical gift or of living will declaration.** (1) ~~The department of justice shall provide on each~~ *An application furnished by the department for the issuance or renewal of a* driver's license *under this chapter or for the issuance of an identification card under Title 61, chapter 12, part 5, must include* spaces for indicating when the licensee has:

(a) executed a document under 72-17-201 of intent to make a gift of all or part of the driver's body under the Uniform Anatomical Gift Act; or

(b) executed a declaration under 50-9-103 relating to the use of life-sustaining treatment.

(2) The department shall provide each applicant, ~~at the time of application for a new~~ *when applying for or renewing a* driver's license or ~~for a renewal~~ *when applying for an identification card*, printed information calling the applicant's attention to the provisions of this section. Each applicant must be asked orally if the applicant wishes to make an anatomical gift and if the applicant has executed the declaration under 50-9-103 relating to the use of life-sustaining treatment.

(3) Each applicant must be given an opportunity to indicate in the spaces provided under subsection (1) the applicant's intent to make an anatomical gift or that the applicant has executed the declaration under 50-9-103 relating to the use of life-sustaining treatment.

(4) The department shall issue to each applicant who indicates an intent to make an anatomical gift a statement that, when signed by the licensee in the manner prescribed in 72-17-201, constitutes a document of anatomical gift. ~~This statement must be printed on a sticker that the donor may attach permanently to the back~~ *If an applicant signs a statement under this subsection, a symbol indicating that the donor has made an anatomical gift must be imprinted on the face* of the donor's driver's license *or identification card*.

(5) The department shall electronically transfer the information of all persons who volunteer, upon application for a driver's license or an identification card, to donate organs or tissue to the organ and tissue donation registry created in 72-17-105 and 72-17-106 and any subsequent changes to the applicant's donor status."

**Section 3.** Section 61-11-101, MCA, is amended to read:

**"61-11-101. Report of convictions and suspension or revocation of driver's licenses — surrender of licenses.** (1) If a person is convicted of an offense for which chapter 5 or chapter 8, part 8, makes mandatory the suspension or revocation of the driver's license or commercial driver's license of the person by the department, the court in which the conviction occurs shall require the surrender to it of all driver's licenses then held by the convicted person. The court shall, within 5 days after the conviction ~~becomes final~~, forward the license and a record of the conviction to the department. If the person does not possess a driver's license, the court shall indicate that fact in its report to the department.

(2) A court having jurisdiction over offenses committed under a statute of this state or a municipal ordinance regulating the operation of motor vehicles on highways, except for standing or parking statutes or ordinances, shall forward a record of the conviction, as defined in 61-5-213, to the department within 5 days after the conviction ~~becomes final~~. The court may recommend that the department issue a restricted probationary license on the condition that the individual comply with the requirement that the person attend and complete a chemical dependency education course, treatment, or both, as ordered by the court under 61-8-732.

(3) A court or other agency of this state or of a subdivision of the state that has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report an action and the adjudication upon which it is based to the department within 5 days on forms furnished by the department.

~~(4) A conviction becomes final for the purposes of this part upon the later of:~~

~~(a) expiration of the time for appeal of the court's judgment or sentence to the next highest court;~~

~~(b) forfeiture of bail that is not vacated; or~~

~~(c) imposition of a fine or court cost as a condition of a deferred imposition of a sentence or a suspended execution of a sentence.~~

~~(5)~~*(4)* (a) On a conviction referred to in subsection (1) of a person who holds a commercial driver's license or who is required to hold a commercial driver's license, a court may not take any action, including deferring imposition of judgment, that would prevent a conviction for any violation of a state or local traffic control law or ordinance, except a parking law or ordinance, in any type of motor vehicle, from appearing on the person's driving record. The provisions of this subsection ~~(5)(a)~~ *(4)(a)* apply only to the conviction of a person who holds a commercial driver's license or who is required to hold a commercial driver's license and do not apply to the conviction of a person who holds any other type of driver's license.

(b) For purposes of this subsection ~~(5)~~ *(4)*, "who is required to hold a commercial driver's license" refers to a person who did not have a commercial driver's license but who was operating a commercial motor vehicle at the time of a violation of a state or local traffic control law or ordinance resulting in a conviction referred to in subsection (1).

~~(6)~~*(5)* (a) If a person who holds a valid registry identification card issued pursuant to 50-46-307 or 50-46-308 is convicted of or pleads guilty to any offense related to driving under the influence of alcohol or drugs when the initial offense with which the person was charged was a violation of 61-8-401, 61-8-406, or 61-8-410, the court in which the conviction occurs shall require the person to surrender the registry identification card.

(b) Within 5 days after the conviction ~~becomes final~~, the court shall forward the registry identification card and a copy of the conviction to the department of public health and human services."

**Section 4. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 3] is effective October 1, 2013.

Approved April 12, 2013

# CHAPTER NO. 195

[SB 316]

AN ACT REVISING SUBDIVISION AND LOCAL BOARD OF HEALTH LAWS RELATED TO ENCROACHMENT ONTO PRIVATE PROPERTY; PROHIBITING LOCAL APPROVAL OF A PROPOSED SUBDIVISION IF A WELL ISOLATION ZONE OR OTHER FEATURES AND IMPROVEMENTS OF THE SUBDIVISION ENCROACH ONTO PRIVATE PROPERTY; REQUIRING DEPARTMENT OF ENVIRONMENTAL QUALITY SANITATION IN SUBDIVISION RULES TO PROVIDE FOR EVIDENCE THAT WELL ISOLATION ZONES ARE LOCATED WHOLLY WITHIN THE BOUNDARIES OF A PROPOSED SUBDIVISION; REQUIRING LOCAL BOARD OF HEALTH RULES TO ADDRESS WELL ISOLATION ZONES UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTIONS 50-2-116, 76-3-608, 76-4-102, AND 76-4-104, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 50-2-116, MCA, is amended to read:

**"50-2-116. Powers and duties of local boards of health.** (1) In order to carry out the purposes of the public health system, in collaboration with federal, state, and local partners, each local board of health shall:

(a) appoint and fix the salary of a local health officer who is:

(i) a physician;

(ii) a person with a master's degree in public health; or

(iii) a person with equivalent education and experience, as determined by the department;

(b) elect a presiding officer and other necessary officers;

(c) employ qualified staff;

(d) adopt bylaws to govern meetings;

(e) hold regular meetings at least quarterly and hold special meetings as necessary;

(f) identify, assess, prevent, and ameliorate conditions of public health importance through:

(i) epidemiological tracking and investigation;

(ii) screening and testing;

(iii) isolation and quarantine measures;

(iv) diagnosis, treatment, and case management;

(v) abatement of public health nuisances;

(vi) inspections;

(vii) collecting and maintaining health information;

(viii) education and training of health professionals; or

(ix) other public health measures as allowed by law;

(g) protect the public from the introduction and spread of communicable disease or other conditions of public health importance, including through actions to ensure the removal of filth or other contaminants that might cause disease or adversely affect public health;

(h) supervise or make inspections for conditions of public health importance and issue written orders for compliance or for correction, destruction, or removal of the conditions;

(i) bring and pursue actions and issue orders necessary to abate, restrain, or prosecute the violation of public health laws, rules, and local regulations;

(j) identify to the department an administrative liaison for public health. The liaison must be the local health officer in jurisdictions that employ a full-time local health officer. In jurisdictions that do not employ a full-time local health officer, the liaison must be the highest ranking public health professional employed by the jurisdiction.

(k) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent than state standards for the control and disposal of sewage from private and public buildings and facilities that are not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the board of environmental review and must provide for appeal of variance decisions to the department as required by 75-5-305. *If the local board of health regulates or permits water well drilling, the regulations must prohibit the drilling of a well if the well isolation zone, as defined in 76-4-102, encroaches onto adjacent private property without the authorization of the private property owner.*

(2) Local boards of health may:

(a) accept and spend funds received from a federal agency, the state, a school district, or other persons or entities;

(b) adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings and facilities;

(c) adopt regulations that do not conflict with rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth that might cause disease or adversely affect public health;

(iii) subject to the provisions of 50-2-130, for sanitation in public and private buildings and facilities that affects public health and for the maintenance of sewage treatment systems that do not discharge effluent directly into state water and that are not required to have an operating permit as required by rules adopted under 75-5-401;

(iv) subject to the provisions of 50-2-130 and Title 50, chapter 48, for tattooing and body-piercing establishments and that are not less stringent than state standards for tattooing and body-piercing establishments;

(v) for the establishment of institutional controls that have been selected or approved by the:

(A) United States environmental protection agency as part of a remedy for a facility under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.; or

(B) department of environmental quality as part of a remedy for a facility under the Montana Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7; and

(vi) to implement the public health laws; and

(d) promote cooperation and formal collaborative agreements between the local board of health and tribes, tribal organizations, and the Indian health service regarding public health planning, priority setting, information and data sharing, reporting, resource allocation, service delivery, jurisdiction, and other matters addressed in this title.

(3) A local board of health may provide, implement, facilitate, or encourage other public health services and functions as considered reasonable and necessary."

**Section 2.** Section 76-3-608, MCA, is amended to read:

**"76-3-608. Criteria for local government review.** (1) The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services or based solely on parcels within the subdivision having been designated as wildland-urban interface parcels under 76-13-145.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection (6) of this section or except as provided in 76-3-509, 76-3-609(2) or (4), or 76-3-616, the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements within and to the proposed subdivision for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the subdivision.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

(6) A governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-604 on the information provided pursuant to 76-3-622 only if the conditional approval or

denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce.

(7) A governing body may not require as a condition of subdivision approval that a property owner waive a right to protest the creation of a special improvement district or a rural improvement district for capital improvement projects that does not identify the specific capital improvements for which protest is being waived. A waiver of a right to protest may not be valid for a time period longer than 20 years after the date that the final subdivision plat is filed with the county clerk and recorder.

*(8) A governing body may not approve a proposed subdivision if any of the features and improvements of the subdivision encroach onto adjoining private property in a manner that is not otherwise provided for under chapter 4 or this chapter or if the well isolation zone of any proposed well to be drilled for the proposed subdivision encroaches onto adjoining private property unless the owner of the private property authorizes the encroachment. For the purposes of this section, "well isolation zone" has the meaning provided in 76-4-102.*"

**Section 3.** Section 76-4-102, MCA, is amended to read:

**"76-4-102. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Adequate municipal facilities" means municipally, publicly, or privately owned facilities that supply water, treat sewage, or dispose of solid waste for all or most properties within the boundaries of a municipality and that are operating in compliance with Title 75, chapters 5 and 6.

(2) "Board" means the board of environmental review.

(3) "Department" means the department of environmental quality.

(4) "Extension of a public sewage system" means a sewerline that connects two or more sewer service lines to a sewer main.

(5) "Extension of a public water supply system" means a waterline that connects two or more water service lines to a water main.

(6) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be transported or distributed.

(7) "Mixing zone" has the meaning provided in 75-5-103.

(8) "Public sewage system" or "public sewage disposal system" means a public sewage system as defined in 75-6-102.

(9) "Public water supply system" has the meaning provided in 75-6-102.

(10) "Registered professional engineer" means a person licensed to practice as a professional engineer under Title 37, chapter 67.

(11) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37, chapter 40.

(12) "Reviewing authority" means the department or a local department or board of health certified to conduct a review under 76-4-104.

(13) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water supply or sewage or solid waste disposal facilities until the department has approved plans for those facilities.

(14) "Sewer service line" means a sewerline that connects a single building or living unit to a public sewage system or to an extension of a public sewage system.

(15) "Solid waste" has the meaning provided in 75-10-103.

(16) "Subdivision" means a division of land or land so divided that creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and any condominium or area, regardless of size, that provides permanent multiple space for recreational camping vehicles or mobile homes.

(17) "Water service line" means a waterline that connects a single building or living unit to a public water supply system or to an extension of a public water supply system.

*(18) "Well isolation zone" means the area within a 100-foot radius of a water well.*"

**Section 4.** Section 76-4-104, MCA, is amended to read:

**"76-4-104. Rules for administration and enforcement.** (1) The department shall, subject to the provisions of 76-4-135, adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards must provide the basis for approving subdivisions for various types of public and private water supplies, sewage disposal facilities, storm water drainage ways, and solid waste disposal. The rules and standards must be related to:

(a) size of lots;

(b) contour of land;

(c) porosity of soil;

(d) ground water level;

(e) distance from lakes, streams, and wells;

(f) type and construction of private water and sewage facilities; and

(g) other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) (a) Except as provided in subsection (3)(b), the rules must provide for the review of subdivisions by a local department or board of health, as described in Title 50, chapter 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies under subsection (4) that the local department or board is competent to conduct the review.

(b) (i) Except as provided in 75-6-121 and subsection (3)(b)(ii) of this section, a local department or board of health may not review public water supply systems, public sewage systems, or extensions of or connections to these systems.

(ii) A local department or board of health may be certified to review subdivisions proposed to connect to existing municipal water and wastewater systems previously approved by the department if no extension of the systems is required.

(4) The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department or board of health is competent to review the subdivisions as described in subsection (3).

(5) The department shall review those subdivisions described in subsection (3) if:

(a) a proposed subdivision lies within more than one jurisdictional area and the respective governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or

(b) the local department or board of health elects not to be certified.

(6) The rules must further provide for:

(a) providing the reviewing authority with a copy of the plat or certificate of survey subject to review under this part and other documentation showing the layout or plan of development, including:

(i) total development area; and

(ii) total number of proposed dwelling units and structures requiring facilities for water supply or sewage disposal;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to ensure proper drainage ways;

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil testing and site design standards for on-lot sewage disposal systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) adequate evidence that a proposed drainfield mixing zone ~~is~~ *and a proposed well isolation zone are* located wholly within the boundaries of the proposed subdivision where the drainfield *or well* is located or that an easement or, for public land, other authorization has been obtained from the landowner to place the proposed drainfield mixing zone *or well isolation zone* outside the boundaries of the proposed subdivision where the drainfield *or well* is located. A mixing zone may extend outside the boundaries of the proposed subdivision onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities. This subsection (6)(i) does not apply to the divisions provided for in 76-3-207 except those under 76-3-207(1)(b).

(j) criteria for granting waivers and deviations from the standards and technical procedures adopted under subsections (6)(e) through (6)(i);

(k) evidence to establish that, if a public water supply system or a public sewage system is proposed, provision has been made for the system and, if other methods of water supply or sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations that are in effect at the time of submission of the preliminary or final plan or plat. Evidence that the systems will comply with local laws and regulations must be in the form of a certification from the local health department as provided by department rule.

(l) evidence to demonstrate that appropriate easements, covenants, agreements, and management entities have been established to ensure the protection of human health and state waters and to ensure the long-term

operation and maintenance of water supply, storm water drainage, and sewage disposal facilities.

(7) If the reviewing authority is a local department or board of health, it shall notify the department of its recommendation for approval or disapproval of the subdivision not later than 45 days from its receipt of the subdivision application. The department shall make a final decision on the subdivision within 10 days after receiving the recommendation of the local reviewing authority, but not later than 55 days after the submission of a complete application, as provided in 76-4-125.

(8) Review and certification or denial of certification that a division of land is not subject to sanitary restrictions under this part may occur only under those rules in effect when a complete application is submitted to the reviewing authority, except that in cases in which current rules would preclude the use for which the lot was originally intended, the applicable requirements in effect at the time the lot was recorded must be applied. In the absence of specific requirements, minimum standards necessary to protect public health and water quality apply.

(9) The reviewing authority may not deny or condition a certificate of subdivision approval under this part unless it provides a written statement to the applicant detailing the circumstances of the denial or condition imposition. The statement must include:

(a) the reason for the denial or condition imposition;

(b) the evidence that justifies the denial or condition imposition; and

(c) information regarding the appeal process for the denial or condition imposition.

(10) The department may adopt rules that provide technical details and clarification regarding the water and sanitation information required to be submitted under 76-3-622."

**Section 5. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 12, 2013

# CHAPTER NO. 196

[SB 319]

AN ACT GENERALLY REVISING MOTOR VEHICLE LAWS RELATED TO THE USE OF AUTHORIZED AGENTS IN THE PROCESSING OF VEHICLE TITLES, REGISTRATION, AND LICENSING; AMENDING SECTIONS 61-3-116, 61-3-205, 61-3-211, 61-3-225, 61-3-303, 61-3-311, 61-3-331, 61-3-338, 61-3-414, 61-3-415, 61-3-465, 61-3-467, 61-3-480, 61-4-111, 61-4-112, AND 61-11-105, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-3-116, MCA, is amended to read:

**"61-3-116. Services that may be performed by authorized agent.** (1) The department may authorize a person to perform, on the department's behalf, specific motor vehicle titling, registration, or driver licensing functions assigned to or administered by the department under this title. The authorization must be evidenced by an authorized agent agreement.

(2) An authorized agent must meet all of the requirements established by the department.

(3) An authorized agent shall*, within the time period prescribed in the authorized agent agreement,* submit to the department or its designee all statutorily prescribed fees, taxes, or penalties the authorized agent collects.

(4) (a) Except when specifically prohibited by statute or the authorized agent agreement, in addition to statutorily prescribed fees, taxes, and penalties, an authorized agent may collect and retain a reasonable convenience fee for services provided.

(b) If an authorized agent is a municipal or county officer, the convenience fee may be charged and collected as permitted under 7-5-2133 or 7-5-4125.

(5) The department may provide an automated mechanism to ensure that any statutorily prescribed fee, tax, or penalty collected by an authorized agent or a county treasurer in a county other than the county where the owner of the vehicle is domiciled is transferred to the county treasurer of the county where the owner of a vehicle is domiciled."

**Section 2.** Section 61-3-205, MCA, is amended to read:

**"61-3-205. Transfer of ownership of vehicles by insurance company.** (1) (a) Except as provided in subsection (2), an insurance company or its adjuster that has taken possession of a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile as a result of settling an insurance claim and that transfers ownership of the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile shall deliver to the transferee at the time of transfer a certificate of title signed and acknowledged by the registered owner or owners before the county treasurer, a deputy county treasurer, *an authorized agent,* or a notary public.

(b) If the certificate of title names one or more holders of a perfected security interest in the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, the insurance company or its adjuster shall also secure and deliver to the transferee a release from the secured party of the security interest.

(2) (a) The registered owner or owners may use an electronic signature pursuant to Title 30, chapter 18, part 1, on the certificate of title or on a limited power of attorney to assign ownership of a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile. The department may prescribe the form of the limited power of attorney to be used for this purpose. A certificate of title transferred with an electronic signature does not require acknowledgment by the county treasurer, a deputy county treasurer, *an authorized agent,* or a notary public. A power of attorney executed under authority of this subsection (2)(a) does not require notarization.

(b) A secured party may release a perfected security interest in a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile under this section by electronic signature pursuant to Title 30, chapter 18, part 1."

**Section 3.** Section 61-3-211, MCA, is amended to read:

**"61-3-211. Surrender of certificate of title — issuance of salvage certificate — salvage retitling requirements.** (1) An insurer acquiring ownership of a motor vehicle that is less than 15 years of age and that the insurer determines to be a salvage vehicle shall surrender the certificate of title to the department within 15 days after acquiring the certificate of title. If the

insurer has not sold the salvage vehicle prior to the time of surrendering the certificate of title, the insurer shall apply for a salvage certificate on a form prescribed by the department. If the certificate of title names one or more holders of a perfected security interest in the motor vehicle, the insurer shall secure and deliver to the department *or an authorized agent* a release from each secured party of the secured interest.

(2) Upon receipt of a properly executed certificate of title and a salvage certificate application from an insurer, the department shall issue a salvage certificate to the insurer within 5 working days of the date of receipt of the application. Upon receipt of a salvage certificate issued by the department, an insurer may possess, retain, transport, sell, transfer, or otherwise dispose of the salvage vehicle. The salvage certificate is prima facie evidence of ownership of a salvage vehicle.

(3) If the insurer sells a salvage vehicle within the 15-day period established in subsection (1) prior to surrendering the certificate of title, the insurer shall complete a salvage receipt on a form prescribed by the department. The insurer shall deliver the original salvage receipt to the salvage vehicle purchaser only after obtaining a clear title and lien release. Prior to disposing of the salvage vehicle, the salvage vehicle purchaser shall apply for a salvage certificate by completing the salvage receipt and submitting it to the department *or an authorized agent*. The insurer shall deliver a copy of the salvage receipt with the surrendered certificate of title to the department *or an authorized agent*. Upon receipt of the certificate of title from the insurer and the application from the salvage vehicle purchaser, the department shall issue a salvage certificate to the salvage vehicle purchaser that is prima facie evidence of ownership.

(4) If an insurer determines that a salvage vehicle will remain with the owner after an agreed settlement, the insurer shall notify the department *or an authorized agent* of the settlement on a form prescribed by the department. Upon receipt of the notice, the department may require the owner to surrender the certificate of title in compliance with this part, regardless of whether ownership of the salvage vehicle was obtained in a jurisdiction not requiring the surrender of the certificate of title or a comparable ownership document.

(5) At the time of surrender of a certificate of title for a salvage vehicle not acquired by an insurer, the department shall issue a salvage certificate to the owner. Upon receipt of a salvage certificate issued by the department to a noninsurer, the owner may possess, retain, transport, sell, transfer, or otherwise dispose of the salvage vehicle. A salvage certificate is prima facie evidence of ownership of a salvage vehicle.

(6) A fee of $5 must be paid to the department for the issuance of a salvage certificate.

(7) A salvage vehicle owned by or in the inventory of a motor vehicle wrecking facility on October 1, 1991, is exempt from the provisions of this section if the owner of the facility has complied with the provisions of 61-3-225."

**Section 4.** Section 61-3-225, MCA, is amended to read:

**"61-3-225. Motor vehicle wrecking facility quarterly reports.** Quarterly, the owner or operator of a motor vehicle wrecking facility, as defined in 75-10-501, shall ~~mail~~ *deliver* to the department *or an authorized agent*, on a form approved by the department, a list of all junk vehicles, as defined in 75-10-501, received by the owner or operator of the motor vehicle wrecking facility during the quarter, stating the year, make, and complete identification number of each vehicle. If the owner or operator of a motor vehicle wrecking facility received a certificate of title when the owner or operator of the facility

received a junk vehicle on the list, that certificate of title must accompany the list. The department shall issue a receipt for the certificate of title if requested by the owner or operator of the facility, and the receipt may serve as an instrument for reclaiming the certificate of title if the vehicle is rebuilt."

**Section 5.** Section 61-3-303, MCA, is amended to read:

**"61-3-303. Original registration — process — fees.** (1) Except as provided in 61-3-324, a Montana resident who owns a motor vehicle, trailer, semitrailer, or pole trailer operated or driven upon the public highways of this state shall register the motor vehicle, trailer, semitrailer, or pole trailer ~~in the office of the county treasurer~~ in the county where the owner is domiciled.

(2) Except as provided in subsections (3) and (11), the county treasurer *or an authorized agent* shall register any vehicle for which:

(a) as of the date that the motor vehicle, trailer, semitrailer, or pole trailer is to be registered, the owner delivers an application for a certificate of title to the department, ~~its~~ *an* authorized agent, or a county treasurer; or

(b) the county treasurer *or an authorized agent* confirms that the department has an electronic record of title for the motor vehicle, trailer, semitrailer, or pole trailer as provided under 61-3-101.

(3) (a) A county treasurer *or an authorized agent* may register a motor vehicle, trailer, semitrailer, or pole trailer for which a certificate of title and registration were issued in another jurisdiction and for which registration is required under 61-3-701 after the county treasurer *or the authorized agent* examines the current out-of-jurisdiction registration certificate or receipt and receives payment of the fees required in 61-3-701. The county treasurer *or an authorized agent* may ask the motor vehicle, trailer, semitrailer, or pole trailer owner to provide additional information, prescribed by the department, to ensure that the electronic record of registration maintained by the department is complete.

(b) A county treasurer *or an authorized agent* may register a motor vehicle, trailer, semitrailer, or pole trailer for which the new owner cannot, due to circumstances beyond the new owner's control, surrender a previously assigned certificate of title. The new owner may submit an application for certificate of title, subject to the registration renewal limitations of 61-3-312.

(4) Upon registering a motor vehicle, trailer, semitrailer, or pole trailer for the first time in this state, the county treasurer *or an authorized agent* shall:

(a) update the electronic record of title, if any, maintained for the vehicle by the department under 61-3-101;

(b) assign a registration period for the vehicle under 61-3-311;

(c) determine the vehicle's age, if required, under 61-3-501;

(d) determine the amount of fees, including local option taxes or fees, to be paid under subsection (5); and

(e) assign and issue license plates for the vehicle under 61-3-331.

(5) Unless otherwise provided by law, a person registering a motor vehicle shall pay to the county treasurer *or an authorized agent*:

(a) the fees in lieu of tax or registration fees as required for:

(i) a light vehicle under 61-3-321 or 61-3-562, in addition to, if applicable, any local option tax or fee under 61-3-537 or 61-3-570;

(ii) a motor home under 61-3-321;

(iii) a travel trailer under 61-3-321;

(iv) a motorcycle or quadricycle under 61-3-321;

(v) a bus, a truck having a manufacturer's rated capacity of more than 1 ton, or a truck tractor under 61-3-321 and 61-3-529; or

(vi) a trailer under 61-3-321;

(b) a donation of $1 or more if the person indicates that the person wishes to donate to promote awareness and education efforts for procurement of organ and tissue donations in Montana to favorably impact anatomical gifts; and

(c) a donation of $1 or more if the person indicates that the person wishes to donate to promote education on, support for, and awareness of traumatic brain injury.

(6) The county treasurer *or an authorized agent* may not issue a registration receipt or license plates for the motor vehicle, trailer, semitrailer, or pole trailer to the owner unless the owner makes the payments required by subsection (5).

(7) The department may make full and complete investigation of the registration status of the motor vehicle, trailer, semitrailer, or pole trailer. A person seeking to register a motor vehicle, trailer, semitrailer, or pole trailer under this section shall provide additional information to support the registration to the department if requested.

(8) Revenue that accrues from the voluntary donation provided in subsection (5)(b) must be forwarded by the respective county treasurer *or an authorized agent* to the department for deposit in the state special revenue fund to the credit of an account established by the department of public health and human services to support activities related to awareness and education efforts for procurement of organ and tissue donations for anatomical gifts.

(9) (a) Except as provided in subsection (9)(b), the fees in lieu of tax, taxes, and fees imposed on or collected from the registration of a travel trailer, motorcycle, or quadricycle or a trailer, semitrailer, or pole trailer that has a declared weight of less than 26,000 pounds are required to be paid only once during the time that the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is owned by the same person who registered the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer. Once registered, a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is registered permanently unless ownership is transferred.

(b) Whenever ownership of a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is transferred, the new owner is required to register the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer as if it were being registered for the first time, including paying all of the required fees in lieu of tax, taxes, and fees.

(10) Revenue that accrues from the voluntary donation provided in subsection (5)(c) must be forwarded by the respective county treasurer *or an authorized agent* to the department for deposit in the state special revenue fund to the credit of the account established in 2-15-2218 to support activities related to education regarding prevention of traumatic brain injury.

(11) ~~Beginning January 1, 2013, the~~ *The* county treasurer *or an authorized agent* shall use the online motor vehicle liability insurance verification system provided in 61-6-157 to verify that the vehicle owner has complied with the requirements of 61-6-301."

**Section 6.** Section 61-3-311, MCA, is amended to read:

**"61-3-311. Registration — time periods.** (1) Unless a motor vehicle, trailer, semitrailer, or pole trailer is subject to permanent registration under this title and except as provided in 61-3-313, 61-3-701, 61-3-721, and subsection

(3) of this section, the department, an authorized agent, or a county treasurer shall, upon original registration of a motor vehicle in this state, assign each motor vehicle to a registration period, as provided in 61-3-316, based upon the calendar month in which the motor vehicle is first registered in this state and designate the calendar year in which the current registration will expire.

(2) Each registration period commences on the first day of the calendar month in the calendar year in which the motor vehicle is registered and the motor vehicle's registration expires on the earlier of:

(a) the last day of the month preceding the anniversary of the registration period for the year designated on the motor vehicle's registration decal if the motor vehicle is registered for a minimum 12-month period;

(b) the last day of the month preceding the anniversary of the registration period for the year designated on the motor vehicle's registration decal if the motor vehicle is registered for a period of at least 13 but less than 25 months; or

(c) the transfer of ownership of the motor vehicle, trailer, semitrailer, or pole trailer to another person.

(3) (a) Upon request of the motor vehicle owner, a county treasurer *or an authorized agent* may assign a motor vehicle to a registration period, as provided in 61-3-316, other than a registration period beginning in the calendar month in which the motor vehicle is first registered in this state if at least 13 but less than 25 months will elapse between the first day of the calendar month in which the motor vehicle is registered and the last day of the month preceding the anniversary of the requested registration period in the year designated on the motor vehicle's registration decal.

(b) The county treasurer *or an authorized agent* shall determine fees imposed for a motor vehicle registered for a period between 13 and 24 months. All registration fees, fees in lieu of tax, or local option taxes or fees that are imposed on an annual basis must be prorated based on the number of months in the requested registration period.

(c) A motor vehicle registered under the provisions of 61-3-303(3)(b) may not be registered under this subsection (3).

(4) If a motor vehicle, trailer, semitrailer, or pole trailer is permanently registered under the provisions of this chapter, the registration is not subject to expiration unless the registered owner of the motor vehicle, trailer, semitrailer, or pole trailer transfers ownership of the vehicle to another person."

**Section 7.** Section 61-3-331, MCA, is amended to read:

**"61-3-331. Assignment of license plates.** The county treasurer *or an authorized agent* shall, at the time of issuing a registration receipt under 61-3-322, assign the motor vehicle, trailer, semitrailer, or pole trailer a distinctive license plate number and, unless the license plates must be specially ordered from the department, deliver to the applicant, depending on the type of motor vehicle that was registered, a set of two license plates or one license plate, each of which must bear the assigned distinctive number."

**Section 8.** Section 61-3-338, MCA, is amended to read:

**"61-3-338. Contract for manufacture and distribution of license plates.** (1) The department shall contract with Montana correctional enterprises for the manufacture, inventory control, storage, and distribution of all license plates issued under this chapter.

(2) The contract must include provisions for payment to Montana correctional enterprises after license plates are shipped to the department, the

office of a county treasurer, *an authorized agent,* or a vehicle owner, as directed by the department or at the request of a vehicle owner.

(3) The contract must require Montana correctional enterprises to provide the necessary interface to support the automated ordering of license plates by the department or as directed by the department and to acquire and use readability software to assess any new plate design or manufactured plate and, if requested by the department, any previously issued license plates."

**Section 9.** Section 61-3-414, MCA, is amended to read:

**"61-3-414. Special motorcycle license plates for military personnel, veterans, and spouses — department to design — fees — disposition.** (1) The department shall design and issue motorcycle license plates for all special military and veteran license plates provided for in 61-3-458(2)(d) and (3).

(2) A person requesting a special military or veteran motorcycle license plate under this section:

(a) is subject to the eligibility requirements for the license plate as provided in 61-3-458; and

(b) shall pay to the county treasurer *or an authorized agent*:

(i) an administrative fee of $5 upon issuance of the motorcycle license plate, to be deposited in the county general fund;

(ii) a $5 license plate fee, to be deposited in the state general fund; and

(iii) a $10 veterans' cemetery fee, to be deposited as provided in 61-3-459(2).

(3) Upon request, after paying the fees imposed under subsection (2)(b) and any applicable vehicle registration fees under this chapter, the surviving spouse of an eligible veteran, if the spouse has not remarried, may retain the special license plates issued to the deceased veteran, subject to the eligibility requirements for the plate as provided in 61-3-458(4)."

**Section 10.** Section 61-3-415, MCA, is amended to read:

**"61-3-415. Special motorcycle license plates — department to design — fees — distribution.** (1) A Montana resident who is the owner of a motorcycle or quadricycle titled and registered under this chapter and who pays the fee required under subsection (2) may be issued a special motorcycle license plate bearing a design created by the department. The design must recognize the efforts of one or more Montana-based nonprofit organizations that grant wishes to chronically or critically ill Montana children.

(2) A person requesting a special motorcycle license plate under this section shall pay to the county treasurer *or an authorized agent*:

(a) an administrative fee of $5 upon issuance of the special license plate, to be deposited in the county general fund;

(b) a $5 license plate fee; and

(c) a donation fee of $20.

(3) The county treasurer *or an authorized agent* shall remit the fees required in subsections (2)(b) and (2)(c) to the department. For each special plate issued, the department shall deposit $5 in the state general fund and $20 in an account in the state special revenue fund to be used by the department as provided in subsection (4).

(4) The department shall use the money deposited in the account in the state special revenue fund as provided in subsection (3) to provide grants, using criteria established by the department, to Montana-based nonprofit organizations that grant wishes to Montana children who are chronically or critically ill.

(5) The department shall adopt rules to identify the entity or entities that may qualify for grants under this section and to establish the criteria that an entity must meet to receive grant funds.

(6) The account in the state special revenue fund provided for in subsection (3) is statutorily appropriated to the department, as provided in 17-7-502."

**Section 11.** Section 61-3-465, MCA, is amended to read:

**"61-3-465. Issuance — application — additional fee — disposition.** (1) The department shall issue or renew collegiate license plates upon receipt of an application that shows:

(a) compliance with 61-3-303, 61-3-311, and 61-3-312; and

(b) payment to the county treasurer *or an authorized agent* of:

(i) an initial application and manufacturing fee of $10, when required; and

(ii) an annual scholarship donation of $30 for the benefit of the institution named in the application.

(2) Once each month, the county treasurer shall, as provided in 15-1-504, transfer to the state the total of the amounts collected for:

(a) the initial application and manufacturing fee for deposit in the state general fund; and

(b) scholarship donations provided for in subsection (1)(b)(ii), along with a schedule showing the number of collegiate license plates issued and the total donations received for the benefit of each institution.

(3) Once each month, an amount equal to the total donations credited to that institution and transferred to the state by the county treasurers during the preceding month must be distributed to the student academic scholarship fund or foundation of each institution.

(4) The amount of $8 of the fee imposed in subsection (1)(b)(i) must be deposited in the account established in 61-6-158, and $2 of the fee must be deposited in the state general fund."

**Section 12.** Section 61-3-467, MCA, is amended to read:

**"61-3-467. Authorization to receive and transmit donations.** As provided in 61-3-465 and notwithstanding any other provisions of Title 7, Title 17, or this title:

(1) the county treasurer *or an authorized agent* must receive the annual scholarship donations provided for in 61-3-465 and ~~once each month transmit, as provided in 15-1-504, those donations to the state~~ *transmit the donations to the state as provided in 15-1-504 or 61-3-116*; and

(2) the appropriate agency shall accept the annual scholarship donations and once each month distribute the accumulated proceeds to the beneficiary institutions specified by and according to the totals contained in the county treasurers' *and authorized agents'* reports."

**Section 13.** Section 61-3-480, MCA, is amended to read:

**"61-3-480. Fees for generic specialty license plates — disposition.** (1) In addition to the other fees and taxes imposed by law, an eligible person who applies for a generic specialty license plate shall pay an administrative fee of $20 and, except as provided in 61-3-479(1)(b), the donation fee specified by the sponsor.

(2) The county treasurer *or an authorized agent* shall, upon receipt of the fees:

(a) deposit $5 of the $20 administrative fee in the county general fund;

(b) notwithstanding any other provisions of Title 7, Title 17, or this title and unless otherwise provided in 61-3-479(1)(b), accept the donation fee paid by the plate purchaser; and

(c) as provided in 15-1-504, once each month, transmit to the state for distribution:

(i) $10 of the $20 administrative fee for deposit in the account provided in 61-6-158;

(ii) $5 of the administrative fee to the state general fund; and

(iii) all donation fees provided for in subsections (1) and (3), along with a schedule showing the number and type of generic specialty license plates issued and total donations received for the benefit of each sponsor of a generic specialty license plate issued or renewed, to each respective sponsor.

(3) If the donation fee is required by a sponsor upon renewal of generic specialty license plates, the fee must be paid to the county treasurer *or an authorized agent* upon renewal of registration and transmitted to the state as prescribed in subsection (2).

(4) Once each month, the state shall distribute to the generic specialty license plate liaison designated by a sponsor under 61-3-475(1)(c) or 61-3-476(1)(c) an amount equal to the total donations credited to that sponsor and transferred to the department of revenue by the county treasurers during the preceding month."

**Section 14.** Section 61-4-111, MCA, is amended to read:

**"61-4-111. Used vehicles — transfer to and from dealers.** (1) Except as provided in 61-4-124(6), a dealer or wholesaler who intends to resell a used motor vehicle, power sports vehicle, or trailer and who operates the motor vehicle, power sports vehicle, or trailer only for demonstration purposes:

(a) is exempt from registration under 23-2-515, 23-2-616, 23-2-804, or 61-3-302(3) when applying for a certificate of title; and

(b) may transfer or receive ownership of a motor vehicle, power sports vehicle, or trailer by use of a dealer reassignment section on a certificate of title. However, when the allotted number of dealer reassignment sections on a certificate of title has been completed, ownership of the motor vehicle, power sports vehicle, or trailer may not be transferred until an application for a certificate of title has been submitted by the dealer *or an authorized agent* to *an authorized agent or* the department and a new certificate of title has been issued.

(2) Upon the transfer of a used motor vehicle, power sports vehicle, or trailer to a person other than a dealer or wholesaler, a temporary registration permit may be issued under 61-3-224 to the person to whom the used motor vehicle, power sports vehicle, or trailer was transferred if the dealer is an authorized agent, as defined in 61-1-101. In addition, the following acts are required of the dealer on or before the times set forth in this subsection:

(a) Within 30 calendar days following the date of delivery of the motor vehicle, power sports vehicle, or trailer, the dealer shall forward to *an authorized agent or to* the county treasurer of the county where the owner of the motor vehicle, power sports vehicle, or trailer is domiciled:

(i) the assigned certificate of title or, if a certificate of title for the motor vehicle, power sports vehicle, or trailer has not been issued in this state, a copy of the then-current registration receipt or certificate in the dealer's possession; and

(ii) an application for a certificate of title executed by the new owner in accordance with the provisions of 61-3-216 and 61-3-220.

(b) Transmission of the documents by the dealer to the county treasurer *or an authorized agent* may be accomplished either by personal delivery, by first-class mail, or by electronic means, as authorized by the department.

(c) If the dealer is unable to forward the certificate of title or, if applicable, registration receipt within the time set forth in subsection (2)(a) because the certificate of title is lost, is in the possession of third parties, or is in the process of reissuance in this state or elsewhere, the dealer shall comply in all other respects with the provisions of subsection (2)(a) and shall forward the missing document or documents to the county treasurer~~, either personally or by first-class mail,~~ *or an authorized agent* within 3 days after receipt.

(3) Upon compliance by the dealer with the requirements in this section, title to the motor vehicle, power sports vehicle, or trailer is considered to have passed to the purchaser as of the date of the delivery of the motor vehicle, power sports vehicle, or trailer to the purchaser by the dealer, and the dealer has no further liability or responsibility with respect to the processing of registration."

**Section 15.** Section 61-4-112, MCA, is amended to read:

**"61-4-112. New motor vehicles — transfers by dealers.** (1) When a dealer transfers a new motor vehicle, power sports vehicle, or trailer to a purchaser or other recipient, the dealer shall, within 30 calendar days following the date of delivery of the new motor vehicle, power sports vehicle, or trailer forward to *an authorized agent or* the county treasurer of the county where the owner of the motor vehicle, power sports vehicle, or trailer is domiciled:

(a) an application for a certificate of title with a notice of security interest, if any, executed by the purchaser or recipient; and

(b) a manufacturer's certificate of origin that shows that the motor vehicle, power sports vehicle, or trailer has not previously been registered or owned, except as otherwise provided in this section, by any person other than a dealer holding a franchise or distribution agreement from the manufacturer, distributor, or importer of the new motor vehicle, power sports vehicle, or trailer.

(2) If the dealer is an authorized agent, ~~as defined in 61-1-101,~~ a temporary registration permit may be issued under 61-3-224 to the person to whom the new motor vehicle, power sports vehicle, or trailer was transferred."

**Section 16.** Section 61-11-105, MCA, is amended to read:

**"61-11-105. Release of information — fees.** (1) Subject to the limitations of this section, the department shall, upon request, furnish a person the individual Montana driving record of a driver or licensee, containing the following data:

(a) the driver's or licensee's name, driver's license number, and date of birth;

(b) driver's license status, including the license type and any endorsements, the license issue date, license restrictions, any suspensions, revocations, or cancellations that have been imposed against the driver or licensee, and the license expiration date;

(c) convictions of the driver or licensee; and

(d) traffic accidents in which the driver or licensee was involved.

(2) The department may not enter into any agreement to disclose or sell, in bulk, any data contained in an individual Montana driving record unless the requester of the information provides the department with the names, driver's

license numbers, and dates of birth of the drivers or licensees from whose records a change in license status or conviction activity is to be reported.

(3) (a) The department may not disclose personal information or highly restricted personal information from an individual Montana driving record, except as permitted or required under 61-11-507, 61-11-508, or 61-11-509.

(b) The department may not disclose medical certification status, driver self-certification status, or medical certificate information from a CDLIS driver record as part of an individual Montana driving record except as expressly authorized under 49 CFR 384.225.

(4) Information relating to a traffic accident that did not involve a conviction, as defined in 61-11-203, may not be released by the department unless the release is requested or approved by a party involved in the accident or is required by court order or a duly executed subpoena.

(5) (a) Subject to the requirements of subsection (6) and except as provided in subsection (5)(b), a fee of $4 must be paid for each individual Montana driving record requested. A fee of $10 must be paid if a certified Montana record, as provided in 61-11-102(7), is requested. A fee of 6 cents must be paid for each individual Montana driving record that is searched by the department to report to a requester a change in license status or conviction activity from one or more individual Montana driving records.

(b) An individual Montana driving record must be provided without charge to any criminal justice agency, as defined in 44-5-103, or other state or federal agency.

(6) In addition to the fees required in 61-11-510(3) and subsection (5) of this section, an individual Montana driving record or any report compiled from one or more individual Montana driving records that are electronically transmitted to a requester *by an authorized agent as provided in 61-3-116 or* through a point of entry for electronic government services are subject to the convenience fee ~~established under~~ *provided for in* 2-17-1103 *or 61-3-116*.

(7) The department may require a requester, other than a federal, state, or local government agency, seeking one or more individual Montana driving records or any data otherwise contained in one or more individual Montana driving records in electronic format to use *an authorized agent as provided in 61-3-116 or* a point of entry for electronic government services to obtain the record or data."

**Section 17. Effective date.** [This act] is effective July 1, 2013.

Approved April 12, 2013

# CHAPTER NO. 197

[SB 327]

AN ACT EXEMPTING CERTAIN COMPETITIVE ELECTRICITY SUPPLIERS FROM THE REQUIREMENTS OF THE MONTANA RENEWABLE POWER PRODUCTION AND RURAL ECONOMIC DEVELOPMENT ACT; AMENDING SECTION 69-3-2004, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 69-3-2004, MCA, is amended to read:

**"69-3-2004. Renewable resource standard — administrative penalty — waiver.** (1) Except as provided in 69-3-2007 and subsections (11) ~~and (12)~~

*through (13)* of this section, a graduated renewable energy standard is established for public utilities and competitive electricity suppliers as provided in subsections (2) through (4) of this section.

(2) In each compliance year beginning January 1, 2008, through December 31, 2009, each public utility and competitive electricity supplier shall procure a minimum of 5% of its retail sales of electrical energy in Montana from eligible renewable resources.

(3) (a) In each compliance year beginning January 1, 2010, through December 31, 2014, each public utility and competitive electricity supplier*, except as provided in subsection (13),* shall procure a minimum of 10% of its retail sales of electrical energy in Montana from eligible renewable resources.

(b) Beginning January 1, 2012, as part of their compliance with subsection (3)(a), public utilities shall purchase both the renewable energy credits and the electricity output from community renewable energy projects that total at least 50 megawatts in nameplate capacity.

(c) Public utilities shall proportionately allocate the purchase required under subsection (3)(b) based on each public utility's retail sales of electrical energy in Montana in the calendar year 2011.

(4) (a) In the compliance year beginning January 1, 2015, and in each succeeding compliance year, each public utility and competitive electricity supplier*, except as provided in subsection (13),* shall procure a minimum of 15% of its retail sales of electrical energy in Montana from eligible renewable resources.

(b) (i) As part of their compliance with subsection (4)(a), public utilities shall purchase both the renewable energy credits and the electricity output from community renewable energy projects that total at least 75 megawatts in nameplate capacity.

(ii) In meeting the standard in subsection (4)(b)(i), a public utility may include purchases made under subsection (3)(b).

(c) Public utilities shall proportionately allocate the purchase required under subsection (4)(b) based on each public utility's retail sales of electrical energy in Montana in the calendar year 2014.

(5) (a) In complying with the standards required under subsections (2) through (4), a public utility or competitive electricity supplier shall, for any given compliance year, calculate its procurement requirement based on the public utility's or competitive electricity supplier's previous year's sales of electrical energy to retail customers in Montana.

(b) The standards in subsections (2) through (4) must be calculated on a delivered-energy basis after accounting for any line losses.

(6) A public utility or competitive electricity supplier has until 3 months following the end of each compliance year to purchase renewable energy credits for that compliance year.

(7) (a) In order to meet the standards established in subsections (2) through (4), a public utility or competitive electricity supplier may only use:

(i) electricity from an eligible renewable resource in which the associated renewable energy credits have not been sold separately;

(ii) renewable energy credits created by an eligible renewable resource purchased separately from the associated electricity; or

(iii) any combination of subsections (7)(a)(i) and (7)(a)(ii).

(b) A public utility or competitive electricity supplier may not resell renewable energy credits and count those sold credits against the public utility's or the competitive electricity supplier's obligation to meet the standards established in subsections (2) through (4).

(c) Renewable energy credits sold through a voluntary service such as the one provided for in 69-8-210(2) may not be applied against a public utility's or competitive electricity supplier's obligation to meet the standards established in subsections (2) through (4).

(8) Nothing in this part limits a public utility or competitive electricity supplier from exceeding the standards established in subsections (2) through (4).

(9) If a public utility or competitive electricity supplier exceeds a standard established in subsections (2) through (4) in any compliance year, the public utility or competitive electricity supplier may carry forward the amount by which the standard was exceeded to comply with the standard in either or both of the 2 subsequent compliance years. The carryforward may not be double-counted.

(10) Except as provided in subsections (11) and (12), if a public utility or competitive electricity supplier is unable to meet the standards established in subsections (2) through (4) in any compliance year, that public utility or competitive electricity supplier shall pay an administrative penalty, assessed by the commission, of $10 for each megawatt hour of renewable energy credits that the public utility or competitive electricity supplier failed to procure. A public utility may not recover this penalty in electricity rates. Money generated from these penalties must be deposited in the universal low-income energy assistance fund established in 69-8-412(1)(b).

(11) A public utility or competitive electricity supplier may petition the commission for a short-term waiver from full compliance with the standards in subsections (2) through (4) and the penalties levied under subsection (10). The petition must demonstrate that the:

(a) public utility or competitive electricity supplier has undertaken all reasonable steps to procure renewable energy credits under long-term contract, but full compliance cannot be achieved either because renewable energy credits cannot be procured or for other legitimate reasons that are outside the control of the public utility or competitive electricity supplier; or

(b) integration of additional eligible renewable resources into the electrical grid will clearly and demonstrably jeopardize the reliability of the electrical system and that the public utility or competitive electricity supplier has undertaken all reasonable steps to mitigate the reliability concerns.

(12) (a) Retail sales made by a competitive electricity supplier according to prices, terms, and conditions of a written contract executed prior to April 25, 2007, are exempt from the standards in subsections (2) through (4).

(b) The exemption provided for in subsection (12)(a) is terminated upon modification after April 25, 2007, of the prices, terms, or conditions in a written contract.

*(13) (a) A competitive electricity supplier with four or fewer small customers in Montana is exempt from the requirements of subsections (2) through (4).*

*(b) For the purposes of determining the number of small customers served by a competitive electricity supplier, an entity that purchases electricity for*

*commercial or industrial use and does not resell electricity to others is one small customer regardless of the number of its metered locations.*"

**Section 2. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 3. Effective date.** [This act] is effective on passage and approval.

**Section 4. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to the compliance year beginning January 1, 2013.

Approved April 12, 2013

# CHAPTER NO. 198

[SB 332]

AN ACT GENERALLY REVISING OPENCUT MINING LAWS; REQUIRING NOTICE OF INSPECTIONS; REVISING NOTICE AND HEARING PROVISIONS; REQUIRING FEE FOR MATERIALS MINED ILLEGALLY; AND AMENDING SECTIONS 7-14-2124, 82-4-403, 82-4-425, 82-4-427, 82-4-431, 82-4-432, 82-4-433, AND 82-4-437, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-14-2124, MCA, is amended to read:

**"7-14-2124. Disposition of surplus crushed rock and gravel.** (1) ~~Any crushed~~ *Crushed* rock or gravel not directly used or needed by the county in the construction, repair, or maintenance of its roads may be sold by the board of county commissioners at not less than actual cost of production to *only a:*

*(a)* ~~any~~ person, firm, or corporation desiring to use it upon any public street or highway in the county*; or*

*(b) landowner for personal use in an area within 5 miles of the opencut operation where the materials were mined*.

(2) The proceeds of any ~~such~~ sale ~~shall~~ *must* be paid into the county road fund."

**Section 2.** Section 82-4-403, MCA, is amended to read:

**"82-4-403. Definitions.** When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Affected land" means the area of land and land covered by water that is disturbed by opencut operations~~, including the area from which overburden or materials are to be or have been removed and upon which the overburden is to be or has been deposited, existing private roads that are used and roads constructed to gain access to the materials, areas of processing facilities on or contiguous to the opencut mine, treatment and sedimentation ponds, soil and materials stockpile areas on or contiguous to the opencut mine, and any other surface or subsurface disturbance associated with opencut operations~~. ~~For the purposes of this subsection, an existing~~ *A* private road may be included as affected land only with the landowner's consent.

(2) "Amendment" means a change to the approved permit.

(3) "Board" means the board of environmental review provided for in 2-15-3502.

(4) "Department" means the department of environmental quality provided for in 2-15-3501.

(5) "Landowner" means the holder of legal title to land subjected to an opencut operation.

(6) "Materials" means bentonite, clay, scoria, peat, sand, soil, gravel, or mixtures of those substances.

(7) "Opencut operation" means ~~the following~~ activities~~, if they are~~ conducted for the primary purpose of sale or utilization of materials*, including*:

(a) *mine site preparation;*

*(b)* (i) removing the overburden and mining directly from the exposed natural deposits; or

(ii) mining directly from natural deposits of materials;

~~(b) mine site preparation, including access;~~

(c) processing of materials ~~within the area that is to be mined or contiguous to the area that is to be mined or the access road~~ *mined from the natural deposits, except that processing facilities located more than 300 feet from where materials were mined or are permitted to be mined are not part of the opencut operation;*

*(d) transporting, depositing, staging, and stockpiling of overburden and materials unless the activity occurs more than 300 feet from where the materials were mined or are permitted to be mined*;

~~(d) transportation of materials on areas referred to in subsections (7)(a) through (7)(c);~~

(e) storing or stockpiling of materials ~~on areas referred to in subsections (7)(a) through (7)(c)~~ *at processing facilities that are part of the opencut operation*;

(f) reclamation of affected land; and

(g) ~~any other associated surface or subsurface activity conducted on areas referred to in subsections (7)(a) through (7)(c)~~ *parking or staging of vehicles, equipment, or supplies unless:*

*(i) the activity is separated from other opencut operations by at least 25 feet and is connected to the opencut operation by a single road that is no more than 25 feet wide; or*

*(ii) the activity is inside the construction disturbance area shown on a construction project plan*.

(8) "Operator" means a person ~~engaged in or controlling an opencut operation. When a permit has been issued for an operation, a person who removes materials from the site under the control of the operator is not considered an operator~~ *who holds a permit issued pursuant to this part. For purposes of enforcing the provisions of this part, the term also includes any person conducting opencut operations on affected land that is not covered by a permit*.

(9) "Overburden" means the earth that lies above a natural deposit of materials.

(10) "Person" means:

(a) a natural person;

(b) a firm, association, partnership, cooperative, or corporation;

(c) a department, agency, or instrumentality of the state or any governmental subdivision; or

(d) any other entity.

(11) "Plan of operation" means a plan that:

(a) meets the requirements of 82-4-434; and

(b) contains a description of current land use, topographical data, hydrologic data, soils data, proposed mine areas, proposed mining and processing operations, proposed reclamation, and appropriate maps.

(12) "Processing facilities" means:

(a) crushers, screens, and pug mills;

(b) asphalt, wash, and concrete plants; ~~and~~

(c) ~~other equipment used in processing opencut materials~~ *treatment, sedimentation, or retention areas for processing facilities; and*

*(d) areas receiving washout from vehicles and equipment using the processing facilities*.

(13) "Reclamation" means the reconditioning of affected land to make the area suitable for productive use, including but not limited to forestry, agriculture, grazing, wildlife, recreation, or residential or industrial development.

(14) "Soil" means the dark or root-bearing surface matter that has been generated through time by the interaction of biological activity, climate, topography, and parent material and that is capable of sustaining plant growth and is recognized and identified as such by standard authorities and methods."

**Section 3.** Section 82-4-425, MCA, is amended to read:

**"82-4-425. Inspection of opencut operations.** The department or its accredited representatives may enter upon lands subjected to opencut operations at all reasonable times for the purpose of inspection to determine whether the provisions of this part have been complied with. *The department shall attempt to provide reasonable notice to a permitted operator when practicable under the circumstances.*"

**Section 4.** Section 82-4-427, MCA, is amended to read:

**"82-4-427. Hearing — appeal — venue.** (1) *(a)* ~~A~~ *Subject to subsections (1)(b) and (1)(c), a* person whose interests are or may be adversely affected by a final decision of the department to approve or disapprove a permit application and accompanying material or a permit amendment application and accompanying material under this part is entitled to a hearing before the board if a written request stating the reasons for the appeal is submitted to the board within 30 days of the department's decision.

*(b) If an application was noticed publicly as required by this part, to be eligible to file for an appeal a person must have either submitted comments to the department on an application or submitted comments at a public meeting held under 82-4-432.*

*(c) Subsection (1)(b) does not apply to a person filing for an appeal of an application that was not required to be noticed publicly by this part.*

(2) An operator may request a hearing before the board on:

(a) a final decision of the department director pursuant to 82-4-436(4) by submitting a request for a hearing within 15 days of receipt of notice of the director's decision; and

(b) an order of suspension or revocation issued under 82-4-442 by filing a request for hearing within 30 days of receipt of the decision.

(3) The operator or the landowner may request a hearing before the board on a decision on a bond release application.

(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.

(5) A petition for judicial review of a board decision made pursuant to this section must be brought in the county in which the permitted activity is proposed to occur or, if mutually agreed upon by both parties in the action, in the first judicial district, Lewis and Clark County. If an activity is proposed to occur in more than one county, the action may be brought in any of the counties in which the activity is proposed to occur.

(6) The petition for judicial review must include the party to whom the permit was issued or the applicant unless otherwise agreed to by the permitholder or applicant. All judicial challenges of permits for projects with a project cost, as determined by the court, of more than $1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

**Section 5.** Section 82-4-431, MCA, is amended to read:

**"82-4-431. Permit for mining, processing, and reclamation required.** (1) ~~An operator may not conduct an opencut operation that results in the removal of a total of 10,000 cubic yards or more of materials and overburden until the department has issued a permit to the operator. An operator may not, without a permit, remove materials or overburden from a site from which a total of 10,000 cubic yards or more of materials and overburden in the aggregate has been removed. An operator conducting a number of opencut operations, each of which results in the removal of less than 10,000 cubic yards of materials and overburden but that result in the removal of 10,000 cubic yards or more of materials and overburden in the aggregate, is subject to the provisions of this part, except as provided in this section.~~ *A permit is required for an operator who:*

*(a) conducts an opencut operation that results in the removal of more than 10,000 cubic yards of materials and overburden;*

*(b) conducts more than one opencut operation where each of the operations results in the removal of less than 10,000 cubic yards of materials and overburden but the operations result in the removal of 10,000 cubic yards or more of materials and overburden in the aggregate; or*

*(c) removes materials or overburden at a previously mined site where the removal, combined with the amount of previously mined materials and overburden, exceeds 10,000 cubic yards.*

(2) Except as provided in or conditioned under subsections ~~(3) and (4)~~ *(5) and (6)*, an operator who holds a permit under this part may conduct ~~an~~ *a limited* opencut operation without first securing an additional permit or an amendment to an existing permit if the *limited* opencut operation meets the following criteria:

*(a) the area to be disturbed by the limited opencut operation is located more than 1 mile from the operator's nearest existing limited opencut operation;*

~~(a)~~*(b)* the total amount of materials and overburden removed ~~from the site~~ does not exceed ~~5,000~~ *10,000* cubic yards and the total area from which the materials and overburden are removed does not exceed 5 acres; and

~~(b)~~*(c)* the operator:

(i) submits appropriate site and opencut operation information *on a limited opencut operation form provided by the department*; and

(ii) within ~~180 days of submitting the~~ *1 year of the department's receipt of the limited opencut operation* form, salvages all soil from the area to be disturbed,

removes the materials, grades the affected land to 3:1 or flatter slopes, blends the graded land into the surrounding topography, replaces an appropriate amount of overburden and all soil, and reclaims to conditions present prior to mining all access roads used for the operation unless the landowner requests in writing that specific roads or portions of the roads remain open. Roads left open at the landowner's request must be sized to support the use of the road after opencut operations.

(iii) at the first seasonal opportunity, seeds or plants all affected land with vegetative species that meet the requirements of 82-4-434.

*(3) At the operator's request and with department approval, the operator may have up to 1 additional year to perform the reclamation required by subsection (2)(c), provided the operator does not apply to extend or continue the limited opencut operation pursuant to subsection (4).*

*(4) (a) An operator who commences a limited opencut operation pursuant to subsection (2) may apply for a permit to continue or expand that opencut operation pursuant to the provisions of this subsection (4).*

*(b) The permit application must be complete within 180 days of the department's receipt of the limited opencut operation form.*

*(c) If the complete permit application is acceptable within 1 year of the department's receipt of the limited opencut operation form, the provisions of subsections (2)(c)(ii) and (2)(c)(iii) do not apply and reclamation must be conducted as prescribed in the permit.*

*(d) If the complete permit application is not acceptable within 1 year of the department's receipt of the limited opencut operation form, the application is considered abandoned and void. Starting 3 days after the department notifies the applicant that the application is considered abandoned and void, the applicant has 180 days to complete the reclamation provided for in subsections (2)(c)(ii) and (2)(c)(iii).*

*(e) If the permit application is withdrawn by the applicant within 1 year of the department's receipt of the limited opencut operation form, the reclamation provided for in subsections (2)(c)(ii) and (2)(c)(iii) must be completed within 180 days of the date of the withdrawal.*

~~(3)~~*(5)* The department may refuse to approve an application for issuance of a permit under subsection (1) or may prohibit the operator from conducting an opencut operation under subsection (2) if, at the time of notification by the operator to the department, the operator has a pattern of violations or is in current violation of this part, rules adopted under this part, or provisions of a permit.

~~(4)~~*(6)* The department may require an additional bond as a condition for the conduct of an opencut operation under subsection (2).

~~(5)~~*(7)* Opencut operations described in subsection (2) may not occur:

(a) in ephemeral, intermittent, or perennial streams;

(b) in an area where the opencut operation will intercept surface water, ground water, or any slope that is steeper than 3:1; or

(c) in any area where mining would be restricted by other laws.

~~(6)~~*(8)* Sand and gravel opencut operations must meet applicable local zoning regulations adopted under Title 76, chapter 2."

**Section 6.** Section 82-4-432, MCA, is amended to read:

**"82-4-432. Application for permit — contents — issuance — amendment.** (1) An application for a permit must be made using forms furnished by the department and must contain the following:

(a) the name of the applicant and, if other than the owner of the land, the name and address of the owner;

(b) the type of operation to be conducted;

(c) the estimated volume of overburden and materials to be removed;

(d) the location of the proposed opencut operation by legal description and county, *accompanied by a map showing the location of the proposed operation sufficient to allow the public to locate the proposed site*; *and*

~~(e) the date when the opencut operation is proposed to commence; and~~

~~(f)~~*(e)* a statement that the applicant has the legal right to mine the designated materials in the lands described.

(2) The application must be accompanied by:

(a) a bond or security meeting the requirements as set out in this part;

(b) a statement from the local governing body having jurisdiction over the area to be mined certifying that the proposed sand and gravel opencut operation complies with applicable local zoning regulations adopted under Title 76, chapter 2;

(c) a plan of operation that addresses the requirements of 82-4-434 and rules adopted pursuant to this part related to 82-4-434;

(d) written documentation that the landowner has been consulted about the proposed plan of operation; and

(e) a list of surface owners of land located within one-half mile of the boundary of the proposed opencut permit area using the ~~most current known~~ owners of record as shown *no more than 60 days prior to the submission of an application* in the *paper or electronic* records of the county clerk and recorder ~~in~~ *for* the county where the proposed opencut operation is located.

(3) If, prior to applying for a permit, a person notifies the department of the intention to submit an application and requests that the department examine the area to be mined, the department shall examine the area and make recommendations to the person regarding the proposed opencut operation. The person may request a meeting with the department. The department shall hold a meeting if requested.

(4) (a) (i) Except as provided in 75-1-208(4)(b), upon receipt of an application, the department shall, within 5 working days, review the application and notify the person as to whether or not the application is complete. An application is complete if it contains the items listed in subsections (1) and (2). If the department determines that the application is not complete, the department shall notify the applicant in writing and include a detailed identification of information necessary to make the application complete.

(ii) The time limit provided in subsection (4)(a)(i) applies to each submittal of the application until the department determines that the application is complete.

(b) (i) A determination that an application is complete does not ensure that the application is acceptable and does not limit the department's ability to request additional information or inspect the site during the review process.

(ii) Upon determining that an application is complete, the department shall begin reviewing the application for acceptability pursuant to this section.

(iii) The department shall accept public comment throughout the review process.

(c) The department may declare an application abandoned and void if:

(i) the applicant fails to respond to the department's written request for more information within 1 year; and

(ii) the department notifies the applicant of its intent to abandon the application and the applicant fails to provide information within 30 days.

(d) The department shall notify the applicant when an application is complete and post the complete application on the department's website.

(5) Within 15 days after the department sends notice of a complete application to the applicant, the applicant shall provide public notice, which must include:

(a) the name, address, and telephone number of the applicant;

(b) a description of the acreage, the estimated volume of overburden and materials to be removed, the type of materials to be removed, the facilities, the duration of activities, and the access points of the proposed opencut operation;

(c) a legal description of the proposed opencut operation and a map*, or directions on how to access a map,* showing the location of the proposed opencut operation and immediately surrounding property; and

(d) on a form provided by the department, *notification that the application is complete and* information on how to request a public meeting pursuant to this section.

(6) To provide public notice, the applicant shall:

(a) publish notice at least twice in a newspaper of general circulation in the locality of the proposed opencut operation~~;~~. *A map is not required in the notice if, in addition to the legal description of the proposed opencut operation, the notice provides an address for the map posted on the department's website and instructions for obtaining a paper copy of the map from an applicant. If the notice does not include a map, the applicant shall promptly provide a paper copy to a requestor.*

(b) mail the notice by first-class mail to the board of county commissioners of the county in which the proposed opencut operation is located and to surface owners of land located within one-half mile of the boundary of the proposed opencut permit area using the most current known owners of record as shown in the *paper or electronic* records of the county clerk and recorder ~~in~~ *for* the county where the proposed opencut operation is located;

(c) post the notice in at least two prominent locations at the site of the proposed opencut operation, including near a public road if possible; and

(d) provide the department with the names and addresses of those notified pursuant to subsection (6)(b).

(7) (a) Except as provided in subsection (7)(b), the department shall accept requests for a public meeting for 45 days after the department sends notice to the applicant of a complete application. Within this period, unless a public meeting is required pursuant to subsection (9), the department shall notify the applicant as to whether or not the application is acceptable pursuant to subsection (10).

(b) If the applicant and the department mutually agree or the applicant submits documentation ~~to~~ *on a form provided by* the department showing that a public meeting will not be required pursuant to subsection (9), the department

shall inform the applicant within 30 days of the notice of a complete application as to whether or not the application is acceptable pursuant to subsection (10).

(8) If a public meeting is required pursuant to subsection (9), within 30 days from the closing date of the public meeting request period in subsection (7), the department shall:

(a) hold a meeting; and

(b) notify the applicant as to whether or not the application is acceptable pursuant to subsection (10) or that the application requires an extended review pursuant to 82-4-439.

(9) (a) The department shall hold a public meeting in the area of the proposed opencut operation at the request of:

(i) the applicant; or

(ii) at least 30% of the property owners or 10 property owners, whichever is greater, notified pursuant to this section. *For the purposes of this subsection (9)(a)(ii), multiple property owners of the same parcel are to be counted as a single property owner.*

(b) To provide notice for a public meeting, the department shall notify by first-class mail *or electronically* the property owners on the list provided by the applicant pursuant to this section and the board of county commissioners in the county where the proposed opencut operation is located.

(10) (a) An application is acceptable if it complies with the requirements of subsections (1) and (2) and includes a plan of operation that satisfies the requirements of 82-4-434 and rules adopted pursuant to this part related to 82-4-434. If the department determines that the application is not acceptable, the department shall notify the applicant in writing and include a detailed identification of all deficiencies.

(b) Within 10 working days of receipt of the applicant's response to the identified deficiencies, the department shall review the responses and notify the applicant as to whether or not the application is acceptable. If the application is unacceptable, the department shall notify the applicant in writing and include a detailed identification of the deficiencies.

(c) If the application is acceptable, the department shall issue a permit to the operator that entitles the operator to engage in the opencut operation on the land described in the application.

(11) (a) An operator may amend a permit by submitting an amendment application to the department. Upon receipt of the amendment application, the department shall review it in accordance with the requirements and procedures in this section. If the amendment application is acceptable, the department shall issue an amendment to the original permit.

(b) An application for an amendment is not subject to the public notice or public meeting requirements of this section or an extended review pursuant to 82-4-439 unless it proposes an increase in permitted acreage of 50% or more of the amount of permitted acreage in the ~~original~~ *current* permit.

(c) For amendment applications not subject to the public notice and public meeting requirements of this section, the department shall, within 45 days of notifying the applicant that the application is complete, notify the applicant as to whether or not the application is acceptable pursuant to subsection (10) ~~or that the application requires an extended review pursuant to 82-4-439~~.

(12) The department shall ~~publish~~ *post* a copy of an acceptable permit or amendment on its website."

**Section 7.** Section 82-4-433, MCA, is amended to read:

**"82-4-433. Bond.** (1) Before a permit or permit amendment may be issued, a surety bond made payable to the state of Montana and conditioned upon the operator's full compliance with all requirements of this part, the rules adopted under this part, and the permit must be submitted to and approved by the department. The bond must be signed by the applicant as principal and by a good and sufficient corporate surety licensed to do business in the state of Montana. The bond amount must be determined by the department at the cost of reclamation of the affected land by the department. The applicant shall submit a bond that is no less than the amount determined by the department.

(2) (a) For opencut operations on federal land within the state, the department may accept a bond payable to the state of Montana and the federal agency administering the land. The bond must provide at least the same amount of financial guarantee as required by this part.

(b) The bond must provide that the department may forfeit the bond without the concurrence of the federal land management agency. The bond may provide that the federal land management agency may forfeit the bond without the concurrence of the department. Upon forfeiture by either agency, the bond must be payable to the department and may also be payable to the federal land management agency. If the bond is payable to the department and the federal land management agency, the department, before accepting the bond, shall enter into an agreement or memorandum of understanding with the federal land management agency providing for administration of the bond funds in a manner that will allow the department to provide for compliance with the requirements of this part, the rules adopted under this part, and the permit.

(3) In lieu of submitting a surety bond pursuant to subsection (1), the operator may submit cash, ~~government securities~~ *a certificate of deposit*, a letter of credit in a form acceptable to the department, or a bond with property sureties in an amount equal to that of the required bond on conditions as prescribed in this part. In the discretion of the department, surety bond requirements may be fulfilled by the operator's posting a bond with land and improvements and facilities located on the land as security, in which event a surety may not be required but the department may require that the amount of the bond be adjusted to reimburse the department for foreclosure costs.

(4) The bond or other security must be increased or reduced as provided in this part.

(5) The bond or security remains in effect until the affected land has been reclaimed as provided under the permit and the department has approved the reclamation and released the bond or security. The bond or security may cover only actual affected land and must be increased or reduced to cover only unreclaimed acreages.

(6) If the license of a surety that has issued a bond filed with the department pursuant to this part is suspended or revoked, the operator, within 30 days after receiving notice of the suspension or revocation from the department, shall substitute a good and sufficient bond from another surety licensed to do business in the state or shall submit another type of security pursuant to subsection (3). Upon failure of the operator to make the bond substitution within the 30-day time period, the department shall suspend the permit of the operator to conduct opencut operations upon the land described in the permit until the substitution has been made. If the operator demonstrates in writing that the operator has been pursuing a replacement bond in good faith but additional time is necessary to complete the transaction, the department may grant up to an

additional 60 days for the operator to submit a replacement bond before suspending the permit.

(7) Whenever an operator has completed all of the reclamation requirements under the provisions of this part as to any affected land, the operator shall notify the department of the completed requirements and may request bond release. If the department releases the operator from further obligation regarding any affected land, the bond must be reduced proportionately. The department shall notify the operator and the landowner in writing of the decision on the bond release application."

**Section 8.** Section 82-4-437, MCA, is amended to read:

**"82-4-437. Annual report — fee.** (1) For each ~~permitted~~ *opencut* operation, the operator shall file an annual report on a form furnished by the department. The report must contain the information and be submitted at times provided in rules of the board.

(2) (a) Except as provided in subsection (2)(b), each ~~permitted~~ *opencut* operation shall submit with the annual report a fee of 2.5 cents per cubic yard of ~~material~~ *materials for all operations* mined during the period covered by the report.

(b) ~~Permitted~~ *Opencut* operations that mine, extract, or produce bentonite are not subject to the fee in this section.

*(3) Pursuant to the provisions of 82-4-441, a person who mines materials without a permit in violation of this part shall submit a report and the fee required by subsection (2)(a).*"

Approved April 12, 2013

# CHAPTER NO. 199

[HB 79]

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE IV, SECTION 8, ARTICLE VI, SECTIONS 1, 2, 3, 4, 6, AND 7, AND ARTICLE X, SECTION 4, OF THE MONTANA CONSTITUTION TO CHANGE THE NAME OF THE STATE AUDITOR TO THE COMMISSIONER OF SECURITIES AND INSURANCE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Article IV, section 8, of The Constitution of the State of Montana is amended to read:

**"Section 8. Limitation on terms of office.** (1) The secretary of state or other authorized official shall not certify a candidate's nomination or election to, or print or cause to be printed on any ballot the name of a candidate for, one of the following offices if, at the end of the current term of that office, the candidate will have served in that office or had he not resigned or been recalled would have served in that office:

(a) 8 or more years in any 16-year period as governor, lieutenant governor, secretary of state, ~~state auditor~~ *commissioner of securities and insurance*, attorney general, or superintendent of public instruction;

(b) 8 or more years in any 16-year period as a state representative;

(c) 8 or more years in any 16-year period as a state senator;

(d) 6 or more years in any 12-year period as a member of the U.S. house of representatives; and

(e) 12 or more years in any 24-year period as a member of the U.S. senate.

(2) When computing time served for purposes of subsection (1), the provisions of subsection (1) do not apply to time served in terms that end during or prior to January 1993.

(3) Nothing contained herein shall preclude an otherwise qualified candidate from being certified as nominated or elected by virtue of write-in votes cast for said candidate."

**Section 2.** Article VI, section 1, of The Constitution of the State of Montana is amended to read:

**"Section 1. Officers.** (1) The executive branch includes a governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and ~~auditor~~ *commissioner of securities and insurance*.

(2) Each holds office for a term of four years which begins on the first Monday of January next succeeding election, and until a successor is elected and qualified.

(3) Each shall reside at the seat of government, there keep the public records of his office, and perform such other duties as are provided in this constitution and by law."

**Section 3.** Article VI, section 2, of The Constitution of the State of Montana is amended to read:

**"Section 2. Election.** (1) The governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and ~~auditor~~ *commissioner of securities and insurance* shall be elected by the qualified electors at a general election provided by law.

(2) Each candidate for governor shall file jointly with a candidate for lieutenant governor in primary elections, or so otherwise comply with nomination procedures provided by law that the offices of governor and lieutenant governor are voted upon together in primary and general elections."

**Section 4.** Article VI, section 3, of The Constitution of the State of Montana is amended to read:

**"Section 3. Qualifications.** (1) No person shall be eligible to the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, or ~~auditor~~ *commissioner of securities and insurance* unless he is 25 years of age or older at the time of his election. In addition, each shall be a citizen of the United States who has resided within the state two years next preceding his election.

(2) Any person with the foregoing qualifications is eligible to the office of attorney general if an attorney in good standing admitted to practice law in Montana who has engaged in the active practice thereof for at least five years before election.

(3) The superintendent of public instruction shall have such educational qualifications as are provided by law."

**Section 5.** Article VI, section 4, of The Constitution of the State of Montana is amended to read:

**"Section 4. Duties.** (1) The executive power is vested in the governor who shall see that the laws are faithfully executed. He shall have such other duties as are provided in this constitution and by law.

(2) The lieutenant governor shall perform the duties provided by law and those delegated to him by the governor. No power specifically vested in the governor by this constitution may be delegated to the lieutenant governor.

(3) The secretary of state shall maintain official records of the executive branch and of the acts of the legislature, as provided by law. He shall keep the great seal of the state of Montana and perform any other duties provided by law.

(4) The attorney general is the legal officer of the state and shall have the duties and powers provided by law.

(5) The superintendent of public instruction and the ~~auditor~~ *commissioner of securities and insurance* shall have such duties as are provided by law."

**Section 6.** Article VI, section 6, of The Constitution of the State of Montana is amended to read:

**"Section 6. Vacancy in office.** (1) If the office of lieutenant governor becomes vacant by his succession to the office of governor, or by his death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office for the remainder of the term. If both the elected governor and the elected lieutenant governor become unable to serve in the office of governor, succession to the respective offices shall be as provided by law for the period until the next general election. Then, a governor and lieutenant governor shall be elected to fill the remainder of the original term.

(2) If the office of secretary of state, attorney general, ~~auditor~~ *commissioner of securities and insurance*, or superintendent of public instruction becomes vacant by death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office until the next general election and until a successor is elected and qualified. The person elected to fill a vacancy shall hold the office until the expiration of the term for which his predecessor was elected."

**Section 7.** Article VI, section 7, of The Constitution of the State of Montana is amended to read:

**"Section 7. 20 departments.** All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive branch (except for the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and ~~auditor~~ *commissioner of securities and insurance*) and their respective functions, powers, and duties, shall be allocated by law among not more than 20 principal departments so as to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a department."

**Section 8.** Article X, section 4, of The Constitution of the State of Montana is amended to read:

**"Section 4. Board of land commissioners.** The governor, superintendent of public instruction, ~~auditor~~ *commissioner of securities and insurance*, secretary of state, and attorney general constitute the board of land commissioners. It has the authority to direct, control, lease, exchange, and sell school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be provided by law."

**Section 9. Two-thirds vote required.** Because [sections 1 through 8] are legislative proposals to amend the constitution, Article XIV, section 8, of the Montana constitution requires an affirmative roll call vote of two-thirds of all the members of the legislature, whether one or more bodies, for passage.

**Section 10. Submission to electorate.** [This act] shall be submitted to the qualified electors of Montana at the general election to be held in November 2014 by printing on the ballot the full title of [this act] and the following:

☐ YES on Constitutional Amendment No. ____

☐ NO on Constitutional Amendment No. ____

# CHAPTER NO. 200

[HB 66]

AN ACT ALLOWING THE DEPARTMENT OF REVENUE TO SERVE AND CONSENT TO SERVICE OF NOTICES OF LEVY BY ELECTRONIC MEANS; PROVIDING FOR RULEMAKING AUTHORITY; AND AMENDING SECTIONS 15-1-706 AND 25-13-402, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-1-706, MCA, is amended to read:

**"15-1-706. Execution upon warrant.** (1) Upon receipt of a copy of the filed warrant and notice from the department *by electronic or other means* that the applicable hearing provisions have been complied with, the sheriff or agent authorized to collect the tax shall proceed to execute upon the warrant in the same manner as prescribed for execution upon a judgment.

(2) A notice of levy may be made by means of a certified letter *or, upon written consent of the recipient, by electronic means* by an agent authorized to collect the tax. An agent is not entitled to any fee or compensation in excess of actual expenses incurred in enforcing the warrant.

(3) When issued, a notice of levy has the same force and effect as a writ of execution. A levy upon earnings continues in effect for 120 days or until the judgment is satisfied, whichever occurs first. The levy applies to all pay periods beginning during the 120-day period.

(4) A sheriff or agent shall return a warrant, along with any funds collected, within 90 days of the date of the warrant.

(5) If the warrant is returned not satisfied in full, the department has the same remedies to collect the deficiency as are available for any civil judgment."

**Section 2.** Section 25-13-402, MCA, is amended to read:

**"25-13-402. How writ executed.** (1) (a) The sheriff or levying officer shall, subject to subsections (6) and (7), execute the writ against the property of the judgment debtor not later than 120 days after receipt of the writ by:

(i) levying on a sufficient amount of property if there is sufficient property;

(ii) collecting or selling the things in action; and

(iii) selling the other property and paying to the judgment creditor or the judgment creditor's attorney as much of the proceeds as will satisfy the judgment.

(b) (i) If the third party is a corporation or other legal entity, service must be accomplished by personally serving the writ upon an officer or supervising employee of the third party or upon a department or person designated by the third party or by serving the writ by mail, as provided in subsection (1)(b)(ii).

(ii) Service by mail upon a corporation or other legal entity must be consented to in writing by the corporation or other legal entity and may be made by mailing a copy of the writ to an officer or supervising employee of the third party or to a department or person designated by the third party. Service may be mailed out of state, at the direction of the third party, if the third party processes garnishments or levies from a location outside the state. If service is by mail, it must be accompanied by a notice that the officer or employee receiving the writ

is required to forward the writ to the person responsible for processing the levy for the third party if the officer or employee initially receiving the writ is not the proper party to process the levy. The writ must be considered served on the date and time that the writ is received by the officer, supervising employee, or designee of the third party, but not later than 5 business days after it is mailed.

(c) A levy under subsection (1)(b) is effective when the writ is served by personal service or by mail as provided in subsection (1)(b)(ii).

(2) Any proceeds in excess of the judgment and accruing costs must be returned to the judgment debtor unless otherwise directed by the judgment or order of the court. When the sheriff or levying officer determines that there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs, the sheriff or levying officer shall levy only on the part of the property that the judgment debtor may indicate if the property indicated is sufficient to satisfy the judgment and costs.

(3) With respect to property held by a third party, including but not limited to banks, credit unions, and other financial institutions and those parties identified in 25-13-306, the third party shall respond to the levy based on the assets held at the time of levy. Response must be made within 10 business days following the date of the levy by delivering the assets or payments to the sheriff or levying officer.

(4) Except for perishable property, the sheriff or levying officer shall hold any property or money levied upon for 10 days, excluding weekends and holidays, following notification of execution upon the judgment debtor. After that time, the sheriff or levying officer may sell the property and pay the money to the judgment creditor.

(5) If the first levy is not sufficient to satisfy the writ, the sheriff or levying officer may levy, from time to time and as often as necessary, within the 120 days until the judgment is satisfied or the writ expires.

(6) (a) A levy upon the earnings of a judgment debtor continues in effect for 120 days or until the judgment is satisfied, whichever occurs first. The levy applies to earnings due on or after the date of service through the expiration of the writ. Earnings withheld from a judgment debtor must be remitted to the sheriff or levying officer within 5 days of the day the earnings are withheld.

(b) The sheriff or levying officer shall clearly mark the expiration date upon all served copies of the writ and notice.

(c) Except as provided in subsection (8), multiple levies served under this subsection (6) have priority according to the date and time of service upon the employer.

(d) The return of service on a levy upon the earnings of a judgment debtor is returned in the same manner provided for in 25-13-404.

(7) *(a)* A levy upon a state tax refund or any other funds that are due to the judgment debtor from a Montana state agency continues in effect for 120 days or until the judgment is satisfied, whichever occurs first.

*(b) Upon written consent of the department of revenue, service of the writ upon the department may be accomplished by electronic means.*

*(c)* The levy applies to any funds due on or after the date of service through the expiration of the writ.

*(d)* Payment of funds withheld from a judgment debtor must be remitted to the sheriff or levying officer within 10 days of the date the funds would have been sent to the judgment debtor in the normal course of business. Any levy on state funds is subordinate to the department of revenue's right of offset for

delinquent taxes or other debt as provided in 15-30-2609, 15-30-2629, 15-31-404, 15-36-315, 15-39-106, 15-39-109, 15-68-516, 15-70-110, 15-72-113, Title 17, chapter 4, and 39-51-1307.

(8) This section is not intended to supersede any state or federal laws regarding priority that must be given to certain levies and executions."

**Section 3. Rulemaking.** The department shall adopt rules to define and implement service of process by electronic means where authorized by law.

**Section 4. Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 15, chapter 1, part 7, and the provisions of Title 15, chapter 1, part 7, apply to [section 3].

Approved April 15, 2013

# CHAPTER NO. 201

[HB 84]

AN ACT ESTABLISHING IN STATUTE THE 72-HOUR PRESUMPTIVE ELIGIBILITY PROGRAM FOR ADULT CRISIS STABILIZATION SERVICES THAT IS PROVIDED FOR IN ADMINISTRATIVE RULE; REVISING THE RULE REQUIREMENTS IN ORDER TO ALLOW REIMBURSEMENT FOR TWO PSYCHIATRIC DIAGNOSTIC INTERVIEWS IN A 72-HOUR PERIOD; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Definitions.** As used in [sections 1 through 5], the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Crisis" means a serious, unexpected situation resulting from an individual's apparent mental illness in which the individual's symptoms are of sufficient severity, as determined by a mental health practitioner, to require immediate care to avoid:

(a) jeopardy to the life or health of the individual; or

(b) death or bodily harm to the individual or to others.

(3) "Crisis stabilization" means development and implementation of a short-term intervention to respond to a crisis in order to:

(a) reduce the severity of an individual's symptoms of mental illness; and

(b) attempt to prevent the individual from receiving services in a more restrictive environment.

(4) "Crisis stabilization services" or "services" means the services allowed under [section 3].

(5) "Presumptive eligibility" means a period of up to 72 hours after an individual is found to be in crisis and during which the individual is presumed to be eligible for crisis stabilization services that will be reimbursed by the department.

**Section 2. Purpose — limitations.** (1) (a) The purpose of [sections 1 through 5] is to establish a program through which enrolled providers may be reimbursed by the department when they provide mental health services during a 72-hour period to stabilize an adult who:

(i) is in a mental health crisis; and

(ii) is uninsured or whose insurance does not adequately cover the cost of the services.

(b) Reimbursement for services provided during a presumptive eligibility period is intended to reduce the need for the individual to receive more intensive services in a more restrictive setting.

(2) [Sections 1 through 5] are not intended to establish an entitlement:

(a) for an individual to receive services under the program; or

(b) for a provider to be reimbursed for services delivered to an individual.

(3) The department may determine the duration of services to be reimbursed under the program and the types of providers who may receive reimbursement for services.

(4) The department or its designee may restrict reimbursement based on:

(a) the medical necessity of the services;

(b) availability of appropriate alternative services;

(c) the relative cost of services; or

(d) other relevant factors.

(5) (a) Subject to available funding, the department may suspend or eliminate reimbursement for services or otherwise limit services, benefits, or provider participation in the presumptive eligibility program.

(b) The department shall provide notice of changes to the program at least 10 days in advance of the date that the changes will be made by:

(i) publishing notice in Montana daily newspapers; and

(ii) providing written notice to crisis stabilization providers and other interested parties.

**Section 3. Crisis stabilization services — requirements.** (1) In order to qualify for reimbursement under [sections 1 through 5], crisis stabilization services must be delivered in a safe environment to an individual in crisis as required under this section.

(2) Crisis stabilization services must:

(a) be delivered by an individual or facility that is enrolled with the department to provide services under [sections 1 through 5];

(b) be provided in accordance with a plan for crisis stabilization that meets requirements established by the department by rule;

(c) include a plan for appropriate followup care; and

(d) be medically necessary mental health services that:

(i) are delivered in direct response to a crisis in an effort to stabilize the individual in crisis;

(ii) provide diagnostic clarity;

(iii) are designed to treat symptoms that can be improved during the presumptive eligibility period; and

(iv) provide an appropriate alternative to psychiatric hospitalization.

(3) Crisis stabilization services include but are not limited to:

(a) two psychiatric diagnostic interview examinations during the crisis stabilization period;

(b) coordination of care as defined by the department by rule;

(c) individual psychotherapy;

(d) family psychotherapy conducted with or without the patient;

(e) one-to-one community-based psychiatric rehabilitation and support; and

(f) crisis management services as defined by the department by rule.

**Section 4. Claims and reimbursement — exceptions.** (1) The department shall adopt and make available a fee schedule for crisis stabilization services.

(2) Claims for crisis stabilization services provided pursuant to [sections 1 through 5] must be submitted to the department as provided by rule.

(3) Providers shall accept the amounts payable under this section as payment in full for services delivered to eligible individuals during the presumptive eligibility period.

(4) Services delivered to an individual in crisis may not be reimbursed if:

(a) the services delivered were not approved for reimbursement by the department; or

(b) the provider is not enrolled with the department.

**Section 5. Rulemaking authority.** The department may adopt rules establishing:

(1) limits on the scope and duration of crisis stabilization services, except for reimbursement for two psychiatric diagnostic interviews during the presumptive eligibility period;

(2) requirements for participating providers and their enrollment in the program;

(3) the scope of services that may be reimbursed because they involve coordination or management of care;

(4) the elements of the required plan for crisis stabilization;

(5) procedures for submitting claims for reimbursement for services provided during the presumptive eligibility period;

(6) procedures for the department's review and audit of claims and for recovery of overpayments;

(7) recordkeeping and confidentiality requirements; and

(8) any other requirements needed to carry out the purpose of [sections 1 through 5].

**Section 6. Codification instruction.** [Sections 1 through 5] are intended to be codified as an integral part of Title 53, chapter 21, and the provisions of Title 53, chapter 21, apply to [sections 1 through 5].

**Section 7. Effective date.** [This act] is effective July 1, 2013.

Approved April 15, 2013

## CHAPTER NO. 202

[HB 124]

AN ACT CLARIFYING EXEMPTIONS FOR A SCHOOL DISTRICT AND SPECIAL DISTRICT IN ELECTIONS; EXEMPTING CERTAIN POLITICAL COMMITTEES FROM CAMPAIGN PRACTICES REQUIREMENTS; LIMITING THE CONTRIBUTIONS CERTAIN CANDIDATES AND POLITICAL COMMITTEES MAY ACCEPT IN SCHOOL DISTRICT AND SPECIAL DISTRICT ELECTIONS; AND AMENDING SECTION 13-37-206, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 13-37-206, MCA, is amended to read:

**"13-37-206. Exception for certain school districts and certain special districts.** (1) The provisions of this part, except *13-37-216 and* 13-37-217, do not apply to ~~candidates~~ *a candidate* for the office of trustee of a school district, ~~their~~ *the candidate's* political ~~campaigns~~ *campaign*, ~~and~~ *or a* political ~~committees~~ *committee* organized to support or oppose a school district issue *or a candidate* when the school district is:

(a) a first-class district located in a county having a population of less than 15,000;

(b) a second- or third-class district; or

(c) a county high school district having a student enrollment of less than 2,000.

(2) The provisions of this part, except *13-37-216 and* 13-37-217, do not apply to ~~candidates~~ *a candidate*, ~~their~~ *the candidate's* political ~~campaigns~~ *campaign*, ~~and~~ *or a* political ~~committees~~ *committee* organized to support or oppose an issue *or a candidate* if the candidate is running for or the committee's issue involves a unit of local government authorized by law to perform a single function or a limited number of functions, including but not limited to a conservation district, a weed management district, a fire district, a community college district, a hospital district, an irrigation district, a sewer district, a transportation district, a water district, or any district or other entity formed by interlocal agreement."

Approved April 15, 2013

# CHAPTER NO. 203

[HB 127]

AN ACT REVISING UNEMPLOYMENT INSURANCE TO IMPROVE THE UNEMPLOYMENT INSURANCE SYSTEM'S INTEGRITY; PROVIDING INCENTIVES FOR EMPLOYERS TO PROVIDE TIMELY AND COMPLETE INFORMATION RELATED TO CLAIMS; CLARIFYING THE DISTRIBUTION OF PENALTIES FOR MAKING FALSE STATEMENTS TO OBTAIN OR INCREASE BENEFITS; EXTENDING RULEMAKING AUTHORITY; CLARIFYING INTERACTION OF UNEMPLOYMENT LAWS WITH CERTAIN CHILD SUPPORT LAWS; PROVIDING A LIMIT TO TEMPORARY SEPARATIONS FROM EMPLOYMENT FOR CHILD SUPPORT LAWS; AMENDING SECTIONS 39-51-401, 39-51-1125, 39-51-1212, 39-51-1214, 39-51-3106, 39-51-3201, AND 40-5-901, MCA; AND PROVIDING A CONTINGENT TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Employing unit responsibility to respond to department requests for information — waiver of rights.** (1) An employing unit or its representative shall provide to the department wage, employment, separation, and eligibility information requested by the department in a timely manner as established by rule.

(2) (a) Subject to the provisions of subsection (4), the department shall consider an employing unit, with respect to a specific claim, to have waived its rights as provided in subsection (3) for:

(i) untimely filing information required under subsection (1) without good cause; or

(ii) failing to provide complete answers in response to the department's request for information.

(b) A request from the employing unit or its representative for a hearing without providing the requested information is considered to be a failure to provide a timely or an adequate response as provided in subsection (2)(a).

(3) A waiver of rights provided for under subsection (2) means that the department shall:

(a) consider the employing unit to be no longer eligible as an interested party with respect to the claim; and

(b) deny credit to the employing unit for any resulting erroneous payment to the claimant.

(4) The department shall accept information submitted by an employing unit or its representative after the required period established by rule and before the deadline set by 39-51-2402(3) if the information is related to a separation from employment or concerning a claimant's eligibility for benefits. After accepting the information, the department shall issue a determination or redetermination that must include a decision on whether the employing unit or its representative presented good cause for failure to meet the timely or complete information requirements in subsection (2). For good cause shown, the department may in its determination or redetermination rescind the waiver of rights.

(5) An employing unit that elects to make payments in lieu of contributions pursuant to 39-51-1103 is also subject to the provisions of this section.

**Section 2.** Section 39-51-401, MCA, is amended to read:

**"39-51-401. Unemployment insurance fund — establishment and control.** There is established separate and apart from all public money or funds of this state a fund in the enterprise fund type known as the unemployment insurance fund, which must be administered by the department exclusively for the purposes of this chapter. Any reference to the unemployment insurance fund in the Montana Code Annotated means the unemployment insurance enterprise fund. All money in the fund must be mingled and undivided. This fund consists of:

(1) all contributions collected under this chapter and payments made in lieu of contributions as provided in 39-51-1124 through 39-51-1126;

(2) interest earned upon any money in the fund;

(3) any property or securities acquired through the use of money belonging to the fund;

(4) all earnings of the property or securities acquired by the fund; ~~and~~

(5) all money credited to this state's account in the unemployment trust fund pursuant to ~~sections 903 and 904 of the Social Security Act (42 U.S.C. 1103 and 1104)~~ *42 U.S.C. 1103 and 1104*, as amended*; and*

*(6) 30% of the penalty payments as provided in 39-51-3201*."

**Section 3.** Section 39-51-1125, MCA, is amended to read:

**"39-51-1125. Computation of payments in lieu of contributions.** (1) Employers electing to make payments in lieu of contributions under 39-51-1103 shall pay into the *unemployment insurance* fund *established in 39-51-401* an amount equivalent to the full amount of regular benefits plus the state's share of extended benefits paid to individuals based on wages paid by the employing unit. Governmental entities shall pay the full amount of extended benefits.

(2) When the base period wages of an individual include wages from more than one employer, the amount to be paid into the *unemployment insurance* fund with respect to the benefits paid to the individual must be prorated among the liable employers in proportion to the wages paid to the individual by each employer during the base period.

(3) The amount of payment required from employers must be ascertained by the department monthly and becomes due and payable by the employer quarterly as directed in this chapter. Penalty and interest for delinquency must be assessed to employers as specified in 39-51-1301.

(4) ~~A~~ *Subject to the provisions of [section 1], a* payment may not be required under this section with respect to benefits paid to an individual if the qualified employer continues to provide employment to the individual without a reduction in hours or wages."

**Section 4.** Section 39-51-1212, MCA, is amended to read:

**"39-51-1212. Experience rating for governmental entities.** (1) The rates of governmental entities who have accumulated experience rating credits must be adjusted annually as follows with each governmental entity assigned a rate based upon:

(a) its benefit cost experience, to be arrived at by dividing the total sum of benefits charged to the employer's account for all past periods that are completed transactions by December 31 by total wages from date of subjectivity of the employing unit through December 31; and

(b) the benefit cost for all past years of governmental entities electing to pay contributions compared with total payrolls reported for all past years by these governmental entities used as a median, with the rates fixed using the median so that the rates will, when applied to the total annual payroll for subject governmental entities, yield total paid contributions equaling approximately the total benefit costs.

(2) New governmental entities electing to pay contributions must be assigned the median rate for the year in which they become subject.

(3) The minimum rate may not be less than 0.06% and the maximum rate may not be greater than 1.5%. The rates are to be graduated at one-tenth intervals.

(4) If benefit charges exceed contributions paid in the last 2 completed state fiscal years, governmental entities' rates must be adjusted by increasing all rates to the next higher schedule.

(5) The computed rate is effective July 1 of each year.

(6) Governmental entities must be charged for their share of the total benefits paid to a claimant if the governmental entity contributed wages during the claimant's base period. The benefit charged must be based on the percentage of wages paid by the governmental entity as compared to the total wages paid by all employers in the claimant's base period.

(7) ~~The~~ *Subject to the provisions of [section 1], the* department may relieve benefit charges paid by a governmental employer with respect to benefits paid to an individual if the governmental employer continues to provide employment to the individual without a reduction in hours or wages."

**Section 5.** Section 39-51-1214, MCA, is amended to read:

**"39-51-1214. Benefit payments chargeable to employer experience rating accounts.** (1) Except for cost reimbursement, benefits paid must be charged to the account of each of the claimant's base period employers. The

benefit charged must be based on the percentage of wages paid by the employer as compared to the total wages paid by all employers in the claimant's base period.

(2) The account of an employer with an experience rating as provided in 39-51-1213 may not be charged with respect to benefits paid under the following situations:

(a) if paid to a worker who terminated services voluntarily without good cause attributable to a covered employer or who had been discharged for misconduct in connection with services;

(b) if paid in accordance with the extended benefit program triggered by either national or state indicators;

(c) *subject to the provisions of [section 1],* if the base period employer continues to provide employment with no reduction in hours or wages;

(d) if benefits are paid to claimants who are in training approved under 39-51-2307;

(e) if the base period employer is ordered to military service, as defined in 10-1-1003;

(f) if benefits are paid to an employee laid off as the result of the return to work of a permanent employee who:

(i) was called to military service, as defined in 10-1-1003; and

(ii) had completed 4 or more weeks of military service and exercised reemployment rights under Title 10, chapter 1, part 10; or

(g) if the worker separates from employment as a result of domestic violence, a sexual assault, or stalking pursuant to 39-51-2111."

**Section 6.** Section 39-51-3106, MCA, is amended to read:

**"39-51-3106. Child support interception of unemployment benefits.** (1) For purposes of this section, the following definitions apply:

(a) "Child support obligations" includes only obligations that are being enforced pursuant to a plan described in ~~section 454 of the Social Security Act (42 U.S.C. 654)~~ *42 U.S.C. 654* that has been approved by the secretary of health and human services under ~~Part D of Title IV of the Social Security Act (now Subchapter IV)~~ *Title 42, Chapter 7, Subchapter IV, Part D of the United States Code*.

(b) "State or local child support enforcement agency" means any agency of a state or political subdivision operating pursuant to a plan provided for in subsection (1)(a).

(c) "Unemployment benefits" means any benefits payable under the Montana unemployment insurance law, including amounts payable by the department pursuant to an agreement under any federal law providing for benefits, assistance, or allowances with respect to unemployment. *These benefits are subject to the provisions in Title 40, chapter 5, part 9.*

(2) An individual filing a new claim for unemployment benefits shall, at the time of filing the claim, disclose whether ~~or not~~ the individual owes child support obligations. If an individual discloses that the individual owes child support obligations and the individual is determined to be eligible for unemployment benefits, the department shall notify the state or local child support enforcement agency enforcing the obligation that the individual has been determined to be eligible for unemployment benefits.

(3) The department shall deduct and withhold from any unemployment benefits payable to an individual owing child support obligations:

(a) the amount specified by the individual to the department to be deducted and withheld under this subsection if neither subsection (3)(b) nor (3)(c) is applicable;

(b) the amount, if any, determined pursuant to an agreement submitted to the department under ~~section 454(19)(B)(i) of the Social Security Act (42 U.S.C. 654(19)(B)(i))~~ *42 U.S.C. 654(19)(B)(i)* by the state or local child support enforcement agency, unless subsection (3)(c) is applicable; or

(c) any amount otherwise required to be deducted and withheld from unemployment benefits pursuant to legal process~~, as that term is defined in section 462(e) of the Social Security Act (42 U.S.C. 662(e))~~, properly served upon the department.

(4) The department shall pay any amount deducted and withheld under subsection (3) to the appropriate state or local child support enforcement agency.

(5) Deductions may be made pursuant to this section only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the department under this section.

(6) Any amount deducted and withheld under subsection (3) must be treated as if it were paid to the individual as unemployment benefits and paid by the individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations."

**Section 7.** Section 39-51-3201, MCA, is amended to read:

**"39-51-3201. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — administrative penalty and remedy.** (1) (a) A person who makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact in order to obtain or increase any benefit or other payment under this chapter or under an employment security law of any other state or territory or the federal government, either for the individual or for any other person, is:

(i) disqualified for benefits for a period of not more than 52 weeks, beginning with the first compensable week following the date of determination by the department, with the length of time of the disqualification to be determined by the department in accordance with the severity of each case; and

(ii) required to repay to the department, pursuant to the provisions of 39-51-3206, a sum equal to the amount wrongfully received by the individual, plus ~~the department may assess~~ a *department-assessed* penalty ~~not to exceed 100%~~ *equal to 50%* of the fraudulently obtained benefits. *The department-assessed penalty incorporates the 15% penalty required under 42 U.S.C. 503(a).*

(b) ~~Future benefits~~ *Benefits* may not be used to offset the penalty due. ~~However, the~~ *The* individual *subject to this section* is not required to repay any amount wrongfully obtained more than 5 years prior to the date of the department's determination that the individual made false statements, willful nondisclosure, or misrepresentation.

(2) (a) An individual, other than a person with a bona fide disability that prevents the individual from making or filing a claim for benefits on the individual's own behalf, who allows or authorizes another person to make or file a claim for benefits on the individual's behalf without designating that person as an authorized agent is subject to the penalties prescribed in subsection (1).

(b) The designation of a person who is not an attorney as an individual's agent must be in writing and signed by the individual. The designation must specify:

(i) the period of time covered by the designation; and

(ii) any limits on the agent's authority.

(c) Any action taken or information provided by an agent has the same effect as an action taken or information provided by the individual.

(3) ~~All~~ *Of the* money ~~accruing~~ *collected* from the ~~penalty~~ *penalties* under subsection (1)(a)*, 70%* must be deposited in the ~~federal special revenue~~ account *provided for in 39-51-406. The remaining 30% of the collected penalties must be deposited in the unemployment insurance fund provided for in 39-51-401.* Money deposited in ~~that~~ *the* account *provided for in 39-51-406* may be appropriated to the department to be used to detect and collect unpaid taxes and overpayments of benefits to the extent that federal grant revenues are inadequate for these purposes. Money in the account *provided for in 39-51-406* not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year."

**Section 8.** Section 40-5-901, MCA, is amended to read:

**"40-5-901. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

[(1) "Date of hire" means the first day that an employee starts work for which the employee is owed compensation by the payor of income.]

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

[(3) (a) "Employee" means a person 18 years of age or older who performs labor in this state for an employer in this state for compensation and for whom the employer withholds federal or state tax liabilities from the employee's compensation.

(b) The term does not include an employee of a federal or state agency performing intelligence or counterintelligence functions if the head of the agency has determined that reporting pursuant to 40-5-922 with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.]

(4) "Employer" means a person, firm, corporation, association, governmental entity, or labor organization that engages an employee for compensation and withholds federal or state tax liabilities from the employee's compensation.

(5) "Foreign support order" means a support order entered or last modified by a court or administrative agency of another state, the District of Columbia, the Commonwealth of Puerto Rico, a territory or insular possession subject to the jurisdiction of the United States, an Indian tribe, or a foreign jurisdiction.

(6) "Income withholding" generally means procedures for directing a payor to withhold from an obligor's income an amount sufficient to pay the obligor's support obligation and to defray arrears that are or may become due. Specifically:

(a) when preceded by "IV-D", income withholding means the procedures set out in Title 40, chapter 5, part 4; and

(b) when preceded by "non IV-D", income withholding means those cases in which an immediate income-withholding order is issued under 40-5-315 after January 1, 1994.

(7) "Interstate case" means a case referred to the department by, or from the department to, another IV-D agency.

[(8) "Labor organization" means a labor union, union local, union affiliate, or union hiring hall.]

(9) "Obligee" means the payee under a support order or a person or agency entitled to receive support payments.

(10) "Obligor" means a person who is obligated to pay support under a support order.

(11) "Payor" means:

(a) an employer or person engaged in a trade or business in this state who engages an employee for compensation; or

(b) when used in context with income withholding, means a person, firm, corporation, association, employer, trustee, political subdivision, state agency, or agent paying income to an obligor on a periodic basis.

[(12) "Rehire" means the first day, following a termination of employment, that an employee begins to again perform work or provide services for a payor. Termination of employment does not include temporary separations *of less than 60 days* from employment, such as unpaid medical leave, an unpaid leave of absence, or a temporary or seasonal layoff.]

(13) "Support order" means a judgment, decree, or order, whether temporary or final, that:

(a) is for the benefit of a child or a state agency;

(b) provides for monetary support, health care, arrearages, or reimbursement;

(c) may include related costs and fees, interest, and similar other relief; and

(d) may include an order for maintenance or other support to be paid to a child's custodial parent.

(14) "IV-D" or "IV-D case" means a case in which the department is providing services under the provisions of Title IV-D of the Social Security Act and the regulations promulgated under that act. A IV-D case also includes a case in which the department is collecting a support debt assigned to this or another state or an Indian tribe under Title IV-D. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)"

**Section 9. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

**Section 10. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 39, chapter 51, part 6, and the provisions of Title 39, chapter 51, part 6, apply to [section 1].

**Section 11. Contingent termination.** [Section 8] terminates on occurrence of the contingency contained in section 1, Chapter 27, Laws of 1999.

Approved April 15, 2013

## CHAPTER NO. 204

[HB 170]

AN ACT CREATING A 3-DAY NONRESIDENT UPLAND GAME BIRD LICENSE; ESTABLISHING TERMS OF USE; GRANTING RULEMAKING AUTHORITY; PROVIDING FOR DISPOSITION OF REVENUE; AMENDING

SECTIONS 87-1-246 AND 87-1-270, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Class B-2—3-day nonresident upland game bird license.** (1) Except as otherwise provided and subject to subsection (2), a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of a fee of $50, receive a Class B-2 license that entitles a holder who is 12 years of age or older to hunt upland game birds for 3 calendar days as indicated on the license and possess the carcasses of upland game birds as authorized by the commission.

(2) A Class B-2 license may not be used to hunt or take:

(a) ring-necked pheasants during the opening week of that season; or

(b) sage grouse at any time.

**Section 2.** Section 87-1-246, MCA, is amended to read:

**"87-1-246. Funding of upland game bird enhancement program.** The amount of money specified in this section from the sale of each hunting license listed must be used exclusively by the department to preserve and enhance upland game bird populations in Montana in accordance with 87-1-246 through 87-1-249, subject to appropriation by the legislature:

(1) Class A-1, resident upland game bird, $2;

(2) Class B-1, nonresident upland game bird, $23;

*(3) Class B-2, 3-day nonresident upland game bird, $10;*

~~(3)~~*(4)* Class AAA, combination sports, $2; and

~~(4)~~*(5)* Class B-10, nonresident big game combination, $23."

**Section 3.** Section 87-1-270, MCA, is amended to read:

**"87-1-270. Allocation of license fees to hunting access enhancement program.** (1) Except as provided in 87-2-805(1)(b)(ii), the amount of $55 from the sale of each Class B-1 nonresident upland game bird license *and $25 from the sale of each Class B-2 3-day nonresident upland game bird license* must be used by the department to encourage public access to private lands for hunting purposes in accordance with 87-1-265 through 87-1-267.

(2) The resident hunting access enhancement fee in 87-2-202(3)(c) and the nonresident hunting access enhancement fee in 87-2-202(3)(d) must be used by the department to encourage public access to private and public lands for hunting purposes in accordance with 87-1-265 through 87-1-267."

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, part 4, and the provisions of Title 87, chapter 2, part 4, apply to [section 1].

**Section 5. Effective date.** [This act] is effective on passage and approval.

**Section 6. Termination.** [This act] terminates June 30, 2019.

Approved April 15, 2013

## CHAPTER NO. 205

[HB 388]

AN ACT LIMITING LOANS FROM MONEY REPAID TO THE DISTRESSED WOOD PRODUCTS INDUSTRY REVOLVING LOAN ACCOUNT TO

INDIVIDUALS OR SMALL BUSINESSES RELATED TO WOOD PROCESSING; AND AMENDING SECTION 90-1-501, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 90-1-501, MCA, is amended to read:

**"90-1-501. Revolving loan program for distressed wood products industry — finding.** (1) Due to the current, well-documented decline in the wood products industry in Montana, the legislature finds that there is a need to assist the Montana wood products industry as a whole through a revolving loan program.

(2) There is a special revenue account called the distressed wood products industry revolving loan account to the credit of the department of commerce.

(3) (a) The distressed wood products industry revolving loan account consists of money deposited into the account from an appropriation in Chapter 489, Laws of 2009, and money from any other source. Any interest earned by the account must be deposited into the account and used to sustain the program.

(b) Loan repayments and any interest generated from loan repayments ~~may~~ *must* be used as revolving loans for the wood products industry ~~or for primary sector businesses statewide and are not subject to the provisions of this section~~ *and are subject to the provisions of subsections (5) through (7)*.

(4) In any biennium, up to 36% of the funds in the distressed wood products industry revolving loan account, not to exceed $2.7 million, may be used as matching funds to secure additional federal money. ~~Except as provided in subsection (3)(b), federal~~ *Federal* funds must be deposited in a federal special revenue account and used for loans in accordance with this part. State matching funds must be deposited in a special revenue account called the distressed wood products matching fund.

(5) (a) Funds from the distressed wood products industry revolving loan account may be loaned to:

(i) individuals, including private contractors related to the wood products industry; or

(ii) businesses defined as small businesses pursuant to the regulations promulgated by the United States small business administration pursuant to 13 CFR 121, et seq.

(b) Loans made pursuant to this subsection (5) must be made to individuals or small businesses that are part of the critical, primary wood-processing infrastructure and have suffered economic hardships.

(6) Loans must be used to sustain and grow the wood products industry in Montana. Loans may be used for:

(a) the purchase or lease of land or equipment;

(b) updating infrastructure, including retrofitting of infrastructure to facilitate new uses;

(c) working capital;

(d) debt service;

(e) matching funds for grants or other loans that comply with the intent of this section; or

(f) any other use the department determines would sustain and grow the wood products industry.

(7) (a) A loan may not exceed $2 million, and the loan must be repaid within 15 years.

(b) A loan recipient may apply for another loan pursuant to this section 2 years or more after the date the previous loan was approved."

Approved April 15, 2013

# CHAPTER NO. 206

[HB 451]

AN ACT REVISING LAWS GOVERNING FIREWARDENS; ALLOWING FOR APPOINTMENT OF A COUNTY FIREWARDEN; ESTABLISHING A COUNTY FIREWARDEN'S DUTIES; REMOVING COUNTY CONFIRMATION OF FIREWARDENS APPOINTED BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AND AMENDING SECTION 76-13-104, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. County firewarden authorized — duties.** (1) A county governing body may appoint a county firewarden.

(2) A county firewarden appointed under this section shall demonstrate knowledge in local, state, and federal wildland fire policy and wildland fire suppression.

(3) A county firewarden shall act as a liaison between local, state, and federal agencies to coordinate training and wildland fire prevention, detection, suppression, investigation, and mitigation. The county governing body may establish any additional duties that the governing body determines to be necessary.

(4) The position of county firewarden is distinct from the position of a county rural fire chief appointed under 7-33-2203 and from a firewarden appointed by the department of natural resources and conservation under 76-13-104.

**Section 2.** Section 76-13-104, MCA, is amended to read:

**"76-13-104. Functions of department — rulemaking.** (1) (a) The department has the duty to ensure the protection of land under state and private ownership and to suppress wildfires on land under state and private ownership. Fees may not be collected for this purpose except fees provided for in 76-13-201.

(b) The department may engage in wildfire initial attack on all lands if the fire threatens to move onto state or private land.

(2) (a) The department shall adopt rules to protect the natural resources of the state, especially the natural resources owned by the state, from destruction by fire and for that purpose, in declared emergencies, may employ personnel and incur other expenses when necessary.

(b) The department may adopt and enforce reasonable rules for the purpose of enforcing and accomplishing the provisions and purposes of part 2 and this part.

(3) The duty imposed on the department under this section is not exclusive to the department and does not absolve private property owners or local governmental fire agencies organized under Title 7, chapter 33, from any fire protection or suppression responsibilities.

(4) The department may give technical and practical advice concerning forest, range, water, and soil conservation and the establishment and maintenance of woodlots, windbreaks, shelterbelts, and fire protection.

(5) The department shall cooperate with all public and other agencies in the development, protection, and conservation of the forest, range, and water resources in this state.

(6) The department shall establish and maintain wildland fire control training programs.

(7) The department shall appoint firewardens in the number and localities that it considers necessary~~, subject to confirmation by the local county government,~~ and shall adopt rules prescribing the qualifications and duties of firewardens that are in addition to those provided in 76-13-116.

(8) The department shall adopt rules addressing development within the wildland-urban interface, including but not limited to:

(a) best practices for development within the wildland-urban interface; and

(b) criteria for providing grant and loan assistance to local government entities to encourage adoption of best practices for development within the wildland-urban interface."

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 7, chapter 33, part 22, and the provisions of Title 7, chapter 33, part 22, apply to [section 1].

Approved April 15, 2013

# CHAPTER NO. 207

[HB 465]

AN ACT INCREASING AND ESTABLISHING CERTAIN FEES CHARGED BY COUNTY CLERKS; AMENDING SECTION 7-4-2631, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-4-2631, MCA, is amended to read:

**"7-4-2631. Fees of county clerk.** (1) Except as provided in 7-2-2803(4), 7-4-2632, and 7-4-2637, the county clerks shall charge, for the use of their respective counties:

(a) for filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, $5;

(b) for filing of subdivision and townsite plats, ~~$5~~ *$10* plus:

(i) for each lot up to and including 100, 50 cents;

(ii) for each additional lot in excess of 100, 25 cents;

(c) for filing certificates of surveys and amendments thereto, ~~$5~~ *$25* plus 50 cents per tract or lot;

*(d) for each page of a document required to be recorded with a subdivision, townsite plat, or certificate of survey, $1;*

~~(d)~~*(e)* for a copy of a record or paper:

(i) for the first page of any document, 50 cents, and 25 cents for each subsequent page; and

(ii) for each certification with seal affixed, $2;

~~(e)~~*(f)* for searching an index record of files of the office for each year when required in abstracting or otherwise, 50 cents;

~~(f)~~*(g)* for administering an oath with certificate and seal, no charge;

~~(g)~~*(h)* for taking and certifying an acknowledgment, with seal affixed, for signature to it, no charge;

~~(h)~~*(i)* for filing, indexing, or other services provided for by Title 30, chapter 9A, part 5, the fees prescribed under those sections;

~~(i)~~*(j)* for recording each stock subscription and contract, stock certificate, and articles of incorporation for water users' associations, $3;

~~(j)~~*(k)* for filing a copy of notarial commission and issuing a certificate of official character of such notary public, $2;

~~(k)~~*(l)* for each certified copy of a birth certificate, $5, and for each certified copy of a death certificate, $3;

~~(l)~~*(m)* for filing, recording, or indexing any other instrument not expressly provided for in this section or 7-4-2632, the same fee provided in this section or 7-4-2632 for a similar service.

(2) The county clerks shall charge, for the use of their respective counties, the fee as provided in 7-4-2632 for recording and indexing the following:

(a) each certificate of location of a quartz or placer mining claim or millsite claim, including a certificate that the instrument has been recorded with the seal affixed; and

(b) each affidavit of annual labor on a mining claim, including a certificate that the instrument has been recorded with the seal affixed.

(3) State agencies submitting documents to be put of record shall pay the fees provided for in this section. If a state agency or political subdivision has requested an account with the county clerk, any applicable fees must be paid on a periodic basis."

**Section 2. Effective date.** [This act] is effective July 1, 2013.

Approved April 15, 2013

# CHAPTER NO. 208

[HB 502]

AN ACT GENERALLY REVISING LAWS RELATED TO FARM MUTUAL INSURANCE; PROVIDING A MANAGING GENERAL AGENT WAIVER TO CERTAIN PERSONS HANDLING RISK FOR FARM MUTUAL INSURERS; ALLOWING FARM MUTUAL INSURERS TO RETAIN A PORTION OF THEIR LIABILITY LIMIT ON RISKS; AND AMENDING SECTIONS 33-2-1501 AND 33-4-502, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Managing general agent waiver — exceptions.** (1) The commissioner may waive the requirements for a managing general agent under Title 33, chapter 2, part 16, for a person managing the property and liability business of a resident domestic farm mutual insurer.

(2) The commissioner may revoke the waiver if the commissioner determines through examination that licensure of the person as a managing general agent is necessary.

(3) A person serving as a managing general agent for crop hail insurance may not receive a waiver under this section.

**Section 2.** Section 33-2-1501, MCA, is amended to read:

**"33-2-1501. Definitions.** As used in parts 15 through 17 of this chapter, the following definitions apply:

(1) "Accredited state" means a state in which the department of insurance or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the national association of insurance commissioners.

(2) "Actuary" means a person who is a member in good standing of the American academy of actuaries.

(3) "Captive insurer" means:

(a) an insurer that is owned by another entity and whose exclusive purpose is to insure risks of the parent entity and its affiliates; or

(b) in the case of a group or association, an insurer that is owned by the member insureds and whose exclusive purpose is to insure risks to member insureds and their affiliates.

(4) "Control" or "controlled" has the meaning defined in 33-2-1101.

(5) "Controlled insurer" means an authorized insurer that is controlled, directly or indirectly, by a producer.

(6) "Controlling person" means a person, firm, association, or corporation that has the power to direct or cause to be directed the management, control, or activities of a reinsurance intermediary.

(7) "Controlling producer" means a producer who, directly or indirectly, controls an insurer.

(8) (a) "Insurer" means any person, firm, association, or corporation authorized, under Title 33, chapter 2, part 1, to transact insurance business in this state.

(b) With regard to part 15 only, the following are not insurers:

(i) risk retention groups as defined in:

(A) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986);

(B) the Liability Risk Retention Act of 1986, 15 U.S.C. 3901, et seq.; or

(C) Title 33, chapter 11, part 1;

(ii) residual market pools and joint underwriting authorities or associations; or

(iii) captive insurers.

(c) With regard to parts 16 and 17, captive insurers are not insurers but captive risk retention groups are insurers.

(9) "Licensed producer" means a producer or reinsurance intermediary licensed pursuant to this title.

(10) (a) "Managing general agent" means a person who:

(i) manages all or part of the insurance business of an insurer and acts as an agent for the insurer;

(ii) either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross written premiums equal to or more than 5% of the policyholder surplus in any quarter or year; and

(iii) engages in one or more of the following activities on the business produced:

(A) adjustment or payment of claims in excess of an amount determined by the commissioner; or

(B) negotiation of reinsurance on behalf of the insurer.

(b) Notwithstanding the provisions of subsection (10)(a), the following persons are not considered managing general agents:

(i) an employee of the insurer;

(ii) a manager of the United States branch of an alien insurer;

(iii) an underwriting manager who, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, is subject to Title 33, chapter 2, part 11, and whose compensation is not based solely on the value of premiums written; ~~or~~

(iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or an interinsurance exchange under powers of attorney*;*

*(v) a person managing the property and liability business of a resident domestic farm mutual insurer who has been granted a managing general agent waiver under [section 1]; or*

*(vi) a director of a resident domestic farm mutual insurer who adjusts claims and participates in the underwriting process*.

(11) "NAIC" means the national association of insurance commissioners.

(12) "Producer" means an insurance producer or reinsurance intermediary authorized or licensed pursuant to this title.

(13) (a) "Qualified United States financial institution" means a financial institution that:

(i) is organized or licensed under the laws of the United States or any state;

(ii) is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies and that either:

(A) is determined by the commissioner to meet the standards of financial condition and standing considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit are acceptable to the commissioner; or

(B) is eligible to act as a fiduciary of a trust or has been granted authority to operate with fiduciary powers.

(b) For purposes of this definition, the commissioner may by rule adopt standards of financial condition and standing that may be developed from time to time by the securities valuation office of the NAIC.

(14) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager.

(15) "Reinsurance intermediary-broker" means a person, other than an officer or employee of the ceding insurer, who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.

(16) (a) "Reinsurance intermediary-manager" means a person who:

(i) has authority to bind or who manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office; and

(ii) acts as an agent for the reinsurer, whether known as a reinsurance intermediary-manager, manager, or other similar term.

(b) The following persons are not considered reinsurance intermediary-managers with respect to the reinsurer:

(i) an employee of the reinsurer;

(ii) a manager of the United States branch of an alien reinsurer;

(iii) an underwriting manager who, pursuant to contract, manages all of the reinsurance operations of the reinsurer, is under common control with the reinsurer, is subject to Title 33, chapter 2, part 11, and whose compensation is not based on the volume of premiums written; or

(iv) a person who manages groups, associations, pools, or organizations of insurers that engage in joint underwriting or joint reinsurance and that are subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

(17) "Reinsurer" means a person, firm, association, or corporation licensed in this state under this title as an insurer with authority to assume reinsurance.

(18) "Underwrite" means the authority to accept or reject risk on behalf of the insurer."

**Section 3.** Section 33-4-502, MCA, is amended to read:

**"33-4-502. Limit of risk — retention of liability.** (1) Except as provided in subsection (3), the maximum amount of insurance that an insurer may retain on a single risk, after deduction of applicable reinsurance, may not exceed the greater of 10% of the admitted assets of the insurer or $50,000.

(2) For the purposes of this section, a "single risk" as to insurance against fire and hazards other than windstorm, earthquake, or other catastrophic perils includes all properties insured by the same insurer that are reasonably susceptible to loss or damage from the same fire or the same occurrence of another hazard insured against.

(3) A farm mutual insurer:

(a) that insures any portion of a liability risk shall maintain a surplus of at least $50,000;

(b) that retains any portion of a liability risk shall obtain reinsurance on that liability insurance with an insurer that meets the criteria established in 33-4-503~~, and the~~. *A* farm mutual insurer's ~~maximum aggregate liability for incurred losses on liability coverage retained for any calendar year or contract year may not exceed the smaller of $200,000 or 20% of the farm mutual insurer's surplus as of December 31 of the preceding year~~ *retention on a single liability risk may not exceed the greater of 3% of admitted assets or $50,000.*~~; and~~

(c) may not retain liability risk or risk resulting from insuring growing crops against loss or damage from hail or other hazards greater than the proportional share of each limit of liability in the following schedule:

| Surplus as of the Preceding December 31: | Proportional Share of Each Limit of Liability Retained: |
|---|---|
| $1,000,000 or greater | 15% |
| $800,000 to $999,999 | 12% |
| $600,000 to $799,999 | 9% |
| $400,000 to $599,999 | 6% |
| $200,000 to $399,999 | 3% |
| Under $200,000 | 0%" |

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 33, chapter 4, part 3, and the provisions of Title 33, chapter 4, part 3, apply to [section 1].

Approved April 15, 2013

# CHAPTER NO. 209

[SB 11]

AN ACT GENERALLY REVISING CRIMINAL JUSTICE SYSTEM LAWS RELATED TO OFFENDERS WITH MENTAL ILLNESS; REVISING REQUIREMENTS FOR PAROLE AND PROBATION OFFICERS AND MEMBERS OF THE BOARD OF PARDONS AND PAROLE; REVISING LAWS RELATED TO CONDITIONS OF RELEASE, BAIL, AND PAROLE OF OFFENDERS WITH MENTAL ILLNESS; REVISING THE DEFINITION OF "MENTAL DISEASE OR DEFECT"; AMENDING SECTIONS 2-15-2302, 46-9-108, 46-9-301, 46-14-101, 46-23-201, AND 46-23-1003, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-15-2302, MCA, is amended to read:

**"2-15-2302. Board of pardons and parole — composition — allocation — quasi-judicial.** (1) There is a board of pardons and parole.

(2) *(a)* The board consists of seven members, each of whom must have knowledge of American Indian culture and problems gained through training as required by rules adopted by the board. One member must be an enrolled member of a state-recognized or federally recognized Indian tribe located within the boundaries of the state of Montana. The tribal member may not be required to hear and act on all American Indian applications before the board.

*(b) Board members must have knowledge of serious mental illness and recovery from serious mental illness gained through annual training as required by rules adopted by the board. One member must be a mental health professional as defined in 53-21-102.*

*(c)* ~~Members of the board~~ *Board members* must possess academic training that has qualified them for professional practice in a field such as criminology, education, *medicine,* psychiatry, psychology, law, social work, sociology, *psychiatric nursing,* or guidance and counseling. Related work experience in the areas listed may be substituted for these educational requirements.

(3) The governor shall attempt to establish geographic balance among board members.

(4) Board members shall serve staggered 4-year terms. The governor shall appoint three members in January of the first year of the governor's term, two members in January of the second year of the governor's term, and two members in January of the third year of the governor's term. The provisions of 2-15-124(2) do not apply to the board.

(5) The terms of board members run with the position, and if a vacancy occurs, the governor shall appoint a person to fill the unexpired portion of the term.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(7) The board is designated as a quasi-judicial board for purposes of 2-15-124, except board members must be compensated as provided by legislative appropriation and the terms of board members must be staggered as provided in subsection (4).

(8) A favorable vote of at least a majority of the seven members of the board is required to implement any policy, procedure, or administrative rule. A favorable vote of at least a majority of the members of a hearing panel, as defined in

46-23-103, is required to make decisions regarding parole and executive clemency, and the provisions of 2-15-124(8) do not apply."

**Section 2.** Section 46-9-108, MCA, is amended to read:

**"46-9-108. Conditions upon defendant's release — notice to victim of stalker's release.** (1) The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including but not limited to the following conditions:

(a) the defendant may not commit an offense during the period of release;

(b) the defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any person or the community;

(c) the defendant shall maintain employment or, if unemployed, actively seek employment;

(d) the defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;

(e) the defendant shall avoid all contact with:

(i) an alleged victim of the crime, including in a case of partner or family member assault the restrictions contained in a no contact order issued under 45-5-209; and

(ii) any potential witness who may testify concerning the offense;

(f) the defendant shall report on a regular basis to a designated agency or individual, pretrial services agency, or other appropriate individual;

(g) the defendant shall comply with a specified curfew;

(h) the defendant may not possess a firearm, destructive device, or other dangerous weapon;

(i) the defendant may not use or possess alcohol or use or possess any dangerous drug or other controlled substance without a legal prescription;

*(j) if applicable, the defendant shall comply with either a mental health or chemical dependency treatment program, or both;*

~~(j)~~*(k)* the defendant shall furnish bail in accordance with 46-9-401; or

~~(k)~~*(l)* the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.

(2) The court may not impose an unreasonable condition that results in pretrial detention of the defendant and shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party.

(3) Whenever a person accused of a violation of 45-5-206, 45-5-220, or 45-5-626 is admitted to bail, the detention center shall, as soon as possible under the circumstances, make one and if necessary more reasonable attempts, by means that include but are not limited to certified mail, to notify the alleged victim or, if the alleged victim is a minor, the alleged victim's parent or guardian of the accused's release."

**Section 3.** Section 46-9-301, MCA, is amended to read:

**"46-9-301. Determining ~~the~~ amount of bail.** In all cases in which bail is determined to be necessary, bail must be reasonable in amount and the amount must be:

(1) sufficient to ensure the presence of the defendant in a pending criminal proceeding;

(2) sufficient to ensure compliance with the conditions set forth in the bail;

(3) sufficient to protect any person from bodily injury;

(4) not oppressive;

(5) commensurate with the nature of the offense charged;

(6) considerate of the financial ability of the accused;

(7) considerate of the defendant's prior record;

(8) considerate of the length of time the defendant has resided in the community and of the defendant's ties to the community;

(9) considerate of the defendant's family relationships and ties;

*(10) considerate of the defendant's mental health status and of the defendant's participation in a mental health treatment program;*

~~(10)~~*(11)* considerate of the defendant's employment status; and

~~(11)~~*(12)* sufficient to include the charge imposed in 46-18-236."

**Section 4.** Section 46-14-101, MCA, is amended to read:

**"46-14-101. Mental disease or defect — purpose — definition.** (1) The purpose of this section is to provide a legal standard of mental disease or defect under which the information gained from examination of the defendant, pursuant to part 2 of this chapter, regarding a defendant's mental condition is applied. The court shall apply this standard:

(a) in any determination regarding:

(i) a defendant's fitness to proceed and stand trial;

(ii) whether the defendant had, at the time that the offense was committed, a particular state of mind that is an essential element of the offense; and

(b) at sentencing when a defendant has been convicted on a verdict of guilty or a plea of guilty or nolo contendere and claims that at the time of commission of the offense for which the defendant was convicted, the defendant was unable to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirements of the law.

(2) (a) As used in this chapter, "mental disease or defect" means an organic, mental, or emotional disorder that is manifested by a substantial disturbance in behavior, feeling, thinking, or judgment to such an extent that the person requires care, treatment, and rehabilitation.

(b) The term "mental disease or defect" does not include *but may co-occur with one or more of the following*:

(i) an abnormality manifested only by repeated criminal or other antisocial behavior;

(ii) a developmental disability, as defined in 53-20-102;

(iii) drug or alcohol intoxication; or

(iv) drug or alcohol addiction."

**Section 5.** Section 46-23-201, MCA, is amended to read:

**"46-23-201. Prisoners eligible for nonmedical parole — rulemaking.** (1) Subject to the restrictions contained in subsections (2) through (5) and when in the board's opinion there is reasonable probability that a prisoner can be

released without detriment to the prisoner or to the community, the board may release on nonmedical parole by appropriate order any person who is:

(a) confined in a state prison;

(b) sentenced to the state prison and confined in a prerelease center;

(c) sentenced to prison as an adult pursuant to 41-5-206 and confined in a youth correctional facility;

(d) sentenced to be committed to the custody of the director of the department of public health and human services as provided in 46-14-312 and confined in the Montana state hospital, the Montana developmental center, or the Montana mental health nursing care center.

(2) Persons under sentence of death, persons sentenced to the department who have been placed by the department in a state prison temporarily for assessment or sanctioning, and persons serving sentences imposed under 46-18-202(2) or 46-18-219 may not be granted a nonmedical parole.

(3) ~~A~~ *A* prisoner serving a time sentence may not be paroled under this section until the prisoner has served at least one-fourth of the prisoner's full term.

(4) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served 30 years.

(5) A parole may be ordered under this section only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen.

*(6) For a prisoner sentenced to be committed to the custody of the director of the department of public health and human services as provided in 46-14-312:*

*(a) the board may require as a condition of parole participation in a supervised mental health treatment program to ensure that the prisoner continues to treat the prisoner's mental disorder; and*

*(b) parole may be revoked if a prisoner fails to comply with the terms of a supervised mental health treatment program described in subsection (6)(a), in which case the prisoner must be recommitted to the custody of the director of the department of public health and human services pursuant to 46-14-312.*

~~(6)~~*(7)* If a hearing panel denies parole, it may order that the prisoner serve up to 6 years before a hearing panel conducts another hearing or review. The board shall adopt by administrative rule a process by which a prisoner may request an earlier hearing or review."

**Section 6.** Section 46-23-1003, MCA, is amended to read:

**"46-23-1003. Qualifications of probation and parole officers.** (1) Probation and parole officers must have at least a college degree and some formal training in behavioral sciences. Exceptions to this rule must be approved by the department. Related work experience in the areas listed in 2-15-2302(2)*(c)* may be substituted for educational requirements at the rate of 1 year of experience for 9 months formal education if approved by the department. All present employees are exempt from this requirement but are encouraged to further their education at the earliest opportunity.

(2) Each probation and parole officer shall, through a source approved by the officer's employer, obtain 16 hours a year of training in subjects relating to the powers and duties of probation officers*, at least 1 hour of which must include training on serious mental illness and recovery from serious mental illness*. In addition, each probation and parole officer must receive training in accordance

with standards adopted by the Montana public safety officer standards and training council established in 2-15-2029. The training must be at the Montana law enforcement academy unless the council finds that training at some other place is more appropriate."

**Section 7. Applicability.** [Section 1] applies to appointments made on or after January 1, 2014.

Approved April 15, 2013

# CHAPTER NO. 210

[SB 18]

AN ACT PROVIDING FOR THE OWNERSHIP OF A CHANNEL AND FORMER CHANNEL OF A NAVIGABLE RIVER OR STREAM FOLLOWING AN AVULSION; CREATING A PROCESS TO CLARIFY OWNERSHIP AFTER AN AVULSION OF ABANDONED BEDS OF RIVERS AND STREAMS NOT ADJUDICATED FOR TITLE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 77-1-102, MCA; REPEALING SECTION 70-18-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Sudden change in river or stream.** (1) If a river or stream abandons its channel and forms a new channel as a result of an avulsion and if the segment of the river or stream where the avulsion occurred has been adjudicated as navigable for title purposes by a court of competent jurisdiction, the land constituting the old channel belongs to the owner of the shores through which the old channel flowed or, if the shores are owned by different owners, to the owners on two sides, divided by an imaginary line drawn through the middle of the old river or stream channel.

(2) An affected owner seeking title to the land described in subsection (1) shall notify the department of natural resources and conservation and describe with particularity the event that resulted in the formation of the new channel. The affected owner shall also provide the department with a survey and any other information the department considers necessary.

(3) Upon receiving the information from the affected owner, the department shall verify the information and determine whether the new channel was created by an avulsion. If the department determines that the new channel was formed by an avulsion and the old channel is abandoned, the department shall recommend to the board of land commissioners that the state and the affected owner exchange quitclaim deeds for the properties affected by the avulsion.

(4) Upon approval by the board and the exchange of quitclaim deeds, the affected owner shall notify the department of revenue and the clerk and recorder of the county in which the affected property is located of the change in ownership and submit any information necessary to update the applicable ownership records.

(5) The land constituting the old channel is subject to property taxation payable by the affected owner from the date the quitclaim deeds are exchanged.

(6) The department of natural resources and conservation and the department of revenue may adopt rules to implement the provisions of this section.

(7) Ownership remains unchanged for land that constituted an island before the avulsion occurred and that is not wholly surrounded by water after the river abandoned the old channel.

(8) (a) If an avulsion occurs on a segment of a river or stream that has not been adjudicated as navigable for title purposes by a court of competent jurisdiction, an owner may seek to clarify title to the property affected by the avulsion.

(b) To seek title clarification, the affected owner shall submit the information to the department as required by subsection (2).

(c) If the department determines that the new channel was formed by an avulsion and that the old channel is abandoned, the department shall recommend to the board that the board issue a disclaimer of interest for the abandoned channel.

(d) Upon approval by the board, the affected owner may cite the disclaimer of interest to support an ownership claim in a quiet title action filed in a district court.

(e) Upon obtaining a quiet title judgment on the abandoned channel, the affected owner shall notify the department of revenue and the clerk and recorder of the county in which the affected property is located of the change in ownership and submit any information necessary to update the applicable ownership records.

(f) The land constituting the old channel is subject to property taxation payable by the affected owner from the date of the quiet title judgement.

(9) For purposes of this section:

(a) "abandoned bed" means a riverbed, streambed, or lakebed with no water over it at the low-water mark;

(b) "avulsion" means a sudden and perceptible change in the course of a river or stream that creates a new river or stream channel and that results in an abandoned bed along the course of the old channel.

**Section 2.** Section 77-1-102, MCA, is amended to read:

**"77-1-102. Ownership of certain islands~~, abandoned riverbeds,~~ and riverbeds.** (1) ~~The~~ *The* following lands belong to the state of Montana to be held in trust for the benefit of the public schools of the state:

~~(a) all lands lying and being in and forming a part of the abandoned bed of any navigable stream or lake in this state and lying between the meandered lines of the stream or lake as shown by the United States survey of the stream or lake;~~

~~(b)~~*(a)* all islands existing in the navigable streams or lakes in this state that have not been surveyed by the government of the United States; and

~~(c)~~*(b)* all lands that at any time in the past constituted an island or part of an island in a navigable stream or lake~~, except those lands that are occupied by and belong to the adjacent landowners as accretions~~.

*(2) This section does not apply to lands that are occupied by and belong to riparian landowners if the lands were formed by accretions.*

~~(2)~~*(3)* State-owned riverbeds are public lands of the state that are held in trust for the people as provided in Article X, section 11, of the Montana constitution."

**Section 3. Repealer.** The following section of the Montana Code Annotated is repealed:

70-18-202. Sudden removal of bank — right of owner to reclaim.

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 70, chapter 18, part 2, and the provisions of Title 70, chapter 18, part 2, apply to [section 1].

**Section 5. Effective date.** [This act] is effective on passage and approval.

**Section 6. Applicability.** [This act] applies to avulsions occurring on or after [the effective date of this act].

Approved April 15, 2013

# CHAPTER NO. 211

[SB 120]

AN ACT INCREASING FROM ONE TO THREE THE NUMBER OF CERTAIN LIQUOR LICENSES THAT AN INDIVIDUAL MAY POSSESS FOR ON-PREMISES CONSUMPTION OR OFF-PREMISES CONSUMPTION; LIMITING EXPANSION TO OWNERSHIP OF 50% OR LESS OF THE ALLOWABLE LICENSES IN A QUOTA AREA; AND AMENDING SECTIONS 16-4-205 AND 16-4-401, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 16-4-205, MCA, is amended to read:

**"16-4-205. ~~Limit one license to person~~ *Limitation on number of licenses* — business in name of licensee.** (1) ~~A~~ *Subject to the provisions of 16-4-401, a* person may not be issued more than ~~one~~ *three* all-beverages ~~license in any year~~ *licenses*, with the exception of a secured party issued an additional all-beverages license as the result of a default. A secured party shall transfer ownership of any additional all-beverages license within 180 days of issuance. A business may not be carried on under any license issued under this chapter except in the name of the licensee.

(2) The provisions of this section do not apply to licenses held by the Montana heritage preservation and development commission under the provisions of 16-4-305."

**Section 2.** Section 16-4-401, MCA, is amended to read:

**"16-4-401. License as privilege — criteria for decision on application.** (1) A license under this code is a privilege that the state may grant to an applicant and is not a right to which any applicant is entitled.

(2) Except as provided in 16-4-311 and subsection (6) of this section *and subject to subsection (8)*, in the case of a license that permits on-premises consumption, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) if the applicant is an individual:

(i) *and the application is approved,* the applicant will not possess an ownership interest in more than ~~one establishment~~ *three establishments* licensed under this chapter for all-beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant or any member of the applicant's immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

(v) the applicant is not under 19 years of age;

(b) if the applicant is a publicly traded corporation:

(i) each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a). If no single owner owns more than 10% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (2)(a).

(ii) each individual who has control over the operation of the license meets the requirements for an individual applicant listed in subsection (2)(a);

(iii) each person who shares in the profits or liabilities of a license meets the requirements for an individual applicant listed in subsection (2)(a). This subsection (2)(b)(iii) does not apply to a shareholder of a corporation who owns less than 10% of the outstanding stock in that corporation *except that the provisions of subsection (8) apply*.

(iv) the corporation is authorized to do business in Montana;

(c) if the applicant is a privately held corporation:

(i) each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a). If no single owner owns more than 10% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (2)(a), and the owners of 51% of the outstanding stock must meet the requirements of subsection (2)(a).

(ii) each individual who has control over the operation of the license meets the requirements for an individual applicant listed in subsection (2)(a);

(iii) each person who shares in the profits or liabilities of a license meets the requirements for an individual applicant listed in subsection (2)(a). This subsection (2)(c)(iii) does not apply to a shareholder of a corporation who owns less than 10% of the outstanding stock in that corporation *except that the provisions of subsection (8) apply*.

(iv) the corporation is authorized to do business in Montana;

(d) if the applicant is a general partnership, each partner must meet the requirements of subsection (2)(a);

(e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the requirements of subsection (2)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all limited partners must meet the requirements of subsection (2)(a).

(f) if the applicant is a limited liability company, all managing members and those members whose ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (2)(a). If no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of subsection (2)(a).

(3) In the case of a license that permits only off-premises consumption *and subject to subsection (8)*, the department shall find in every case in which it

makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) if the applicant is an individual:

(i) *and the application is approved,* the applicant will not possess an ownership interest in more than ~~one establishment~~ *three establishments* licensed under this chapter for all-beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant or any member of the applicant's immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

(iv) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, the applicant's rights have been restored;

(v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

(vi) the applicant is not under 19 years of age;

(b) if the applicant is a publicly traded corporation:

(i) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (3)(a). If no single owner owns more than 10% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (3)(a).

(ii) the corporation is authorized to do business in Montana;

(c) if the applicant is a privately held corporation:

(i) each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (3)(a). If no single owner owns more than 10% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (3)(a), and the owners of 51% of the outstanding stock must meet the requirements of subsection (3)(a).

(ii) the corporation is authorized to do business in Montana;

(d) if the applicant is a general partnership, each partner must meet the requirements of subsection (3)(a);

(e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the requirements of subsection (3)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all limited partners must meet the requirements of subsection (3)(a).

(f) if the applicant is a limited liability company, all managing members and those members whose ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (3)(a). If no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of subsection (3)(a).

(4) Subject to 16-4-311, in the case of a license that permits the manufacture, importing, or wholesaling of an alcoholic beverage, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) if the applicant is an individual:

(i) the applicant has no ownership interest in any establishment licensed under this chapter for retail alcoholic beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, the applicant's rights have been restored;

(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments;

(v) the applicant is not under 19 years of age; and

(vi) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or controlled by a manufacturer of an alcoholic beverage;

(b) if the applicant is a publicly traded corporation:

(i) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (4)(a). If no single owner owns more than 10% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (4)(a).

(ii) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or controlled by a manufacturer of an alcoholic beverage; and

(iii) the corporation is authorized to do business in Montana;

(c) if the applicant is a privately held corporation:

(i) each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (4)(a). If no single owner owns more than 10% of the outstanding stock, the applicant must designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (4)(a) and the owners of 51% of the outstanding stock must meet the requirements of subsection (4)(a).

(ii) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or controlled by a manufacturer of an alcoholic beverage; and

(iii) the corporation is authorized to do business in Montana;

(d) if the applicant is a general partnership, each partner must meet the requirements of subsection (4)(a);

(e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the requirements of subsection (4)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all limited partners must meet the requirements of subsection (4)(a).

(f) if the applicant is a limited liability company, all managing members and those members whose ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (4)(a). If no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of subsection (4)(a).

(5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b) apply separately to each class of stock.

(6) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant to 16-4-302.

(7) An applicant's source of funding must be from a suitable source. A lender or other source of money or credit may be found unsuitable if the source:

(a) is a person whose prior financial or other activities or criminal record:

(i) poses a threat to the public interest of the state;

(ii) poses a threat to the effective regulation and control of alcoholic beverages; or

(iii) creates a danger of illegal practices, methods, or activities in the conduct of the licensed business; or

(b) has been convicted of a felony offense within 5 years of the date of application or is on probation or parole or under deferred prosecution for committing a felony offense.

*(8) (a) An individual applying for an all-beverages license or having any ownership interest in an entity applying for an all-beverages license may not, if the application were to be approved, own an interest in more than half the total number of allowable all-beverages licenses in any quota area described in 16-4-201.*

*(b) If two or more individuals through business or family relationship share in the profits or liabilities of all-beverages licenses, the aggregate number of licenses in which they share profits or liabilities may not exceed half the total number of allowable all-beverages licenses in the specific quota area in which the all-beverages licenses will be held.*"

**Section 3. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Approved April 15, 2013

# CHAPTER NO. 212

[SB 122]

AN ACT REVISING NONPARTISAN PRIMARY ELECTION LAWS FOR POLITICAL SUBDIVISIONS; REQUIRING AN ELECTION ADMINISTRATOR TO CONDUCT LOCAL NONPARTISAN PRIMARY ELECTIONS ONLY WHEN THE NUMBER OF CANDIDATES SEEKING THE OFFICE IS SUFFICIENT; AND AMENDING SECTION 13-14-115, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 13-14-115, MCA, is amended to read:

**"13-14-115. Preparation and distribution of nonpartisan primary ballots — determination on conducting primary.** (1) The election administrators shall arrange, prepare, and distribute primary ballots for nonpartisan offices, designated "nonpartisan primary ballots". The ballots must be arranged and prepared as provided in 13-10-209 and be without political designation.

(2) (a) The election administrator of a political subdivision may determine that a local nonpartisan portion of a primary election need not be held if:

(i) the number of candidates for an office exceeds three times the number to be elected to that office in no more than one-half of the offices on the ballot; and

(ii) the number of candidates in excess of three times the number to be elected is not more than one for any office on the ballot.

*(b) If the election administrator determines that a municipal primary election held pursuant to 13-1-107(2) must be held pursuant to subsection (2)(a) for a local nonpartisan office, the election administrator shall conduct the election only for the local nonpartisan offices that have candidates filed in excess of two times the number to be elected to that office.*

~~(b)~~*(c)* If the election administrator determines that a primary election need not be held pursuant to subsection (2)(a) *or (2)(b) for a local nonpartisan office*, the administrator shall give notice to the governing body that a primary election will not be held *for that office*.

(3) The governing body may require that a primary election be held *for a local nonpartisan office* if it passes a resolution not more than 10 days after the close of filing by candidates for election stating that a primary election must be held *for that office*."

Approved April 15, 2013

# CHAPTER NO. 213

[SB 136]

AN ACT INCREASING THE AMOUNT OF FUNDS AVAILABLE FROM THE PERMANENT COAL TAX TRUST FUND FOR THE MONTANA VETERANS' HOME LOAN MORTGAGE PROGRAM; AMENDING SECTIONS 17-6-308 AND 90-6-603, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 17-6-308, MCA, is amended to read:

**"17-6-308. Authorized investments.** (1) Except as provided in subsections (2) through (5) and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules adopted by the board.

(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The board may agree in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must be on terms and conditions determined by the board and must be repaid from revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

(3) The board shall manage the seed capital and research and development loan portfolios created by the former Montana board of science and technology development. The board shall establish an appropriate repayment schedule for all outstanding research and development loans made to the university system. The board is the successor in interest to all agreements, contracts, loans, notes, or other instruments entered into by the Montana board of science and technology development as part of the seed capital and research and development loan portfolios, except agreements, contracts, loans, notes, or other instruments funded with coal tax permanent trust funds. The board shall administer the agreements, contracts, loans, notes, or other instruments funded with coal tax permanent trust funds. As loans made by the former Montana board of science and technology development are repaid, the board shall deposit

the proceeds or loans made from the coal severance tax trust fund in the coal severance tax permanent fund until all investments are paid back with 7% interest.

(4) The board shall allow the Montana facility finance authority to administer $15 million of the permanent coal tax trust fund for capital projects. Until the authority makes a loan pursuant to the provisions of Title 90, chapter 7, the funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As loans for capital projects made pursuant to this subsection are repaid, the principal and interest payments on the loans must be deposited in the coal severance tax permanent fund until all principal and interest have been repaid. The board and the authority shall calculate the amount of the interest charge. Individual loan amounts may not exceed 10% of the amount administered under this subsection.

(5) The board shall allow the board of housing to administer ~~$15~~ *$30* million of the permanent coal tax trust fund for the purposes of the Montana veterans' home loan mortgage program provided for in Title 90, chapter 6, part 6.

(6) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations.

(7) All repayments of proceeds pursuant to subsection (3) of investments made from the coal severance tax trust fund must be deposited in the coal severance tax permanent fund."

**Section 2.** Section 90-6-603, MCA, is amended to read:

**"90-6-603. Veterans' home loan mortgage program created — use of coal tax trust fund money.** (1) There is a Montana veterans' home loan mortgage program under the direction and management of the board for eligible veterans who are first-time home buyers.

(2) The board of investments shall allow the board to administer ~~$15~~ *$30* million of the permanent coal tax trust fund for the purpose of the program. Until the board uses money in the trust fund to purchase a mortgage loan from a participating financial institution pursuant to this part, the money under the administration of the board must remain invested by the board of investments. As a loan made pursuant to this part is repaid, the principal payments on the loan must be deposited in the trust fund until all of the principal of the loan is repaid. Interest received on the loan may be used by a participating financial institution and the board, in amounts determined by the board in accordance with 90-6-605, to pay for the origination and servicing of a loan by a participating financial institution and to pay the reasonable costs of the board for the administration of the program. After payment of associated expenses, interest received on the loan must be deposited into the trust fund.

(3) Interest on a home mortgage loan made pursuant to this part must be charged at 1% less than the federal national mortgage association's delivery rate or 1% lower than the lowest interest rate charged by the board for the purposes of other home loan mortgage programs administered by the board, whichever is less. If the federal national mortgage association's rate becomes unavailable, the board shall use another similar rate for the purposes of this subsection. The board may not make a direct loan to an eligible veteran."

**Section 3. Effective date.** [This act] is effective July 1, 2013.

Approved April 15, 2013

# CHAPTER NO. 214

[SB 239]

AN ACT GENERALLY REVISING TAX INCREMENT FINANCING DISTRICT LAWS; PROVIDING FOR CREATION OF TARGETED ECONOMIC DEVELOPMENT DISTRICTS; ALLOWING COUNTIES TO CREATE TARGETED ECONOMIC DEVELOPMENT DISTRICTS AND TO USE TAX INCREMENT FINANCING; REMOVING PROVISIONS FOR CREATION OF AND BONDING IN TECHNOLOGY DISTRICTS, AEROSPACE TRANSPORTATION AND TECHNOLOGY DISTRICTS, AND INDUSTRIAL DISTRICTS; AMENDING SECTIONS 7-15-4282, 7-15-4283, 7-15-4284, 7-15-4285, 7-15-4286, 7-15-4287, 7-15-4288, 7-15-4289, 7-15-4290, 7-15-4291, 7-15-4292, 7-15-4293, 7-15-4294, 7-15-4301, 7-15-4302, 7-15-4304, 7-15-4305, 7-15-4306, 7-15-4322, AND 7-15-4324, MCA; REPEALING SECTIONS 7-15-4295, 7-15-4296, 7-15-4297, 7-15-4298, 7-15-4299, AND 17-5-820, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 4] may be cited as the "Targeted Economic Development District Act".

**Section 2. Legislative findings — purpose.** The legislature finds and declares that:

(1) infrastructure-deficient areas exist in the local governments of the state and constitute a serious impediment to the development of infrastructure-intensive, value-adding economic development in Montana;

(2) local governments lack sufficient capital to rectify the infrastructure shortage in infrastructure-deficient areas, thus impeding their ability to achieve economic growth through the development of value-adding industries;

(3) the creation of infrastructure in support of value-adding economic development is a matter of state policy and state concern because the state and its local governments will continue to suffer economic dislocation due to the lack of value-adding industries; and

(4) the state's tax increment financing laws should be used to encourage the creation of areas in which needed infrastructure for value-adding industries could be developed.

**Section 3. Targeted economic development districts.** (1) A local government may, by ordinance and following a public hearing, authorize the creation of a targeted economic development district in support of value-adding economic development projects. The purpose of the district is the development of infrastructure to encourage the location and retention of value-adding projects in the state.

(2) A targeted economic development district:

(a) must consist of a continuous area with an accurately described boundary that is large enough to host a diversified tenant base of multiple independent tenants;

(b) must be zoned for use in accordance with the area growth policy, as defined in 76-1-103;

(c) may not comprise any property included within an existing tax increment financing district;

(d) must, prior to its creation, be found to be deficient in infrastructure improvements as stated in the resolution of necessity adopted under [section 4];

(e) must, prior to its creation, have in place a comprehensive development plan adopted by the local governments that ensures that the district can host a diversified tenant base of multiple independent tenants; and

(f) may not be designed to serve the needs of a single district tenant or group of nonindependent tenants.

(3) The local government may use tax increment financing pursuant to the provisions of 7-15-4282 through 7-15-4294 for the targeted economic development district. If the local government uses tax increment financing, the use of and purpose for tax increment financing must be specified in the comprehensive development plan required in subsection (2)(e).

(4) For the purposes of [sections 1 through 4]:

(a) "secondary value-added products or commodities" means products or commodities that are manufactured, processed, produced, or created by changing the form of raw materials or intermediate products into more valuable products or commodities that are capable of being sold or traded in interstate commerce;

(b) "secondary value-adding industry" means a business that produces secondary value-added products or commodities or a business or organization that is engaged in technology-based operations within Montana that, through the employment of knowledge or labor, adds value to a product, process, or export service resulting in the creation of new wealth.

**Section 4. Resolution of necessity required for targeted economic development district.** A local government may not exercise the powers provided in part 43 or this part unless it has adopted a resolution of necessity finding that:

(1) one or more infrastructure-deficient areas exist in the local government; and

(2) the infrastructure improvement of the area is necessary for the welfare of the residents of the local government.

**Section 5.** Section 7-15-4282, MCA, is amended to read:

**"7-15-4282. Authorization for tax increment financing.** (1) ~~Any~~ *An* urban renewal plan as defined in 7-15-4206~~, industrial district ordinance adopted pursuant to 7-15-4299, technology district ordinance adopted pursuant to 7-15-4295, or aerospace transportation and technology district ordinance adopted pursuant to 7-15-4296~~ *or a targeted economic development district comprehensive development plan created as provided in [section 3]* may contain a provision or be amended to contain a provision for the segregation and application of tax increments as provided in 7-15-4282 through ~~7-15-4299~~ *7-15-4294*.

(2) The tax increment financing provision must take into account the effect on the county and school districts that include ~~municipal~~ *local government* territory."

**Section 6.** Section 7-15-4283, MCA, is amended to read:

**"7-15-4283. Definitions related to tax increment financing.** For purposes of 7-15-4282 through ~~7-15-4299~~ *7-15-4294 and [sections 1 through 4]*, the following definitions apply unless otherwise provided or indicated by the context:

(1) "Actual taxable value" means the taxable value of *all* taxable property at any time, as calculated from the ~~last equalized assessment roll~~ *property tax record*.

~~(2) "Aerospace transportation and technology district" means a tax increment financing aerospace transportation and technology district created pursuant to 7-15-4296.~~

~~(3) "Aerospace transportation and technology infrastructure development project" means a project undertaken within or for an aerospace transportation and technology district that consists of any of the activities authorized by 7-15-4288.~~

~~(4)~~*(2)* "Base taxable value" means the actual taxable value of all taxable property within an urban renewal area~~, industrial district, technology district, or aerospace transportation and technology district~~ *or targeted economic development district as it appears on the property tax record* prior to the effective date of a tax increment financing provision. This value may be adjusted as provided in 7-15-4287 or 7-15-4293.

~~(5)~~*(3)* "Incremental taxable value" means the amount, if any, by which the actual taxable value at any time exceeds the base taxable value of all *taxable* property within an urban renewal area~~, industrial district, technology district, or aerospace transportation and technology district subject to taxation~~ *or targeted economic development district*.

~~(6) "Industrial district" means a tax increment financing industrial district created pursuant to 7-15-4297 through 7-15-4299.~~

~~(7) "Industrial infrastructure development project" means a project undertaken within or for an industrial district that consists of any of the activities authorized by 7-15-4288.~~

~~(8) "Municipality" means any incorporated city or town, county, or city-county consolidated local government for the purposes of:~~

~~(a) an industrial district operating pursuant to 7-15-4282 through 7-15-4294 and Title 7, chapter 15, part 43;~~

~~(b) a technology district operating pursuant to 7-15-4282 through 7-15-4294 and Title 7, chapter 15, part 43; or~~

~~(c) an aerospace transportation and technology district operating pursuant to 7-15-4282 through 7-15-4294 and Title 7, chapter 15, part 43.~~

*(4) "Local government", for the purposes of a targeted economic development district, means any incorporated city or town, a county, or a city-county consolidated local government.*

*(5) "Targeted economic development district" means a district created pursuant to [sections 1 through 4].*

~~(9)~~*(6)* "Tax increment" means the collections realized from extending the tax levies, expressed in mills, of all taxing bodies in which the urban renewal area~~,~~ ~~industrial district, technology district, aerospace transportation and technology~~ *or targeted economic development* district~~,~~ or a part of ~~an~~ *the* area or district is located against the incremental taxable value.

~~(10)~~*(7)* "Tax increment provision" means a provision for the segregation and application of tax increments as authorized by 7-15-4282 through ~~7-15-4299~~ *7-15-4294*.

~~(11)~~*(8)* "Taxes" means all taxes levied by a taxing body against property on an ad valorem basis.

~~(12)~~*(9)* "Taxing body" means any incorporated city or town, county, city-county consolidated local government, school district, or other political subdivision or governmental unit of the state, including the state, that levies taxes against property within the urban renewal area~~, industrial district,~~

~~technology district, or an aerospace transportation and technology~~ *or targeted economic development* district.

~~(13) "Technology district" means a tax increment financing district created pursuant to 7-15-4295.~~

~~(14) "Technology infrastructure development project" means a project undertaken within or for a technology district that consists of any of the activities authorized by 7-15-4288.~~"

**Section 7.** Section 7-15-4284, MCA, is amended to read:

**"7-15-4284. Filing of tax increment provisions plan or district ordinance.** (1) The clerk of the ~~municipality~~ *local government* shall ~~file~~ *provide* a certified copy of *the ordinance creating* each urban renewal plan~~, industrial district ordinance, technology district ordinance, or aerospace transportation and technology district ordinance or~~ *or targeted economic development district comprehensive development plan and* an amendment to ~~any of them~~ *either of the plans* containing a tax increment provision ~~with~~ *to* the department of revenue.

(2) A certified copy of each plan, ordinance, or amendment must also be filed with the clerk or other appropriate officer of each of the affected taxing bodies."

**Section 8.** Section 7-15-4285, MCA, is amended to read:

**"7-15-4285. Determination and report of original, actual, and incremental taxable values.** The department of revenue shall, upon receipt of a qualified tax increment provision and each succeeding year, calculate and report to the ~~municipality~~ *local government* and to any other affected taxing body in accordance with Title 15, chapter 10, part 2, the base, actual, and incremental taxable values of the property."

**Section 9.** Section 7-15-4286, MCA, is amended to read:

**"7-15-4286. Procedure to determine and disburse tax increment.** (1) Mill rates of taxing bodies for taxes levied after the effective date of the tax increment provision must be calculated on the basis of the sum of the taxable value, as shown by the last equalized assessment roll, of all taxable property located outside the urban renewal area~~, industrial district, technology district, or aerospace transportation and technology~~ *or targeted economic development* district and the base taxable value of all taxable property located within the area or district. The mill rate determined must be levied against the sum of the actual taxable value of all taxable property located within as well as outside the area or district.

(2) (a) The tax increment, if any, received in each year from the levy of the combined mill rates of all the affected taxing bodies against the incremental taxable value within the area or district, except for the university system mills levied and assessed against property, must be paid into a special fund held by the treasurer of the ~~municipality~~ *local government* and used as provided in 7-15-4282 through ~~7-15-4299~~ *7-15-4294*.

(b) The balance of the taxes collected in each year must be paid to each of the taxing bodies as otherwise provided by law."

**Section 10.** Section 7-15-4287, MCA, is amended to read:

**"7-15-4287. Provision for use of portion of tax increment.** (1) At the time of adoption of a tax increment provision or at any time subsequent thereto, the governing body of the ~~municipality~~ *local government* may provide that a portion of the tax increment from the incremental taxable value ~~shall~~ be released from segregation by an adjustment of the base taxable value, provided that:

(a) all principal and interest then due on bonds for which the tax increment has been pledged ~~has~~ *have* been fully paid; and

(b) the tax increment resulting from the smaller incremental value is determined by the governing body to be sufficient to pay all principal and interest due later on the bonds.

(2) The adjusted base value determined under subsection (1) ~~shall~~ *must* be reported by the clerk to the officers and taxing bodies to which the increment provision is reported.

(3) Thereafter, the adjusted base value is used in determining the mill rates of affected taxing bodies unless the tax increment resulting from the adjustment is determined to be insufficient for this purpose. In this case, the governing body ~~must~~ *shall* reduce the base value to the amount originally determined or to a higher amount necessary to provide tax increments sufficient to pay all principal and interest due on the bonds."

**Section 11.** Section 7-15-4288, MCA, is amended to read:

**"7-15-4288. Costs that may be paid by tax increment financing.** The tax increments may be used by the ~~municipality~~ *local government* to pay the following costs of or incurred in connection with an urban renewal ~~project, industrial infrastructure development project, technology infrastructure development project, or aerospace transportation and technology infrastructure development project~~ *area or targeted economic development district as identified in the urban renewal plan or targeted economic development district comprehensive development plan*:

(1) land acquisition;

(2) demolition and removal of structures;

(3) relocation of occupants;

(4) the acquisition, construction, and improvement of *public improvements or* infrastructure, ~~industrial infrastructure, technology infrastructure, or aerospace transportation and technology infrastructure that includes~~ *including* streets, roads, curbs, gutters, sidewalks, pedestrian malls, alleys, parking lots and offstreet parking facilities, sewers, sewer lines, sewage treatment facilities, storm sewers, waterlines, waterways, water treatment facilities, natural gas lines, electrical lines, telecommunications lines, rail lines, rail spurs, bridges, ~~spaceports for reusable launch vehicles with associated runways and launch, recovery, fuel manufacturing, and cargo holding facilities,~~ publicly owned buildings, and any public improvements authorized by Title 7, chapter 12, parts 41 through 45; Title 7, chapter 13, parts 42 and 43; and Title 7, chapter 14, part 47, and items of personal property to be used in connection with improvements for which the foregoing costs may be incurred;

(5) costs incurred in connection with the redevelopment activities allowed under 7-15-4233;

(6) acquisition of infrastructure-deficient areas or portions of areas;

(7) administrative costs associated with the management of the urban renewal area~~, industrial district, technology district, or aerospace transportation and technology~~ *or targeted economic development* district;

(8) assemblage of land for development or redevelopment by private enterprise or public agencies, including sale, initial leasing, or retention by the ~~municipality~~ *local government* itself at its fair value;

(9) the compilation and analysis of pertinent information required to adequately determine the needs of ~~an urban renewal project in an urban~~

~~renewal area, the infrastructure needs of secondary, value-adding industries in the industrial district, the needs of a technology infrastructure development project in the technology district, or the needs of an aerospace transportation and technology infrastructure development project in the aerospace transportation and technology~~ *the urban renewal area or targeted economic development* district;

(10) the connection of the urban renewal area~~, industrial district, technology district, or aerospace transportation and technology~~ *or targeted economic development* district to existing infrastructure outside the *area or* district;

(11) the provision of direct assistance~~, through industrial infrastructure development projects, technology infrastructure development projects, or aerospace transportation and technology infrastructure development projects, to secondary,~~ *to secondary* value-adding industries to assist in meeting their infrastructure and land needs within the *area or* district; and

(12) the acquisition, construction, or improvement of facilities or equipment for reducing, preventing, abating, or eliminating pollution."

**Section 12.** Section 7-15-4289, MCA, is amended to read:

**"7-15-4289. Use of tax increments for bond payments.** The tax increment may be pledged to the payment of the principal of premiums, if any, and interest on bonds ~~which~~ *that* the ~~municipality~~ *local government* may issue for the purpose of providing funds to pay ~~such~~ *those* costs."

**Section 13.** Section 7-15-4290, MCA, is amended to read:

**"7-15-4290. Use of property taxes and other revenue for payment of bonds.** (1) (a) The tax increment derived from an urban renewal area may be pledged for the payment of revenue bonds issued for urban renewal projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay urban renewal costs described in 7-15-4288 and 7-15-4289.

(b) The tax increment derived from ~~an industrial~~ *a targeted economic development* district may be pledged for the payment of revenue bonds issued for ~~industrial infrastructure~~ *targeted economic* development *district* projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay ~~industrial~~ *targeted economic development* district costs described in 7-15-4288 and 7-15-4289.

~~(c) The tax increment derived from a technology district may be pledged for the payment of revenue bonds issued for technology infrastructure development projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay technology district costs described in 7-15-4288 and 7-15-4289.~~

~~(d) The tax increment derived from an aerospace transportation and technology district may be pledged for the payment of revenue bonds issued for aerospace transportation and technology infrastructure development projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay aerospace transportation and technology district costs described in 7-15-4288 and 7-15-4289.~~

(2) A ~~municipality~~ *local government* issuing bonds pursuant to subsection (1) may, by resolution of its governing body, enter into a covenant for the security of the bondholders, detailing the calculation and adjustment of the tax increment and the taxable value on which it is based and, after a public hearing, pledging or appropriating other revenue of the ~~municipality~~ *local government*, except property taxes prohibited by subsection (3), to the payment of the bonds if collections of the tax increment are insufficient.

(3) Property taxes, except the tax increment derived from property within the area or district and tax collections used to pay for services provided to the ~~municipality~~ *local government* by a project, may not be applied to the payment of bonds issued pursuant to 7-15-4301 for which a tax increment has been pledged.

(4) If applicable, the ~~municipality~~ *local government* shall specify whether the bonds are tax credit bonds as provided in 17-5-117, recovery zone economic development bonds or recovery zone facility bonds as provided in 7-7-140, or qualified energy conservation bonds as provided in 7-7-141."

**Section 14.** Section 7-15-4291, MCA, is amended to read:

**"7-15-4291. Agreements to remit unused portion of tax increments.** The ~~municipality~~ *local government* may also enter into agreements with the other affected taxing bodies to remit to ~~such~~ *those* taxing bodies any portion of the annual tax increment not currently required for the payment of the costs listed in 7-15-4288 or pledged to the payment of the principal of premiums, if any, and interest on the bonds referred to in 7-15-4289."

**Section 15.** Section 7-15-4292, MCA, is amended to read:

**"7-15-4292. Termination of tax increment financing — exception.** (1) The tax increment provision *contained in an urban renewal plan or a targeted economic development district comprehensive development plan* terminates upon the later of:

(a) the 15th year following its adoption; or

(b) the payment or provision for payment in full or discharge of all bonds for which the tax increment has been pledged and the interest on the bonds.

(2) (a) Except as provided in subsection (2)(b), any amounts remaining in the special fund or any reserve fund after termination of the tax increment provision must be distributed among the various taxing bodies in proportion to their property tax revenue from the area or district.

(b) Upon termination of the tax increment provision, a ~~municipality~~ *local government* may retain and use in accordance with the provisions of the urban renewal plan:

(i) funds remaining in the special fund or a reserve fund related to a binding loan commitment, construction contract, or development agreement for an approved urban renewal project *or targeted economic development district project* that a ~~municipality~~ *local government* entered into before the termination of a tax increment provision;

(ii) loan repayments received after the date of termination of the tax increment provision from loans made pursuant to a binding loan commitment; or

(iii) funds from loans previously made pursuant to a loan program established under an urban renewal plan *or targeted economic development district comprehensive development plan*.

(3) After termination of the tax increment provision, all taxes must be levied upon the actual taxable value of the taxable property in the urban renewal area~~, the industrial district, the technology district, or the aerospace transportation and technology~~ *or targeted economic development* district and must be paid to each of the taxing bodies as provided by law.

(4) Bonds secured in whole or in part by a tax increment provision may not be issued after the 15th anniversary of tax increment provisions. However, if bonds secured by a tax increment provision are outstanding on the applicable anniversary, additional bonds secured by the tax increment provision may be

issued if the final maturity date of the bonds is not later than the final maturity date of any bonds then outstanding and secured by the tax increment provision."

**Section 16.** Section 7-15-4293, MCA, is amended to read:

**"7-15-4293. Adjustment of base taxable value following change of law or local disaster.** (1) If the base taxable value of an urban renewal area~~, an industrial district, a technology district, or an aerospace transportation and technology~~ *or targeted economic development* district is affected after its original determination by a statutory, administrative, or judicial change in the method of appraising property, the tax rate applied to it, the tax exemption status of property, or the taxable valuation of property if the change in taxable valuation is based on conditions existing at the time the base year was established, the ~~governing body of the municipality~~ *local government* may request the department of revenue to estimate the base taxable value so that the tax increment resulting from the increased incremental value is sufficient to pay all principal and interest on the bonds as those payments become due.

(2) If a tax increment financing district created after January 1, 2002, has not issued bonds, the governing body of a ~~municipality~~ *local government* may request the department of revenue to adjust the base taxable value to account for a loss of taxable revenue resulting from the state granting property in the area or district tax-exempt status within the first year of creation of the tax increment financing district. The ~~municipality~~ *local government* shall give notice of and hold a public hearing on the proposed change.

(3) (a) If an urban renewal area~~, an industrial district, a technology district, or an aerospace transportation and technology~~ *or targeted economic development* district suffers a loss of property value directly related to a disaster for which the principal executive officer of the local jurisdiction has made a disaster declaration pursuant to 10-3-402, the department of revenue shall decrease the base taxable value of the area or district by the amount of the base taxable value lost because of the disaster in the tax year in which the disaster is declared. The principal executive officer shall forward a copy of the disaster declaration to the department of revenue.

(b) The taxable value removed from the base taxable value of the area or district under subsection (3)(a) must be added to the base taxable value of the area or district upon reconstruction of the property in the tax year of reconstruction. If reconstruction of the property is only partially completed as of January 1 of the tax year, the department of revenue shall determine the base taxable value of the property for that tax year by multiplying the percentage of completion, expressed as a decimal equivalent, of reconstruction of the property by the original base taxable value of the property. The addition to the base taxable value under this subsection (3)(b) is limited to the amount of the original base taxable value of each parcel before the disaster occurred."

**Section 17.** Section 7-15-4294, MCA, is amended to read:

**"7-15-4294. Assessment agreements.** (1) A ~~municipality~~ *local government* may enter into a written agreement with any private person:

(a) establishing a minimum market value of land, existing improvements, or improvements or equipment to be constructed or acquired; and

(b) requiring the individual to pay an annual tax deficiency fee whenever the property that is the subject of the agreement is valued by the department of revenue for property tax purposes at a market value that is less than the value established by the agreement. The amount of the deficiency fee may not exceed the difference between the property taxes that would have been imposed on the

property based on the minimum value of the property expressed in the agreement and the property taxes that are imposed on the property based on the market value established by the department of revenue.

(2) The property that is the subject of the agreement must be located or installed in an urban renewal area~~, an industrial district, a technology district, an aerospace transportation and technology district, or any other area or~~ *or targeted economic development* district that is subject to a tax increment financing provision.

(3) The minimum value established by the agreement may be fixed or may increase or decrease in later years from the initial minimum value as provided in the agreement.

(4) The agreement creates a lien on the property pursuant to 71-3-1506 and must be filed and recorded in the office of the county clerk and recorder in each county in which the property or any part of the property is located. Recording an agreement constitutes notice of the agreement to anyone who acquires any interest in the property that is the subject of the agreement, and the agreement is binding upon the person acquiring the interest.

(5) An agreement made pursuant to subsection (1) may be modified or terminated by mutual consent of the current parties to the agreement. Modification or termination of an agreement must be approved by the governing body of the ~~municipality~~ *local government*. A document modifying or terminating an agreement must be filed in the office of the county clerk and recorder in each county in which the property or any part of the property is located.

(6) An agreement entered into pursuant to subsection (1) or modified pursuant to subsection (5) terminates on the earliest of:

(a) the date on which conditions in the agreement for termination are satisfied;

(b) the termination date specified in the agreement; or

(c) the date when the tax increment is no longer paid to the ~~municipality~~ *local government* under 7-15-4292.

(7) This section does not limit a ~~municipality's~~ *local government's* authority to enter into contracts other than tax deficiency agreements as described in this section."

**Section 18.** Section 7-15-4301, MCA, is amended to read:

**"7-15-4301. Authorization to issue urban renewal bonds, ~~industrial infrastructure development bonds, technology infrastructure development bonds, aerospace transportation and technology infrastructure~~ *targeted economic* development bonds, and refunding bonds.** (1) A *local government or* municipality may:

(a) issue bonds from time to time, in its discretion, to finance the undertaking of any urban renewal project~~, industrial infrastructure development project, technology infrastructure development project, or aerospace transportation and technology infrastructure development~~ *or targeted economic development* project under Title 7, chapter 15, part 42, and this part, including, without limiting the generality of projects, the payment of principal and interest upon any advances for surveys and plans for the projects; and

(b) issue refunding bonds for the payment or retirement of bonds previously issued by it.

(2) Except as provided in 7-15-4302, bonds may not pledge the general credit of the *local government or* municipality and must be made payable, as to both principal and interest, solely from the income, proceeds, revenue, and funds of the *local government or* municipality derived from or held in connection with its undertaking and carrying out of urban renewal projects~~, industrial infrastructure development projects, technology infrastructure development project, or aerospace transportation and technology infrastructure development~~ *or targeted economic development district* projects under Title 7, chapter 15, part 42, and this part, including the tax increment received and pledged by the *local government or* municipality pursuant to 7-15-4282 through ~~7-15-4299~~ *7-15-4294*, and, if the income, proceeds, revenue, and funds of the *local government or* municipality are insufficient for the payment, from other revenue of the *local government or* municipality pledged to the payment. Payment of the bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source in aid of any urban renewal projects~~, industrial infrastructure development projects, technology infrastructure development project, or aerospace transportation and technology infrastructure development~~ *or targeted economic development district* projects of the *local government or* municipality under Title 7, chapter 15, part 42, and this part or by a mortgage on all or part of any projects.

(3) Bonds issued under this section must be authorized by resolution or ordinance of the local governing body.

(4) If applicable, the governing body of the *local government or* municipality shall specify whether the bonds are tax credit bonds as provided in 17-5-117, recovery zone economic development bonds or recovery zone facility bonds as provided in 7-7-140, or qualified energy conservation bonds as provided in 7-7-141."

**Section 19.** Section 7-15-4302, MCA, is amended to read:

**"7-15-4302. Authorization to issue general obligation bonds.** (1) For the purpose of 7-15-4267 or for the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project~~, industrial infrastructure development project, technology infrastructure development project, or aerospace transportation and technology infrastructure project of a municipality,~~ *or targeted economic development district project,* the *local government or* municipality, in addition to any authority to issue bonds pursuant to 7-15-4301, may issue and sell its general obligation bonds.

(2) Any bonds issued pursuant to this section must be issued in the manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by the *local government or* municipality for public purposes generally.

(3) Aiding in the planning, undertaking, or carrying out of an approved urban renewal project~~, industrial infrastructure development project, technology infrastructure development project, or aerospace transportation and technology infrastructure~~ *or targeted economic development district* project is considered a single purpose for the issuance of general obligation bonds, and the proceeds of the bonds authorized for a project may be used to finance the exercise of the powers conferred upon the *local government or* municipality by Title 7, chapter 15, part 42, and this part that are necessary or proper to complete the project in accordance with the approved plan~~, industrial district ordinance, technology district ordinance, or aerospace transportation and technology~~

~~district~~ *or* ordinance and any modification to the ordinance that is duly adopted by the local governing body.

(4) If applicable, the *local government or* municipality shall specify whether the bonds are tax credit bonds as provided in 17-5-117, recovery zone economic development bonds or recovery zone facility bonds as provided in 7-7-140, or qualified energy conservation bonds as provided in 7-7-141."

**Section 20.** Section 7-15-4304, MCA, is amended to read:

**"7-15-4304. Presumption of regularity of bond issuance.** In a suit, action, or proceeding involving the validity or enforceability of or security for any bond issued under Title 7, chapter 15, part 42, and this part, a bond reciting in substance that it has been issued by the *local government or* municipality in connection with an urban renewal project~~, industrial infrastructure development project, technology infrastructure development project, or aerospace transportation and technology infrastructure development~~ *or targeted economic development district* project is conclusively considered to have been issued for that purpose and the project is conclusively considered to have been planned, located, and carried out in accordance with the provisions of Title 7, chapter 15, part 42, and this part."

**Section 21.** Section 7-15-4305, MCA, is amended to read:

**"7-15-4305. Validity and sufficiency of signatures on bonds.** In case any of the public officials of the *local government or* municipality whose signatures appear on any bonds or coupons issued under ~~this part and~~ part 42 ~~shall~~ *and this part* cease to be ~~such~~ officials before the delivery of ~~such~~ *the* bonds, ~~such~~ *their* signatures ~~shall, nevertheless, be~~ *remain* valid and sufficient for all purposes the same as if ~~such~~ *the* officials had remained in office until ~~such~~ delivery *of the bonds*."

**Section 22.** Section 7-15-4306, MCA, is amended to read:

**"7-15-4306. Bonds as legal investments.** (1) All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking or investment business~~;~~*,* all insurance companies, insurance associations, and other persons carrying on an insurance business~~;~~*,* and all executors, administrators, curators, trustees, and other fiduciaries may legally invest any sinking funds, money, or other funds belonging to them or within their control in any bonds or other obligations issued by a *local government or* municipality pursuant to ~~this part and~~ part 42 *and this part*, provided that ~~such~~ *the* bonds and other obligations ~~shall~~ *must* be secured by an agreement between the issuer and the federal government in which the issuer agrees to borrow from the federal government and the federal government agrees to lend to the issuer, prior to the maturity of ~~such~~ bonds or other obligations, money in an amount ~~which~~ *that,* ~~(~~together with any other money irrevocably committed to the payment of interest on ~~such~~ *the* bonds or other obligations~~)~~*,* will suffice to pay the principal of ~~such~~ *the* bonds or other obligations with interest to maturity ~~thereon, which~~ *on the bonds. The* money under the terms of ~~said~~ *the* agreement is required to be used for the purpose of paying the principal of and the interest on ~~such~~ *the* bonds or other obligations at their maturity.

(2) ~~Such~~ *The* bonds and other obligations ~~shall~~ *must* be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions, and officers, public or private, to use any funds owned or controlled by them for the purchase of ~~any such~~ *the* bonds or other obligations.

(3) Nothing contained in this section with regard to legal investments ~~shall~~ *may* be construed as relieving any person of any duty of exercising reasonable care in selecting securities."

**Section 23.** Section 7-15-4322, MCA, is amended to read:

**"7-15-4322. Details relating to urban renewal bonds.** (1) Bonds issued under 7-15-4301 may be issued in one or more series and must bear a date or dates, be payable upon demand or mature at a time or times, bear interest as provided in 17-5-102, be in denomination or denominations, be in ~~form (~~either coupon or registered~~)~~ *form*, carry conversion or registration privileges, have rank or priority, be executed in a manner, be payable in a medium of payment at a place or places, be subject to terms of redemption ~~(~~with or without premium~~)~~, be secured in a manner, and have other characteristics as may be provided by the resolution, ordinance, or trust indenture or a mortgage authorized pursuant to the resolution, ordinance, or trust indenture.

(2) (a) The bonds may be sold at not less than 97% of par, at public or private sale~~,~~ or may be exchanged for other bonds on the basis of par.

(b) The bonds may be sold to the federal government at private sale at not less than par, and if less than all of the authorized principal amount of the bonds is sold to the federal government, the balance may be sold~~,~~ at public or private sale~~,~~ at not less than 97% of par at an interest cost to the *local government or* municipality of not to exceed the interest cost of the portion of the bonds sold to the federal government."

**Section 24.** Section 7-15-4324, MCA, is amended to read:

**"7-15-4324. Special bond provisions when tax increment financing is involved.** (1) Bonds issued under this part for which a tax increment is pledged pursuant to 7-15-4282 through ~~7-15-4299~~ *7-15-4294* must be designed to mature not later than 25 years from their date of issue and must mature in years and amounts so that the principal and interest due on the bonds in each year may not exceed the estimated tax increment, payments in lieu of taxes or other amounts agreed to be paid by the property owners in a district, and other estimated revenue, including proceeds of the bonds available for payment of interest on the bonds, pledged to their payment to be received in that year.

(2) The governing body, in the resolution or ordinance authorizing the bonds, shall determine the estimated tax increment, payments in lieu of taxes or other amounts agreed to be paid by the property owners in an area or district, and other revenue, if any, for each year the bonds are to be outstanding. In calculating the costs under 7-15-4288 for which the bonds are issued, the *local government or* municipality may include an amount sufficient to pay interest on the bonds prior to receipt of tax increments pledged and sufficient for the payment of the bonds and to fund any reserve fund in respect of the bonds."

**Section 25. Existing technology districts, aerospace transportation and technology districts, and industrial districts.** (1) Technology districts, aerospace transportation and technology districts, and industrial districts established under Title 7, chapter 15, part 42, prior to [the effective date of this act] may continue to operate and issue bonds under laws governing the districts and financial operations of the districts as those laws read on December 31, 2012, except that the local government or municipality may not amend the plan or boundaries of the district or expand in any manner the projects contained in the plan without providing notice of the changes to the director of the department of revenue or the director's designee and receiving approval of the department for the plan or boundary changes. A technology district, an aerospace transportation and technology district, or an industrial district may

be terminated and a targeted economic development district may be simultaneously created if the created district complies with the provisions of [sections 1 through 4].

(2) Technology districts, aerospace transportation and technology districts, and industrial districts established under Title 7, chapter 15, part 42, that were initiated prior to [the effective date of this act] may continue to operate and issue bonds under the laws governing the districts and financial operations of the districts as those laws read on December 31, 2012. A technology district, aerospace transportation and technology district, or industrial district is considered initiated if the local governing body has adopted an ordinance for a district and has held a public hearing for creation of the district.

**Section 26. Repealer.** The following sections of the Montana Code Annotated are repealed:

7-15-4295. Technology districts.

7-15-4296. Aerospace transportation and technology districts.

7-15-4297. Short title.

7-15-4298. Legislative findings.

7-15-4299. Industrial districts.

17-5-820. Authorization of bonds.

**Section 27. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 7, chapter 15, part 42, and the provisions of Title 7, chapter 15, part 42, apply to [sections 1 through 4].

**Section 28. Effective date.** [This act] is effective July 1, 2013.

Approved April 15, 2013

# CHAPTER NO. 215

[HB 9]

AN ACT ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECTS GRANT AWARDS; APPROPRIATING MONEY FOR CULTURAL AND AESTHETIC GRANTS; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Appropriation of cultural and aesthetic grant funds — priority of disbursement.** (1) The Montana arts council shall award grants for projects authorized by and limited to the amounts appropriated by [section 2] and this section. Money must be disbursed in priority order, first to projects covered under subsection (3) and second to projects listed in [section 2].

(2) The Montana arts council shall disburse money to projects authorized by [section 2] through grant contracts between the Montana arts council and the grant recipient. The award contract must bind the parties to conditions, if any, listed with the appropriation in [section 2].

(3) There is appropriated from the cultural and aesthetic projects trust fund account to the Montana historical society $30,000 for the biennium ending June 30, 2015, for care and conservation of capitol complex artwork.

**Section 2. Appropriation of cultural and aesthetic grant funds.** The following projects are approved, and $758,650 is appropriated to the Montana arts council for the biennium ending June 30, 2015, from the cultural and aesthetic projects trust fund account:

| Grant # | Grantee | Grant Amount |
|---|---|---|
| A. Special Project $4,500 or less | | |
| 1704 | Preservation Cascade, Inc. | $4,500 |
| 1705 | Signatures | $4,500 |
| 1700 | Council for the Arts | $2,500 |
| 1701 | Granite County Museum and Cultural Center | $3,600 |
| 1706 | Yellowstone Ballet Company | $2,500 |
| 1703 | Montana Storytelling Roundup | $2,500 |
| B. Special Projects | | |
| 1725 | Montana Historical Society | $15,500 |
| 1719 | Humanities Montana | $15,000 |
| 1729 | Upper Swan Valley Historical Society, Inc. | $12,500 |
| 1720 | International Choral Festival | $6,250 |
| 1713 | CoMotion Dance Project | $8,750 |
| 1710 | Bozeman Symphony Society | $8,750 |
| 1712 | Clay Arts Guild of Helena | $5,000 |
| 1716 | Headwaters Dance Co. | $10,000 |
| 1715 | Friends of Chief Plenty Coups Advisory Council | $6,250 |
| 1723 | Missoula Art Museum | $6,250 |
| 1714 | Emerson Center for the Arts & Culture | $6,250 |
| 1728 | Musikanten, Inc. | $5,000 |
| 1724 | Missoula Writing Collaborative | $5,000 |
| 1721 | International Wildlife Media Center & Film Festival | $2,500 |
| C. Operational Support | | |
| 1755 | MAGDA | $15,000 |
| 1767 | Museums Association of Montana | $12,500 |
| 1762 | Montana Association of Symphony Orchestras | $15,000 |
| 1726 | Montana Performing Arts Consortium | $15,000 |
| 1763 | Montana Dance Arts Association | $15,000 |
| 1743 | Carbon County Historical Society | $15,000 |
| 1733 | Archie Bray Foundation | $15,000 |
| 1730 | Alberta Bair Theater | $15,000 |
| 1744 | Custer County Art & Heritage Center | $15,000 |
| 1766 | Montana Shakespeare in the Parks | $15,000 |
| 1784 | World Museum of Mining | $15,000 |
| 1779 | Stillwater Historical Society | $15,000 |
| 1739 | Butte Center for the Performing Arts | $15,000 |
| 1742 | Carbon County Arts Guild & Depot Gallery | $12,500 |
| 1774 | Ravalli County Museum | $12,500 |
| 1781 | VSA Montana | $12,500 |
| 1734 | Art Mobile of Montana | $15,000 |
| 1759 | MonDak Heritage Center | $13,900 |
| 1769 | Northwest Montana Historical Society | $12,500 |
| 1786 | YMCA Writer's Voice | $11,250 |

| | | |
|---|---|---|
| 1756 | Mai Wah Society | $8,750 |
| 1741 | Butte Symphony Association | $11,250 |
| 1747 | Gallatin Historical Society | $9,400 |
| 1731 | Alpine Artisans, Inc. | $10,000 |
| 1775 | Rimrock Opera Company | $10,000 |
| 1787 | Zootown Arts Community Center | $11,250 |
| 1752 | Helena Indian Alliance | $6,250 |
| 1782 | Western Heritage Center | $8,750 |
| 1754 | Intermountain Opera Association | $11,250 |
| 1750 | Great Falls Symphony | $11,250 |
| 1751 | Hamilton Players, Inc. | $8,750 |
| 1783 | Whitefish Theatre Co. | $8,750 |
| 1778 | Shane Lalani Center for the Arts | $6,250 |
| 1753 | Helena Symphony | $6,250 |
| 1777 | Schoolhouse History & Art Center | $20,000 |
| 1748 | Glacier Symphony and Chorale | $11,250 |
| 1736 | Beaverhead County Museum | $7,500 |
| 1773 | Queen City Ballet Company | $6,250 |
| 1749 | Grandstreet Broadwater Productions, Inc. | $6,250 |
| 1772 | Pondera History Association (PHA) | $6,250 |
| 1737 | Big Horn Arts and Craft Association | $6,250 |
| 1770 | Paris Gibson Square Museum of Art | $11,250 |
| 1735 | AWARE Inc/Growth Thru Art | $6,250 |
| 1780 | Sunburst Foundation | $5,000 |
| 1732 | Alpine Theatre Project, Inc. | $3,750 |
| 1785 | Yellowstone Art Museum | $6,250 |
| 1745 | Equinox Theatre | $6,250 |
| 1740 | Butte Citizens for Preservation and Revitalization | $3,750 |
| 1771 | Pondera Arts Council | $6,250 |
| 1758 | Missoula Cultural Council | $2,500 |
| D. Capital Expenditure | | |
| 1789 | Helena Presents/Myrna Loy Center | $12,500 |
| 1788 | City of Shelby Champions Park | $6,250 |
| E. Miscellaneous | | |
| 1738 | Billings Symphony Society | $15,000 |
| 1776 | Rocky Mountain Ballet Theatre | $7,500 |
| 1760 | Montana Agricultural Center and Museum | $12,000 |
| 1746 | Friends of the Museum of the Plains Indians | $2,000 |
| 1717 | Hockaday Museum of Art | $8,500 |
| 1764 | Montana Preservation Alliance | $15,000 |
| 1761 | Montana Arts | $12,500 |
| 1711 | Butte-Silver Bow Public Archives | $4,500 |
| 1702 | Miles City Speaker's Bureau | $4,000 |

**Section 3. Reversion of grant money.** On July 1, 2015, the unencumbered balance of the grants for the biennium ending June 30, 2015, reverts to the cultural and aesthetic projects trust fund account provided for in 15-35-108.

**Section 4. Reduction of grants on pro rata basis.** (1) Except for the appropriation provided for in [section 1(3)], if money in the cultural and aesthetic projects trust fund account is insufficient to fund projects at the appropriation levels contained in [section 2], the amount of the grant for projects in section E of [section 2] must be reduced on a pro rata basis.

(2) If the grant amounts for projects in section E of [section 2] are eliminated pursuant to subsection (1) and if the money in the cultural and aesthetic projects trust fund account is insufficient to fund the remaining projects identified in [section 2], reductions to those projects with funding greater than $4,500 must be made on a pro rata basis.

**Section 5. Effective date.** [This act] is effective July 1, 2013.

Approved April 16, 2013

# CHAPTER NO. 216

[HB 117]

AN ACT GENERALLY REVISING THE REGULATION OF ESCROW BUSINESSES ACT; CHANGING REFERENCES FROM DIRECTOR TO DEPARTMENT; LIMITING THE EXEMPTION FOR MORTGAGE INDUSTRY LICENSEES SERVICING OTHER TYPES OF CONTRACTS; ADDING AN EXEMPTION FOR LOAN CLOSERS; DELETING AUTOMATIC LICENSE REVOCATION FOR ADMINISTRATIVE VIOLATIONS; CHANGING ENTITY CONTROL REQUIREMENTS; REQUIRING AN ANNUAL FINANCIAL STATEMENT; REVISING ENFORCEMENT AND PENALTY PROVISIONS; CHANGING THE LICENSE YEAR TO COINCIDE WITH THE CALENDAR YEAR AND PROVIDING FOR TRANSITION; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO PARTICIPATE IN A NATIONWIDE LICENSING SYSTEM FOR ESCROW BUSINESSES; EXPANDING RULEMAKING AUTHORITY; AMENDING SECTIONS 32-7-102, 32-7-103, 32-7-108, 32-7-109, 32-7-110, 32-7-111, 32-7-115, 32-7-121, 32-7-122, 32-7-123, AND 32-7-124, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 32-7-102, MCA, is amended to read:

**"32-7-102. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of administration as provided for in Title 2, chapter 15, part 10.

~~(2) "Director" means the director of the department of administration.~~

~~(3)~~*(2)* "Escrow" means any transaction in which one person, for the purpose of effecting the sale, transfer, encumbrance, or lease of real or personal property to another person or for the purpose of making payments under any encumbrance of the property, delivers any written instrument, money, evidence, title to real or personal property, or other thing of value to a third person to be held by that third person until the happening of a specified event or the performance of a prescribed condition, when the instrument, money,

evidence, title, or thing of value is to be delivered by the third person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, or bailor or to any agents or employees pursuant to the written escrow instructions.

~~(4)~~*(3)* "Escrow business" means a commercial activity characterized by the regular and continuous carrying on of escrow transactions.

~~(5)~~*(4)* "Licensee" means a person holding a valid license under this part as an escrow business.

~~(6)~~*(5)* "Person" means an individual, cooperative, association, company, firm, partnership, corporation, or other legal entity."

**Section 2.** Section 32-7-103, MCA, is amended to read:

**"32-7-103. Exemptions.** (1) The provisions of this part do not apply to the following:

(a) a person licensed by this state pursuant to Title 37, chapter 61, as an attorney at law who is not actively engaged in the escrow business;

(b) a person licensed by this state pursuant to Title 37, chapter 50, as a public accountant who is not actively engaged in the escrow business;

(c) a person whose principal business is that of preparing abstracts or making searches of title that are used as a basis for the issuance of any title insurance policy by a company doing business under the laws of this state relating to insurance companies and the person is regulated by the commissioner of insurance;

(d) a person licensed pursuant to Title 32, chapter 9, part 1, as a mortgage broker, mortgage lender, or mortgage servicer*, except that a licensed mortgage broker, mortgage lender, or mortgage servicer that provides escrow services in relation to contracts, agreements, or transactions besides residential mortgage loan agreements also must be licensed under this part as an escrow business*;

(e) a financial institution, as defined in 32-6-103, that has its escrow accounts regularly audited or examined. The financial institution shall supply a copy of the most recently prepared audit or examination to the ~~director~~ *department* upon the ~~director's~~ *department's* request.

(f) except as provided in subsection (2), any broker licensed by the Montana board of realty regulation if the broker is performing an act~~:~~

~~(i)~~ in the course of or incidental to a single real estate transaction~~; and~~

~~(ii)~~ for which a real estate license is required; ~~and~~

(g) any person furnishing escrow services under the order of a court*; and*

*(h) a loan closer if the loan closer:*

*(i) is employed by an exempt financial institution; or*

*(ii) is an independent contractor only acting as a courier and who does not take possession of the funds for deposit or subsequent disbursement*.

(2) A trust account of a broker licensed by the Montana board of realty regulation is not an escrow account within the meaning of this part."

**Section 3.** Section 32-7-108, MCA, is amended to read:

**"32-7-108. ~~Director~~ *Department* — powers and duties.** (1) The ~~director~~ *department* shall exercise general supervision and control over persons doing escrow business in this state.

(2) In addition to the other duties imposed upon the ~~director~~ *department* by law, the ~~director~~ *department* shall:

(a) adopt reasonable rules necessary to effectuate the purposes of this part;

(b) conduct examinations and investigations that may be necessary to determine whether a person has engaged or is about to engage in any act or practice constituting a violation of any provisions of this part;

(c) conduct examinations, investigations, and hearings necessary and proper for the efficient administration of this part; and

(d) establish fees commensurate with the costs of issuing the license and examining an escrow business."

**Section 4.** Section 32-7-109, MCA, is amended to read:

**"32-7-109. Application for license — bond — issuance.** (1) A person must be licensed pursuant to this part before engaging in an escrow business.

(2) *An application for a license must be in the form and submitted in the manner prescribed by the department.* ~~To obtain a license, an applicant shall file with the director an application for an escrow business license. The application must be in writing, verified by oath, and in the form prescribed by the director. The application must set forth:~~

~~(a) the location of the applicant's principal office and all branch offices in this state;~~

~~(b) the name and form under which the applicant plans to conduct business;~~

~~(c) the general plan and character of the business;~~

~~(d) the names, residences, and business addresses of any principals, partners, officers, trustees, and directors, specifying as to each the respective capacity and title;~~

~~(e) the experience and qualifications of the persons proposed to act as officers and managers;~~

~~(f) the length of time the applicant has been engaged in the escrow business; and~~

~~(g) any other relevant information the director requires.~~

(3) ~~An~~ *At the time of submitting an application for a license, the* applicant shall file with the ~~license application~~ *department* a bond in an amount to be set by the department by rule. *The bond must be issued by a surety company holding a certificate of authority from the Montana state auditor.* The bond must be conditioned on the applicant conducting the escrow business in accordance with the requirements of law. All bonds must be ~~filed with the department, approved by the department, and~~ renewed annually.

(4) The ~~director~~ *department* shall grant and issue an escrow business license if:

(a) the ~~director~~ *department* has received the bond and application ~~specified in this section~~; and

(b) the applicant has complied with all the *application* requirements of this part*, including any protocols of a nationwide licensing system in which the department participates,* and any rules promulgated under ~~it~~ *this part*.

(5) An escrow business shall immediately notify the department of any material change in the information contained in the application."

**Section 5.** Section 32-7-110, MCA, is amended to read:

**"32-7-110. Fees.** (1) (a) An applicant for licensure shall pay an initial license fee of $350. *The annual license renewal fee is $100. The department may direct that fees charged by the department under this section be remitted to the department through a nationwide licensing system as provided in [section 12].*

(b) ~~Licenses expire annually on June 30. A licensee shall, on or before June 1, pay an annual license renewal fee of $100. A licensee's failure to pay the annual license renewal fee within the time prescribed results in an automatic revocation of the license.~~ *The license year for an escrow business license is January 1 through December 31 and all licenses expire annually on December 31.*

(c) A licensee may be charged an examination fee based on the actual costs of the examination.

(2) ~~All fees collected by the department for the licensure and~~ *The department's portion of license fees and all examination fees* ~~examination of escrow businesses~~ must be ~~paid to~~ *deposited with* the state treasurer to the credit of the state special revenue fund for use by the department in its licensure and examination functions under this part."

**Section 6.** Section 32-7-111, MCA, is amended to read:

**"32-7-111. Transferability.** An escrow business license is not transferable or assignable. The provisions of this section apply to the change of ownership of *a legal entity licensed as an escrow business under this part if the change of ownership involves a change of control in the entity* ~~any escrow business, including the change of control over any corporation licensed as an escrow business~~. For purposes of this section, "change of control" means the transfer of 25% or more of the ~~outstanding voting stock of the corporation~~ *ownership interests in the entity*."

**Section 7.** Section 32-7-115, MCA, is amended to read:

**"32-7-115. Maintenance of records.** (1) A licensee shall establish and maintain the books, accounts, and records necessary to enable the ~~director~~ *department* at any time to determine whether the escrow transactions performed by the licensee comply with the provisions of this part. The books, accounts, and records must be maintained in accordance with generally accepted accounting principles and good business practice.

(2) A licensee shall establish and maintain the following records concerning general accounts:

(a) a general record reflecting the assets, liabilities, capital, income, and expense of the business, maintained in accordance with generally accepted accounting principles;

(b) a cash receipt and disbursement journal; and

(c) a reconciliation of monthly statements to the general record.

(3) The records referred to in subsections (1) and (2) must be reconciled at least once each month with the bank statements reflecting each escrow account.

(4) A licensee shall preserve for at least 3 years after the close of any escrow:

(a) all bank statements reflecting each escrow account and records of monthly reconciliations of the statements to the general record;

(b) all canceled checks drawn on each escrow account;

(c) any additional records reflecting banking transactions regarding each escrow account, including copies of all receipts for funds transferred from other accounts into each escrow account;

(d) all statements of account;

(e) all escrow instructions and amendments to them; and

(f) all additional records pertinent to each escrow transaction.

(5) A licensee shall *file annually with the department* ~~perform one of the following:~~ *by a date set by the department by rule a statement of the licensee's financial condition as of December 31 of the preceding calendar year and its transactions and escrow activities during that preceding calendar year concerning consumers in this state.*

~~(a) file annually with the director, on or before April 30, a statement of its financial condition, transactions, and affairs as of the preceding December 31. The director may grant an extension, not to exceed 10 days, on or before the April 30 filing date if the licensee demonstrates good cause for an extension.~~ The financial statement must be certified by an independent public accountant and must be in a form and contain the information ~~prescribed by the director~~ *that the department requires*.

~~(b) request that the director examine the financial condition, transactions, and affairs of the licensee pursuant to procedures prescribed by the director.~~"

**Section 8.** Section 32-7-121, MCA, is amended to read:

**"32-7-121. Unauthorized business practices — penalty.** ~~(1)~~ Unauthorized business practices of escrow businesses include but are not limited to the following:

~~(a)~~*(1)* issuing, circulating, making use of, or publishing, by any means of communication, an advertisement indicating that a person is in the escrow business if that person is not a licensed escrow business;

~~(b)~~*(2)* soliciting or accepting an escrow instruction or amended or supplemental escrow instruction containing any blank to be filled in after the signing or initialing of the escrow instruction or permitting any person to make any addition to, deletion from, or alteration of an escrow instruction or amended or supplemental escrow instruction unless the addition, deletion, or alteration is signed or initialed by the affected party who signed or initialed the escrow instruction or amended or supplemental escrow instruction prior to the addition, deletion, or alteration;

~~(c)~~*(3)* failing to carry out the escrow transactions pursuant to the written escrow instructions unless amended by the written agreement of all parties to the escrow agreement or their assigns;

~~(d)~~*(4)* accepting any escrow transaction that requires or has required the prepayment, deduction, or withholding of any sum to cover payments on the indebtedness or any prior encumbrance if the payments are not due and payable to the mortgagee or obligee at the time the escrow is established. However, payments may be made on property taxes for the current year or for the next annual premium on hazard insurance.

~~(e)~~*(5)* refusing to allow parties to an escrow transaction or designated agents of those parties access to the records of the escrow transaction; and

~~(f)~~*(6)* failing to promptly distribute funds pursuant to escrow instructions.

~~(2) Any licensee who engages in an unauthorized business practice is subject to the revocation or suspension of the licensee's license.~~"

**Section 9.** Section 32-7-122, MCA, is amended to read:

**"32-7-122. Investigations by ~~director~~ *department* — desist order — injunctions or other actions.** (1) The ~~director~~ *department* may investigate, upon complaint or otherwise, if it appears that:

(a) an escrow business is conducting its business in an unsafe and injurious manner or in violation of this part or any rule promulgated pursuant to this part; or

(b) a person is engaging in the escrow business without being licensed under the provisions of this part.

(2) (a) If it appears to the ~~director~~ *department*, upon sufficient grounds or evidence satisfactory to the ~~director~~ *department*, that an escrow business has engaged *in* or is about to engage in *unlicensed activity or* any act or practice in violation of this part or any rule or order issued pursuant to this part or that the assets or capital of any escrow business or company are impaired or the licensee's affairs are in an unsafe condition, the ~~director~~ *department* may summarily order the escrow business to cease and desist from the act or practice or the ~~director~~ *department* may apply to the district court ~~of the first judicial district~~ of Lewis and Clark County to enjoin the act or practice and to enforce compliance with this part or for any other appropriate equitable relief.

(b) Upon a proper showing, the court may:

(i) grant a temporary restraining order, followed by a preliminary injunction and a permanent injunction;

(ii) appoint a receiver for the defendant or defendant's assets;

(iii) cancel the licensee's license; and

(iv) order other equitable remedies the court considers necessary and appropriate.

(3) The court may not require the ~~director~~ *department* to post a bond."

**Section 10.** Section 32-7-123, MCA, is amended to read:

**"32-7-123. Subpoenas — oaths — examinations of witness and evidence.** (1) In the conduct of any examination, investigation, or hearing, the ~~director~~ *department* may:

(a) compel the attendance of any person or obtain any documents by subpoena;

(b) administer oaths;

(c) examine any person under oath concerning the business and conduct of affairs of any person subject to the provisions of this part; and

(d) require the production of any books, records, or papers relevant to the inquiry.

(2) If a person refuses to obey a subpoena issued to the ~~director~~ *department*, the district court of ~~the first judicial district of~~ Lewis and Clark County or other district court having proper venue, upon application by the ~~director~~ *department*, may order the person to produce documentary evidence or to give evidence relating to the matter under investigation or in question. If a person fails to obey the order of the court, the person may be punished by the court as contempt of court."

**Section 11.** Section 32-7-124, MCA, is amended to read:

**"32-7-124. Hearings ~~and appeals~~ — *penalties.*** *(1) The department may impose a civil penalty not to exceed $1,000 for each violation if the department finds, after providing a 14-day written notice of alleged violations and opportunity for administrative hearing, that any person, any licensee, or any officer, agent, employee, or representative of the person or licensee, whether licensed or unlicensed, has:*

*(a) violated any of the provisions of this part;*

*(b) failed to comply with the rules or orders promulgated by the department;*

*(c) failed or refused to make required reports to the department;*

*(d) furnished false information to the department; or*

*(e) operated without a required license.*

*(2) The department may issue an order requiring restitution to parties and reimbursement of the department's costs of bringing an administrative action. In addition, the department may issue an order revoking, conditioning, or suspending the right of the licensee, directly or through another, to engage in escrow business activities in this state.*

*(3) All hearing schedules and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or, in the case of an unlicensed business, to the last-known address of record.*

*(4) For purposes of this part, the department is considered to have complied with the requirements of law concerning service of process upon mailing by certified mail any notice required under this part, postage prepaid and addressed to:*

*(a) the last-known address of the licensee's registered agent for service of process on file with the department;*

*(b) the last-known address of the licensee on file with the department for an in-state licensee; or*

*(c) the last-known address of an unlicensed person.*

*(5) In a judicial action, suit, or proceeding arising under this part or any administrative rule adopted pursuant to this part between the department and a licensee who does not maintain a physical office in this state, venue is in the district court of Lewis and Clark County.*

*(6)* The provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a contested case brought under this part."

**Section 12. Department authority to utilize nationwide licensing system for licensing escrow businesses.** (1) The department may participate in a nationwide licensing system for licensing purposes under this part and may require escrow businesses to apply for licensure, in the manner that the department may direct, on application forms approved by the nationwide licensing system.

(2) The department may establish rules that are necessary to comply with the nationwide licensing system protocols and procedures pertaining to fees, renewal dates, amending or surrendering a license, and any other activity necessary for participation in the nationwide licensing system.

(3) The department's portion of the licensing fees collected by the nationwide licensing system must be deposited into the department's account in the state special revenue fund for use in the administration of this part.

**Section 13. Transition.** The department shall charge one-half of the fees specified in 32-7-110(1)(a) for licenses issued or renewed for the period of July 1, 2013, through December 31, 2013.

**Section 14. Codification instruction.** [Section 12] is intended to be codified as an integral part of Title 32, chapter 7, part 1, and the provisions of Title 32, chapter 7, part 1, apply to [section 12].

**Section 15. Effective date.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 5(1)(b)] is effective July 1, 2013.

Approved April 16, 2013

# CHAPTER NO. 217

[HB 287]

AN ACT PROVIDING FOR AN ADDITIONAL CIVIL PENALTY FOR A VIOLATION OF THE MONTANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT OF 1973 IF THE VICTIM IS AN OLDER PERSON OR DEVELOPMENTALLY DISABLED; PROVIDING FOR DISPOSITION OF FINES; AND AMENDING SECTION 30-14-143, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Additional penalty for unfair or deceptive act committed against older person or developmentally disabled person.** (1) In addition to any civil penalty imposed pursuant to 30-14-142, a person who engages in a practice unlawful under 30-14-103 and whose conduct is perpetrated against an older person or against a developmentally disabled person is liable for an additional civil penalty not to exceed $10,000 for each violation if the court finds that:

(a) the person knew or should have known that the person's conduct was directed toward one or more older or developmentally disabled persons; or

(b) the person's conduct caused an older or developmentally disabled person to suffer one of the following:

(i) loss or encumbrance of a primary residence;

(ii) loss of principal employment or other source of income;

(iii) substantial loss of property set aside for retirement or for personal or family care and maintenance;

(iv) substantial loss of payments received under a pension or retirement plan or a government benefits program; or

(v) loss of assets essential to the health or welfare of the older or disabled person.

(2) Damages awarded in an action under 30-14-133 must be given priority over imposition of civil penalties ordered by the court under this section.

(3) As used in this section:

(a) "developmentally disabled person" means a person with a developmental disability as defined in 53-20-102; and

(b) "older person" has the meaning provided in 52-3-803.

**Section 2.** Section 30-14-143, MCA, is amended to read:

**"30-14-143. Disposition of civil fines, costs, and fees.** (1) ~~All~~ *(a) Except as provided in subsection (1)(b), all* civil fines, costs, and fees received or recovered by the department pursuant to this part must be deposited into a state special revenue account to the credit of the department and must be used to defray the expenses of the department in discharging its administrative and regulatory powers and duties in relation to this part. Any excess civil fines, costs, or fees must be transferred to the general fund.

*(b) All civil fines received or recovered by the department pursuant to [section 1] must be deposited in the general fund.*

(2) All civil fines, costs, and fees received or recovered by a county attorney pursuant to this part must be paid to the general fund of the county in which the action was commenced."

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 30, chapter 14, part 1, and the provisions of Title 30, chapter 14, part 1, apply to [section 1].

**Section 4. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 16, 2013

# CHAPTER NO. 218

[HB 513]

AN ACT EXEMPTING PERMITS FOR OVERSIZE VEHICLES FROM ENVIRONMENTAL REVIEW UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTION 61-10-121, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-10-121, MCA, is amended to read:

**"61-10-121. Permits for excess size and weight — *exempt from environmental review* — agents.** (1) (a) Upon application and with good cause shown, the department of transportation, or its agent under subsection (3), and local authorities in their respective jurisdictions may issue telephonically or in writing a special permit authorizing the applicant to operate or move a vehicle, combination of vehicles, load, object, or other thing of a size or weight exceeding the maximum specified in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110 upon a highway under the jurisdiction of and for the maintenance of which the body granting the permit is responsible. However, only the department may issue permits for movement of a vehicle or combination of vehicles carrying built-up or reducible loads in excess of 9 feet in width or exceeding the length, height, or weight specified in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110. This permit must be issued in the public interest. A carrier receiving this permit must have public liability and property damage insurance for the protection of the traveling public as a whole. A permit may not be issued for a period greater than the period for which the GVW license is valid, including grace periods, as provided in this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit.

(b) The department may issue to dealers in implements of husbandry and self-propelled machinery oversize permits. The permits may be transferred from unit to unit by the dealer, for the fee set forth in 61-10-124. These oversize permits may not restrict dealers in implements of husbandry and self-propelled machinery from traveling on a Saturday or Sunday and expire on December 31 of each year, with no grace period. For the purposes of this section, a dealer in implements of husbandry or self-propelled machinery must be a resident of the state. A post-office box number is not a permanent address under this section.

(2) The applicant for a special permit shall specifically describe the powered vehicle or towing vehicle and generally describe the type of vehicle, combination of vehicles, load, object, or other thing to be operated or moved and the particular state highways over which the vehicle, combination of vehicles, load, object, or other thing is to be moved and whether the permit is required for a single trip or for continuous operation.

*(3) Issuance of a permit pursuant to this section is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when existing roads through existing rights-of-way are used.*

~~(3)~~*(4)* The department may enter into a contract with a private party to act as an agent of the department for the purpose of issuing, in writing, a special permit allowed under this section."

Approved April 16, 2013

# CHAPTER NO. 219

[HB 566]

AN ACT CREATING NEXT-OF-KIN SPECIAL LICENSE PLATES; AND AMENDING SECTION 61-3-458, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-3-458, MCA, is amended to read:

**"61-3-458. Special plates for military personnel, veterans, spouses, and gold star families.** (1) (a) Active military personnel, veterans, or the surviving spouse of an eligible veteran, if the spouse has not remarried, may be issued special military or veteran license plates as provided in this section.

(b) ~~Family~~ *As provided in subsection (3), family* members of a member of the U.S. armed forces who are eligible for *or who have received:*

*(i)* a "Gold Star Lapel Button" may be issued special gold star family license plates ~~as provided in subsection (3)~~*; and*

*(ii) a "Next-of-Kin of Deceased Personnel Lapel Button" may be issued special next-of-kin license plates*.

(c) Subject to the provisions of 61-3-332 and except as otherwise provided in this chapter, special license plates issued pursuant to this section must be numbered in sets of two with a different number on each set and must be properly displayed as provided in 61-3-301. Special military, veteran, ~~or~~ gold star family*, or next-of-kin* license plates may not be issued for a quadricycle, semitrailer, or pole trailer. Special military, veteran, ~~or~~ gold star family*, or next-of-kin* license plates bearing a wheelchair as the symbol of a person with a disability may be issued to a person who meets the qualifications under 61-3-332(9) and this section. Special military or veteran license plates may be issued for a motorcycle pursuant to 61-3-414.

(2) (a) Upon application, after paying all applicable motor vehicle, trailer, semitrailer, or pole trailer registration fees and special license plate fees and providing an official certificate from the applicant's unit commander verifying the individual's eligibility and authorizing the department to issue the plates to the individual, eligible military personnel may be issued one set of special military license plates as provided in this subsection (2).

(b) A member of the Montana national guard who is a state resident may be issued special license plates with a design or decal displaying the letters "NG". However, the member shall surrender the plates to the department when the member becomes ineligible.

(c) A member of the reserve armed forces of the United States who is a state resident may be issued special license plates according to the member's branch of service verified in the application with a design or decal displaying one of the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); or United

States marine corps reserve, MCR (globe and anchor). However, the member shall surrender the plates to the department when the member becomes ineligible.

(d) An active member of the regular armed forces of the United States who is a state resident may be issued special license plates inscribed with a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the member's branch of service verified in the application. However, the member shall surrender the plates to the department upon becoming ineligible.

(3) Upon application, after paying all applicable motor vehicle, trailer, semitrailer, or pole trailer registration fees and special license plate fees and*:*

*(a)* providing a department of defense form 3 (DD Form 3) or its successor or documents showing the person's eligibility for a "Gold Star Lapel Button", a family member of a member of the U.S. armed services who is eligible to receive *or who has received* a "Gold Star Lapel Button" as provided in Public Law 534, 89th congress, may be issued special license plates inscribed with a blue-bordered gold star with the words "Gold Star Family" inscribed beneath the registration number*; or*

*(b) providing a department of defense form 1300 (DD Form 1300) or its successor or documents showing the person's eligibility for a "Next-of-Kin of Deceased Personnel Lapel Button", a family member of a member of the U.S. armed services who is eligible to receive or who has received a "Next-of-Kin of Deceased Personnel Lapel Button" as provided in 32 CFR 578.63 may be issued special next-of-kin license plates inscribed as determined by the department in consultation with the Montana department of military affairs*.

(4) (a) Upon application, after presenting proper identification and a department of defense form 214 (DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment verifying the applicant's eligibility and paying the veterans' cemetery fee specified in 61-3-459 and all applicable motor vehicle, trailer, semitrailer, or pole trailer registration fees under this chapter, subject to the provisions of 61-3-460, an eligible veteran must be issued any set and more than one set of the special license plates provided for in this subsection (4) that the member requests and is eligible to receive.

(b) A veteran may be issued special license plates displaying the letters "DV", which entitles the veteran to the parking privileges allowed to a person with a special parking permit issued under Title 49, chapter 4, part 3, if the veteran:

(i) has been awarded the purple heart and has been rated by the U.S. department of veterans affairs as 50% or more disabled because of a service-connected injury; or

(ii) is currently rated 100% disabled or is paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability.

(c) A veteran who has been awarded the purple heart may be issued special license plates with the purple heart decal displaying the words "combat wounded".

(d) A veteran who was captured and held prisoner by the military force of a foreign nation may be issued special license plates with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(e) If the veteran was a member of the United States armed forces on December 7, 1941, and during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) was on station at Pearl Harbor on the island of Oahu or was offshore from Pearl Harbor at a distance of not more than 3 miles, the veteran may be issued special license plates designed to show that the veteran is a survivor of the Pearl Harbor attack.

(f) A person who is a member of the legion of valor may be issued special plates displaying a design or decal depicting the recognized legion of valor medallion.

(g) A veteran may be issued special license plates displaying the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the veteran's service record verified in the application.

(h) A member or a former member of the Montana national guard eligible to receive a military retirement may be issued special license plates displaying the Montana national guard insignia and the words "National Guard veteran".

(i) A veteran who qualifies under subsections (4)(b) and (4)(c) may be issued special combination license plates displaying the letters "DV" and displaying a purple heart decal with the words "combat wounded". A person who receives the combination plates is entitled to the same parking privileges as provided in subsection (4)(b).

(5) Upon request, after paying the veterans' cemetery fee provided in 61-3-459 and all applicable vehicle registration fees under this chapter, subject to the provisions of 61-3-460, the surviving spouse of an eligible veteran, if the spouse has not remarried, may retain the special license plates issued to the deceased veteran, except the special "DV" plates provided for under subsection (4)(b) or the combination plates provided for in subsection (4)(i).

(6) For purposes of this section, "veteran" has the meaning provided in 10-2-101."

Approved April 16, 2013

# CHAPTER NO. 220

[SB 149]

AN ACT REVISING COLLABORATIVE PRACTICE LAWS FOR PHARMACY IMMUNIZATIONS; ALLOWING LICENSED PHARMACISTS TO, WITHOUT A COLLABORATIVE PRACTICE AGREEMENT IN PLACE, ADMINISTER LIMITED IMMUNIZATIONS TO INDIVIDUALS WHO ARE 12 YEARS OF AGE OR OLDER OR IMMUNIZATIONS TO ADULTS; REVISING THE DEFINITION OF "PRACTICE OF PHARMACY"; AND AMENDING SECTIONS 37-7-101 AND 37-7-105, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 37-7-101, MCA, is amended to read:

**"37-7-101. Definitions.** As used in this chapter, the following definitions apply:

(1) (a) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or any other means.

(b) Except as provided in 37-7-105, the term does not include immunization by injection for children under ~~18 years of age~~ *18 years of age*.

(2) "Board" means the board of pharmacy provided for in 2-15-1733.

(3) "Cancer drug" means a prescription drug used to treat:

(a) cancer or its side effects; or

(b) the side effects of a prescription drug used to treat cancer or its side effects.

(4) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(5) "Clinical pharmacist practitioner" means a licensed pharmacist in good standing who meets the requirements specified in 37-7-306.

(6) "Collaborative pharmacy practice" means the practice of pharmacy by a pharmacist who has agreed to work in conjunction with one or more prescribers, on a voluntary basis and under protocol, and who may perform certain patient care functions under certain specified conditions or limitations authorized by the prescriber.

(7) "Collaborative pharmacy practice agreement" means a written and signed agreement between one or more pharmacists and one or more prescribers that provides for collaborative pharmacy practice for the purpose of drug therapy management of patients.

(8) "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

(9) "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device based on:

(a) a practitioner's prescription drug order;

(b) a professional practice relationship between a practitioner, pharmacist, and patient;

(c) research, instruction, or chemical analysis, but not for sale or dispensing; or

(d) the preparation of drugs or devices based on routine, regularly observed prescribing patterns.

(10) "Confidential patient information" means privileged information accessed by, maintained by, or transmitted to a pharmacist in patient records or that is communicated to the patient as part of patient counseling.

(11) "Controlled substance" means a substance designated in Schedules II through V of Title 50, chapter 32, part 2.

(12) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(13) "Device" has the same meaning as defined in 37-2-101.

(14) "Dispense" or "dispensing" means the interpretation, evaluation, and implementation of a prescription drug order, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for administration to or use by a patient.

(15) "Distribute" means the delivery of a drug or device by means other than administering or dispensing.

(16) "Drug" means a substance:

(a) recognized as a drug in any official compendium or supplement;

(b) intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(c) other than food, intended to affect the structure or function of the body of humans or animals; and

(d) intended for use as a component of a substance specified in subsection (16)(a), (16)(b), or (16)(c).

(17) "Drug utilization review" means an evaluation of a prescription drug order and patient records for duplication of therapy, interactions, proper utilization, and optimum therapeutic outcomes. The term includes but is not limited to the following evaluations:

(a) known allergies;

(b) rational therapy contraindications;

(c) reasonable dose and route administration;

(d) reasonable directions for use;

(e) drug-drug interactions;

(f) drug-food interactions;

(g) drug-disease interactions; and

(h) adverse drug reactions.

(18) "Equivalent drug product" means a drug product that has the same established name, active ingredient or ingredients, strength or concentration, dosage form, and route of administration and meets the same standards as another drug product as determined by any official compendium or supplement. Equivalent drug products may differ in shape, scoring, configuration, packaging, excipients, and expiration time.

(19) "Health care facility" has the meaning provided in 50-5-101.

(20) (a) "Health clinic" means a facility in which advice, counseling, diagnosis, treatment, surgery, care, or services relating to preserving or maintaining health are provided on an outpatient basis for a period of less than 24 consecutive hours to a person not residing at or confined to the facility.

(b) The term includes an outpatient center for primary care and an outpatient center for surgical services, as those terms are defined in 50-5-101, and a local public health agency as defined in 50-1-101.

(c) The term does not include a facility that provides routine health screenings, health education, or immunizations.

(21) "Hospital" has the meaning provided in 50-5-101.

(22) "Intern" means:

(a) a person who is licensed by the state to engage in the practice of pharmacy while under the personal supervision of a preceptor and who is satisfactorily progressing toward meeting the requirements for licensure as a pharmacist;

(b) a graduate of an accredited college of pharmacy who is licensed by the state for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist;

(c) a qualified applicant awaiting examination for licensure; or

(d) a person participating in a residency or fellowship program.

(23) "Long-term care facility" has the meaning provided in 50-5-101.

(24) (a) "Manufacturing" means the production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis.

(b) Manufacturing includes:

(i) any packaging or repackaging;

(ii) labeling or relabeling;

(iii) promoting or marketing; and

(iv) preparing and promoting commercially available products from bulk compounds for resale by pharmacies, practitioners, or other persons.

(25) "Medicine" means a remedial agent that has the property of curing, preventing, treating, or mitigating diseases or which is used for this purpose.

(26) "Participant" means a physician's office, pharmacy, hospital, or health clinic that has elected to voluntarily participate in the cancer drug repository program provided for in 37-7-1403 and that accepts donated cancer drugs or devices under rules adopted by the board.

(27) "Patient counseling" means the communication by the pharmacist of information, as defined by the rules of the board, to the patient or caregiver in order to ensure the proper use of drugs or devices.

(28) "Person" includes an individual, partnership, corporation, association, or other legal entity.

(29) "Pharmaceutical care" means the provision of drug therapy and other patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of disease process.

(30) "Pharmacist" means a person licensed by the state to engage in the practice of pharmacy and who may affix to the person's name the term "R.Ph.".

(31) "Pharmacy" means an established location, either physical or electronic, registered by the board where drugs or devices are dispensed with pharmaceutical care or where pharmaceutical care is provided.

(32) "Pharmacy technician" means an individual who assists a pharmacist in the practice of pharmacy.

(33) "Poison" means a substance that, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or that destroys living tissue with which it comes in contact.

(34) "Practice of pharmacy" means:

(a) interpreting, evaluating, and implementing prescriber orders;

(b) administering drugs and devices pursuant to a collaborative practice agreement*, except as provided in 37-7-105,* and compounding, labeling, dispensing, and distributing drugs and devices, including patient counseling;

(c) properly and safely procuring, storing, distributing, and disposing of drugs and devices and maintaining proper records;

(d) monitoring drug therapy and use;

(e) initiating or modifying drug therapy in accordance with collaborative pharmacy practice agreements established and approved by health care facilities or voluntary agreements with prescribers;

(f) participating in quality assurance and performance improvement activities;

(g) providing information on drugs, dietary supplements, and devices to patients, the public, and other health care providers; and

(h) participating in scientific or clinical research as an investigator or in collaboration with other investigators.

(35) "Practice telepharmacy" means to provide pharmaceutical care through the use of information technology to patients at a distance.

(36) "Preceptor" means an individual who is registered by the board and participates in the instructional training of a pharmacy intern.

(37) "Prescriber" has the same meaning as provided in 37-7-502.

(38) "Prescription drug" means any drug that is required by federal law or regulation to be dispensed only by a prescription subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 353.

(39) "Prescription drug order" means an order from a prescriber for a drug or device that is communicated directly or indirectly by the prescriber to the furnisher by means of a signed order, by electronic transmission, in person, or by telephone. The order must include the name and address of the prescriber, the prescriber's license classification, the name and address of the patient, the name, strength, and quantity of the drug, drugs, or device prescribed, the directions for use, and the date of its issue. These stipulations apply to written, oral, electronically transmitted, and telephoned prescriptions and orders derived from collaborative pharmacy practice.

(40) "Provisional community pharmacy" means a pharmacy that has been approved by the board, including but not limited to federally qualified health centers, as defined in 42 CFR 405.2401, where prescription drugs are dispensed to appropriately screened, qualified patients.

(41) "Qualified patient" means a person who is uninsured, indigent, or has insufficient funds to obtain needed prescription drugs or cancer drugs.

(42) "Registry" means the prescription drug registry provided for in 37-7-1502.

(43) "Utilization plan" means a plan under which a pharmacist may use the services of a pharmacy technician in the practice of pharmacy to perform tasks that:

(a) do not require the exercise of the pharmacist's independent professional judgment; and

(b) are verified by the pharmacist.

(44) "Wholesale" means a sale for the purpose of resale."

**Section 2.** Section 37-7-105, MCA, is amended to read:

**"37-7-105. Administration of ~~influenza vaccine~~ *immunizations.*** *(1)* ~~A~~ *An immunization-certified* pharmacist may ~~administer immunization against the influenza virus by injection or inhalation for individuals who are 12 years of age or older~~ *prescribe and administer the following immunizations without a collaborative practice agreement in place:*

*(a) influenza to individuals who are 12 years of age or older;*

*(b) pneumococcal polysaccharide vaccine and tetanus and diphtheria to individuals who are 18 years of age or older;*

*(c) herpes zoster to those individuals identified in the guidelines published by the United States centers for disease control and prevention's advisory committee on immunization practices; or*

*(d) in the event of an adverse reaction, epinephrine or diphenhydramine to individuals who are 12 years of age or older.*

*(2) A pharmacist who administers an immunization pursuant to this section shall:*

*(a) ensure that the individual immunized is assessed for contraindications to immunization;*

*(b) ensure that the individual who is being immunized or the individual's legal representative receives a copy of the appropriate vaccine information statement;*

*(c) report an adverse reaction if the pharmacist is notified of the reaction;*

*(d) provide a signed certificate of immunization to the primary health care provider of each individual who is immunized and to the individual who is immunized that includes the individual's name, date of immunization, address of immunization, administering pharmacist, immunization agent, manufacturer, and lot number; and*

*(e) create a record for each immunization, in which the individual's name, date, address of immunization, administering pharmacist, immunization agent, manufacturer, and lot number is included, and maintain the record for 7 years from the date the immunization was administered.*

*(3) For the purposes of this section, the following definitions apply:*

*(a) "Immunization-certified pharmacist" means a pharmacist who has successfully completed a course of training approved by the United States centers for disease control and prevention, by a provider accredited by the accreditation counsel for pharmacy education, or by an authority approved by the board and who holds a current basic cardiopulmonary resuscitation certification issued by the American heart association, the American red cross, or other recognized provider.*

*(b) "Vaccine information statement" means an information sheet that is produced by the United States centers for disease control and prevention that explains the benefits and risks associated with a vaccine to a vaccine recipient or the legal representative of the vaccine recipient."*

Approved April 16, 2013

## CHAPTER NO. 221

[SB 258]

AN ACT NAMING THE JUSTICE BUILDING AFTER JOSEPH P. MAZUREK; REVISING THE CAPITOL COMPLEX MASTER PLAN SO THAT THE STATE BUILDING NAMING PROVISIONS AND OTHER RESTRICTIONS DO NOT APPLY TO THE JUSTICE BUILDING; ALLOWING A PLAQUE AND MEMORIAL COMMEMORATING JOSEPH P. MAZUREK TO BE PLACED ON THE CAPITOL COMPLEX GROUNDS IF PRIVATE FUNDS ARE USED TO CONSTRUCT AND MAINTAIN THE PLAQUE AND MEMORIAL; AMENDING SECTIONS 2-17-807 AND 2-17-808, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Joseph P. Mazurek served as an officer in the United States Army, in the Montana State Senate from 1981 to 1993 where he served as Chair of the Senate Judiciary Committee and as Senate President, and as Montana Attorney General from 1993 to 2001; and

WHEREAS, as Attorney General, Joseph P. Mazurek was instrumental in leading efforts to settle federal and tribal water rights compacts, investigate and prosecute workers' compensation and Medicaid fraud, and resolve cleanup of 100 years of contamination in the Clark Fork River; and

WHEREAS, Joseph P. Mazurek established the Attorney General's Task Force on Youth Violence and worked tirelessly to end youth violence in Montana; and

WHEREAS, Joseph P. Mazurek helped bring about a peaceful end to the 81-day Freeman standoff, led the state's cooperative effort with the United States to bring the Unabomber to justice, and supported legislation to strengthen and protect crime victims' rights as Attorney General; and

WHEREAS, Joseph P. Mazurek was widely regarded as one of Montana's preeminent statesmen during his time in the Montana Legislature and as Montana Attorney General, recognized for his commitment to bringing opposing parties together and for his unflagging enthusiasm for public service.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Joseph P. Mazurek building, memorial, and plaque — funding.** (1) The justice and state library building located at 215 North Sanders in Helena is named the Joseph P. Mazurek building.

(2) A plaque and memorial commemorating Joseph P. Mazurek may be placed on the capitol complex grounds subject to review by the council according to the criteria in 2-17-804(2).

(3) Private funds must be used to construct the plaque and memorial and to maintain them for 50 years.

**Section 2.** Section 2-17-807, MCA, is amended to read:

**"2-17-807. Approval for displays and naming buildings, spaces, and rooms.** (1) A state building, space, or room in the capitol complex may not be named after an individual or a bust, plaque, statue, memorial, monument, or art display may not be displayed on a long-term basis in the capitol complex or on the capitol complex grounds unless the building, space, or room name or display is approved by the legislature and complies with this part. The capitol building, including any future additions and expansions, may not be named after any person, as defined in 2-4-102.

(2) (a) Except as provided in subsections (2)(b) through ~~(2)(d)~~ *(2)(e)*, a state building, space, or room in the capitol complex may not be named after an individual or a bust, plaque, statue, memorial, monument, or art display commemorating an individual may not be displayed on a long-term basis in the capitol complex unless the individual has been deceased for at least 10 years.

(b) The statue of Mike and Maureen Mansfield authorized in 2-17-808(1)(d)(iii) and the plaque commemorating President George H. W. Bush authorized in 2-17-808(2)(b)(ii) may continue to be displayed in the capitol complex.

(c) A public building within the capitol complex constructed with private funds after April 17, 2007, or a space or room constructed with private funds after April 17, 2007, in a public building, other than the capitol building, may bear a name designated by the benefactor of the building, space, or room if:

(i) the building, space, or room is to be owned by or used exclusively or primarily by the Montana historical society to store or display artifacts or other property owned by the Montana historical society; and

(ii) the building, space, or room and the designated name are approved by the council and by the board of the historical society, provided for in 2-15-1512.

(d) The classroom building authorized in May 2007 to be built at the Montana law enforcement academy may be named after Karl Ohs, and a plaque and the Lou Peters award commemorating Karl Ohs may be displayed there.

*(e) The justice building located at 215 North Sanders in Helena must be named after Joseph P. Mazurek and a plaque and memorial commemorating him may be displayed on the capitol complex grounds.*

(3) A bust, plaque, statue, memorial, monument, or art display commemorating an event, including a military event, may not be displayed on a long-term basis in the capitol complex until 10 years after the end of the event.

(4) All busts, plaques, statues, memorials, monuments, or art displays authorized, but not installed within 5 years of authorization, must be reauthorized.

(5) The department of administration may review and approve the temporary display of a bust, plaque, statue, memorial, monument, or art display for up to 1 year in the capitol complex or on the capitol complex grounds."

**Section 3.** Section 2-17-808, MCA, is amended to read:

**"2-17-808. Placement of certain busts, plaques, statues, memorials, monuments, and art displays.** (1) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, in the capitol:

(a) the busts of Thomas J. Walsh, Burton K. Wheeler, and Joseph Dixon;

(b) the plaques commemorating Theodore Brantley, Fred Whiteside, the first Montana volunteers who fought in the Spanish-American War, the construction of the capitol from 1899 to 1902, the 1972 Montana constitutional convention, and the women legislators' centennial;

(c) the murals by Edgar S. Paxson, Ralph E. DeCamp, Charles M. Russell, Amedee Joullin, and F. Pedretti and sons;

(d) the statues of:

(i) Wilbur Fiske Sanders;

(ii) Jeannette Rankin; and

(iii) Mike and Maureen Mansfield;

(e) the Montana statehood centennial bell;

(f) the gallery of outstanding Montanans;

(g) the Montana constitutional exhibit;

(h) the biographical descriptions of Montana's governors, to be placed near the portraits of the governors;

(i) a plaque commemorating former representative Francis Bardanouve and lettering naming the first floor of the east wing of the capitol in honor of Francis Bardanouve; and

(j) a mural honoring the historical contributions of women as community builders.

(2) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, on the grounds of the capitol:

(a) the statues of Thomas Francis Meagher and Lady Liberty;

(b) the plaques commemorating:

(i) Donald Nutter;

(ii) President George H. W. Bush; and

(iii) American prisoners of war and personnel of the United States armed services missing in action;

(c) two benches with plaques recognizing contributors to the 1997-2000 capitol restoration, repair, and renovation project;

(d) the Montana centennial square; and

(e) the monument of the ten commandments.

(3) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, on the capitol complex grounds:

(a) the statue by Robert Scriver entitled "symbol of the pros";

(b) the monuments to the liberty bell, the veterans' and pioneer memorial building—landscape beautification project, Montana veterans, Pearl Harbor survivors, and the peace pole;

(c) the sculptures of the herd bull and the eagle;

(d) the plaques commemorating the Montana national guard and Lewis and Clark; and

(e) the arrastra.

(4) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, in state buildings on the capitol complex:

(a) the paintings of Dr. W. F. Cogswell and the paintings entitled "burning bush", "dryland farmer", "farm girl", "the river rat", "top of the world", "angus #68", "the source", "the Bozeman trail", and "the Mullan road";

(b) the art displays known as "Montana workers—mining, ranching, and building", "copper city rodeo", "dancing cascade", "save a piece of the sky", and "night light";

(c) the plaque commemorating Walt Sullivan, the plaque of the Sam W. Mitchell building, and the plaque commemorating the original headquarters of the Montana highway patrol;

(d) the busts of Lee Metcalf and Sam W. Mitchell; ~~and~~

(e) the plaque and Lou Peters award commemorating Karl Ohs*;*

*(f) the plaque and memorial commemorating Joseph P. Mazurek*.

(5) The senate sculpture depicting the Lewis and Clark expedition is to be placed for up to 50 years, subject to renewal, on the west wall in the senate chambers.

(6) The council shall determine the specific placement of the items identified in subsections (1) through (4). (Subsection (1)(j) void on occurrence of contingency—sec. 3, Ch. 279, L. 2011.)"

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 16, 2013

# CHAPTER NO. 222

[HB 182]

AN ACT ADDING TO LEGISLATIVE GOALS FOR PUBLIC SCHOOLS AN EMPHASIS ON LITERACY AND NUMERACY, STRATEGIC REASONING, AND AN UNDERSTANDING OF POLITICAL, SOCIAL, AND ECONOMIC SYSTEMS OF THE UNITED STATES AND THE WORLD; AMENDING SECTION 20-1-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-1-102, MCA, is amended to read:

**"20-1-102. Legislative goals for public elementary and secondary schools.** It is the goal of the legislature that Montana's public elementary and secondary school system, in cooperation with parents or guardians, create a learning environment for each student that:

*(1) develops a sound foundation for literacy and numeracy during the early years that is built upon and reinforced throughout the educational experience;*

~~(1)~~*(2)* furthers the ability to reason critically, ~~and~~ creatively, *and strategically*;

~~(2)~~*(3)* fosters the ability to effectively *understand and* communicate ideas, knowledge, and thoughts;

~~(3)~~*(4)* develops a sense of personal and civic responsibility;

*(5) provides an in-depth understanding of the American political, social, and economic systems and the historical context from which they arose;*

*(6) provides familiarization with political, social, and economic systems found elsewhere in the world;*

~~(4)~~*(7)* develops a strong work ethic, postsecondary readiness, and employment skills; and

~~(5)~~*(8)* encourages a healthy lifestyle."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 18, 2013

# CHAPTER NO. 223

[HB 488]

AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO CREATE A POSTER TO PROVIDE INFORMATION REGARDING THE NATIONAL HUMAN TRAFFICKING RESOURCE CENTER HOTLINE; PROVIDING THAT THE DEPARTMENT ESTABLISH BY RULE PERSONS AND ENTITIES THAT SHOULD RECEIVE COPIES OF THE POSTER FOR DISPLAY; AND REQUIRING THE DEPARTMENT OF TRANSPORTATION TO DISPLAY THE POSTER.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Human trafficking hotline — creation of poster — rulemaking.** (1) (a) The department of justice shall create a poster that provides information regarding the national human trafficking resource center hotline. The poster must be at least 8 1/2 inches by 11 inches in size, must include, if available, a quick response code that is provided by the national human trafficking resource center for access by mobile devices, and must include the following statement:

"If you or someone you know is being forced to engage in any activity and cannot leave—whether it is commercial sex, housework, farm work, or any other activity—call the National Human Trafficking Resource Center Hotline at 1-888-373-7888 to access help and services.

Victims of human trafficking are protected under U.S. and Montana law.

The toll-free hotline is:

- Available 24 hours a day, 7 days a week;
- Toll-free;

- Operated by a nonprofit, nongovernmental organization;
- Anonymous and confidential;
- Accessible in 170 languages; and
- Able to provide help, referral to services, training, and general information."

(b) The statement provided in subsection (1)(a) must appear on each poster in English, Spanish, and any other language that is required for voting materials under the federal Voting Rights Act, 42 U.S.C. 1973aa-1a.

(2) (a) The department of justice shall provide a copy of the poster to persons and entities that the department of justice determines by rule should receive the poster.

(b) The department shall make a copy of the poster available for print on its website.

(3) The department of justice shall request that any person or entity receiving a copy of the poster display the poster in a location that is accessible to employees and members of the public.

**Section 2. Human trafficking hotline — posted notice required at rest areas.** The department of transportation shall display at each rest area within the limits of the right-of-way of interstate highways and other state highways a poster created by the department of justice pursuant to [section 1] that provides information regarding the national human trafficking resource center hotline.

**Section 3. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 44, chapter 4, and the provisions of Title 44, chapter 4, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 60, chapter 2, part 2, and the provisions of Title 60, chapter 2, part 2, apply to [section 2].

Approved April 18, 2013

# CHAPTER NO. 224

[SB 88]

AN ACT ADOPTING THE UPPER MISSOURI RIVER BREAKS NATIONAL MONUMENT COMPACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. United States of America, Bureau of Land Management, Upper Missouri River Breaks National Monument — Montana compact — ratified.** This Compact is entered into by the state of Montana and the United States of America to settle for all time any and all claims to federal reserved water rights for the Upper Missouri River Breaks National Monument administered by the U.S. Bureau of Land Management within the state of Montana.

ARTICLE I

RECITALS

WHEREAS, the State of Montana, in 1979 pursuant to Title 85, chapter 2, of the Montana Code Annotated, commenced a general adjudication of the rights

to the use of water within the State of Montana including all federal reserved and appropriative water rights;

WHEREAS, 85-2-228, MCA, provides that a federal reserved water right with a priority date of July 1, 1973, or later be subject to the same process and adjudication as a federal reserved water right with a priority date before July 1, 1973;

WHEREAS, 85-2-703 and 85-2-228(3), MCA, provide that the State may negotiate settlement of claims by the federal government to non-Indian reserved waters within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of the Upper Missouri River Breaks National Monument as articulated in the Proclamation of January 17, 2001;

WHEREAS, the Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516-517 (1968);

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of Interior pursuant to 43 U.S.C. 1457 (1986, Supp. 1992);

NOW THEREFORE, the State of Montana and the United States agree as follows:

## ARTICLE II
## DEFINITIONS

For Purposes of this Compact only, the following definitions shall apply:

(1) "Abstract" means copies of the documents entitled "Abstract of U.S. Bureau of Land Management Water Right for the Judith River" and "Abstract of U.S. Bureau of Land Management Water Right for Arrow Creek," referenced in this Compact as Appendices 1 and 2.

(2) "Acre-foot" or "Acre-feet" or "AF" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet of water.

(3) "Arrow Creek Basin" means the watershed of Arrow Creek designated as Montana Water Court Basin 41R.

(4) "BLM" means the United States Department of Interior, Bureau of Land Management or its successor.

(5) "Concurrent" means occurring or existing simultaneously or side by side. As applied to this compact, "Concurrent" rights to instream flow are non-additive water rights that constitute a usufructuary interest held by two or more parties in the same volume of water.

(6) "Department" means the Montana Department of Natural Resources and Conservation or its successor.

(7) "Effective Date" means the date on which the Compact is given ratification by the Montana Legislature, written approval by the United States Department of the Interior, and written approval by the United States Department of Justice, whichever occurs later.

(8) "Groundwater" means any water that is beneath the ground surface.

(9) "Instream Flow" means the water that the parties agree shall remain in the stream in satisfaction of the United States' reserved water right for the purposes of the federal reservation.

(10) "Judith River Basin" means the watershed of the Judith River designated as Montana Water Court Basin 41S.

(11) "Monument" means the "Upper Missouri River Breaks National Monument" as defined herein.

(12) "Non-Consumptive Use" means a beneficial use of water that does not cause a reduction in the source of supply or result in a reduction in the quantity or quality of water and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

(13) "Parties" means the State of Montana and the United States.

(14) "Proclamation" means Presidential Proclamation 7398 of January 17, 2001, designating the Upper Missouri River Breaks National Monument.

(15) "Proportionally Enforceable Stream Flow" means, as applied to the Arrow Creek water right described herein, a rate of flow that when measured at a point upstream of the designated enforcement point described in Article III.B.2, shall be equivalent to an instream flow right of five (5) cfs measured at the designated enforcement point.

(16) "Ramped Diversion" means a condition on new diversions that allows for an increase in diversion of up to twenty (20) cubic feet per second (cfs) per day to prevent sudden drops in the natural recession rate of the river hydrograph.

(17) "Recognized Under State Law" when referring to a water right or use means a water right or use protected by state law, but does not include state recognition of a federal or tribal reserved water right arising under federal law.

(18) "Reserved Water Right" means collectively the federal reserved water rights to quantified instream flows in the Judith River and Arrow Creek as described herein.

(19) "State" means the state of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, "state" means the Director of the Montana Department of Natural Resources and Conservation or the Director's designee.

(20) "Upper Missouri River Breaks National Monument" means the federal reservation of land that was designated under the Antiquities Act of 1906, 16 U.S.C. 431-433 (1906, Supp. ____) by Presidential Proclamation 7398.

(21) "United States" means the federal Government and all officers, agencies, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, "United States" means the Secretary of the Department of the Interior or the Secretary's Designee.

ARTICLE III

WATER RIGHT

The Parties agree that the following water rights are in settlement of the reserved water rights claims of the United States for the Monument. All water rights described in this Article are subject to Article IV of this Compact as well as any specific additional conditions set forth below.

A. Priority Date. The United States' water rights for instream flow purposes within the Upper Missouri River Breaks National Monument that are described herein have a priority date of January 17, 2001. The United States' January 17, 2001, water rights are subordinate in priority to water rights Recognized Under

State Law existing on June 1, 2012. Accordingly, any water right Recognized Under State Law with a priority date before June 1, 2012, is not subject to call by the United States in the exercise of the Reserved Water Right.

B. Instream Flow. The United States has water rights for minimum instream flows in the Judith River and Arrow Creek as follows:

1. The Judith River. From the point furthest upstream where the Monument boundary crosses the mainstem river channel on the southern boundary of the NW 1/4 SE 1/4 of section 2, T.21N., R.16E., MPM, to the confluence with the Missouri River. The water right is in the amount of an instream flow rate of one hundred and sixty (160) cubic feet per second (cfs), to be measured at the United States Geological Survey (USGS) Gaging Station #06114700 near the confluence of the Judith River with the Missouri River. The period of use for this right is from January 1 to December 31.

2. Arrow Creek. From the point furthest upstream where the Monument Boundary crosses the mainstem creek channel on the western boundary of the SW 1/4 of section 6, T.20N., R.15E., MPM, to the confluence with the Missouri River. The water right is in the amount of an instream flow rate of five (5) cfs enforceable at the point immediately upstream of the confluence of Arrow Creek and Flat Creek in the SE 1/4 NE 1/4 of section 6, T.22N., R15E., MPM (the designated enforcement point). The period of use for this right is from March 1 to July 31.

i. Provision for Alternate Enforcement Location. The parties recognize that measurement at the confluence of Arrow Creek and Flat Creek may be difficult to administer and that measurement at an upstream point may be more feasible. The enforceable level of the flow rate shall be adjusted to an amount proportional to the 5 cfs if measurement is conducted at an upstream measurement point rather than at the designated enforcement point described above. The Proportionally Enforceable Stream Flow shall be determined jointly by the BLM and the Department, after additional stream flow monitoring is conducted by the BLM to provide the Parties sufficient data to make a determination. Prior to implementing a Proportionally Enforceable Stream Flow, the Parties shall: (1) provide notice to water users in the affected basin of the proposed revision to the enforceable amount; (2) hold at least one meeting in Stanford, Montana, preceded by such notice as may be required under State law for public meetings, at which the Parties shall explain the proposed revision; and (3) provide a reasonable period for receipt of any written public comment concerning the proposed revision. Any future revision of the designated enforcement point and implementation of a Proportionally Enforceable Stream Flow as provided in this section shall be based solely on stream flow monitoring considerations and shall be subject to the same conditions as provided above. Such future revision shall not be considered a modification of this Compact or an enlargement or diminution of the 5 cfs instream flow right in Arrow Creek.

C. Stream Reaches on which new mainstem impoundments will be prohibited after the Effective Date of the Compact.

1. The Judith River. From the confluence of the Middle and South Forks of the Judith River downstream to its confluence with the Missouri River.

2. Arrow Creek. From its confluence with Hay Creek downstream to its confluence with the Missouri River.

D. Conditions to be applied to permits issued after the Effective Date of the Compact.

1. Direct from source diversions from the Judith River or Arrow Creek that have a diversion capacity greater than 20 cfs shall be operated as a Ramped Diversion. The permit conditions shall require such diversions to be implemented incrementally with an increase of no more than 20 cfs in any 24-hour period.

ARTICLE IV

COMPACT IMPLEMENTATION

A. Judith River. Judith River flows that are not already appropriated as of the Effective Date of this Compact will be available for future development, subject to the Reserved Water Right and applicable permit conditions as described herein. The Department may approve new uses after the Effective Date of this Compact, but the Department shall condition any permit or approval of new uses to provide that such uses may not cause the flow of the Judith River to fall below one hundred and sixty (160) cfs from January 1 through December 31 at the United States Geological Survey gaging station #06114700 on the lower Judith River near the mouth of the Judith River near Winifred, Montana; and, if required, with the diversion restrictions described under Article III.C. Appropriations occurring after June 1, 2012, shall be subject to a call by the United States in the exercise of the Reserved Water Right at any time streamflow falls below the minimum instream flow requirement for five (5) consecutive days.

B. Arrow Creek. Arrow Creek flows that are not already appropriated as of the Effective Date of this Compact will be available for future development subject to the Reserved Water Right and applicable permit conditions as described herein. The Department may approve new uses after the Effective Date of this Compact but shall condition any permit or approval of new uses to provide that such uses may not cause the flow of Arrow Creek to fall below five (5) cfs if measured at the confluence of Arrow Creek and Flat Creek at the designated enforcement point described in Article III.B.2 above—or if measured at an alternate enforcement location as described in Article III.B.2.i above, a Proportionally Enforceable Stream Flow amount as described therein—from March 1 through July 31; and, if required, with the diversion restrictions described under Article III.C. New appropriations occurring after June 1, 2012, shall be subject to a call by the United States in the exercise of the Reserved Water Right at any time stream flow falls below the minimum instream flow requirement as measured at the designated enforcement point as described in Article III.B.2 above, or at an alternate enforcement point provided for in Article III.B.2.i.

C. Conditions to be applied to permits issued after the Effective Date of the Compact.

1. Direct from source diversions from the Judith River or Arrow Creek that have a diversion capacity greater than twenty (20) cfs shall be operated as a Ramped Diversion. The permit conditions shall require that diversions be implemented incrementally with an increase of no more than 20 cfs in any 24-hour period.

D. Uses exempted from curtailment by the United States' exercise of the Reserved Water Right during times of shortage. During times when there is insufficient water to satisfy the Reserved Water Right, and curtailment of junior water rights is otherwise contemplated under Articles III.A and B, the following water rights shall not be subject to call or curtailment for the benefit of the Reserved Water Right:

1. Non-Consumptive Uses located upstream of the instream flow reaches identified in Article III.

2. Groundwater Uses developed pursuant to 85-2-306, MCA.

Water permits/certificates under the provisions of 85-2-306, MCA, shall not be subject to call by the Reserved Water Right. Should the Montana Legislature amend the requirements of this section to a more restrictive standard than that in effect under this subsection on the Effective Date of this Compact (35 gallons per minute or less and not to exceed 10 acre-feet per year), the more restrictive standard shall apply to appropriations permitted after the effective date of the amending legislation when determining whether the right is subject to curtailment by the United States in the exercise of the Reserved Right.

3. Stockwater impoundments of less than 15 acre-feet capacity and total appropriation less than 30 acre-feet per year.

a. Stockwater impoundments of less than 15 acre-feet capacity and a total appropriation of less than 30 acre-feet per year that are not diverted from a perennial flowing stream and that are constructed on and will be accessible to a parcel of land that is owned or under control of the applicant and that is 40 surface acres or larger shall not be subject to call by the Reserved Water Right.

4. Temporary Emergency Appropriations under 85-2-113(3), MCA.

5. An Application submitted pursuant to 85-20-1401, MCA, Article VI.

6. An application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required for:

a. Remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

b. Aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387; or

c. Remedial actions taken pursuant to Title 75, chapter 10, part 7, of the Montana Code Annotated.

E. Prohibition on Future Mainstem Impoundment. DNRC may permit no new impoundments that do not meet the permit exception requirements of 85-2-306, MCA, on the mainstem of the Judith River or Arrow Creek as described in Article III.C. Reclamation, repair, or rehabilitation of an existing impoundment shall not be considered a new impoundment, provided that reclamation, repair, or rehabilitation shall not cause the impoundment to exceed the storage volume listed on the statement of claim.

F. Action for enforcement of Provisions of Article III. The United States may file an original action in a court of competent jurisdiction to enforce the provisions of Article III at any time. The United States shall not be required to exhaust any available administrative remedies in order to enforce Article III of this Compact.

## ARTICLE V
## GENERAL PROVISIONS

A. No Effect on Tribal Rights or Other Federal Reserved Water Rights.

1. The relationship between the water rights of the Bureau of Land Management described herein and any rights to water of an Indian Tribe in Montana, or of any federally derived water right of an individual, or of the United States on behalf of such Tribe or individual shall be determined by the rule of priority.

2. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any Indian Tribes and Tribal members in Montana.

3. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of an Indian Tribe regarding boundaries or property interests in the State of Montana.

4. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than those of the Bureau of Land Management for the Upper Missouri River Breaks National Monument.

B. General Disclaimers. Nothing in this Compact may be construed or interpreted:

1. As a precedent for the litigation of reserved water rights or the interpretation or administration of existing or future compacts between the United States and the State; or of the United States and any other state;

2. As a waiver by the United States of its right under state law to raise objections in state court to individual water rights claimed pursuant to the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact, or, except as provided in this Compact, any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under the State Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact;

3. As a waiver by the United States of its right to seek relief from a conflicting water use not entitled to protection under the terms of this Compact;

4. To establish a precedent for other agreements between the State and the United States or an Indian tribe;

5. To determine the relative rights, inter sese, of persons using water under the authority of state law or to limit the rights of the parties or a person to litigate an issue not resolved by this Compact;

6. To create or deny substantive rights through headings or captions used in this Compact;

7. To expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the Effective Date of this Compact;

8. To affect the right of the State to seek fees or reimbursement for costs or the right of the United States to contest the imposition of such fees or costs, pursuant to a ruling by a state or federal court of competent jurisdiction or an Act of Congress;

9. To affect, in any manner, the entitlement to or quantification of other federal water rights. This Compact is binding on the United States solely in regard to the water rights of the United States for the Upper Missouri River Breaks National Monument, and this Compact does not affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact.

C. Use of Water Right. Non-use of all or a part of the Reserved Right shall not constitute abandonment of the right. The Reserved Right need not be applied to a use deemed beneficial under state law, but shall be restricted to uses necessary to fulfill the purposes outlined in the Proclamation.

D. Concurrent with other Non-Consumptive Instream Water Uses. The federal reserved water right for instream flows for the Upper Missouri River

Breaks National Monument described in this Compact shall run concurrently with any other non-consumptive instream water rights, and shall not be additive to such non-consumptive instream rights.

E. Appropriation Pursuant to State Law. Nothing in this Compact may prevent the United States from seeking a water appropriation pursuant to State law for use on the reserved land within the Upper Missouri River Breaks National Monument or for use outside the boundaries of the federal reservation for which a water right is described in this Compact, provided that a water right obtained in this manner shall be Recognized Under State Law and shall be administered pursuant to State law.

F. Reservation of Rights. The parties expressly reserve all rights not granted, described, or relinquished in this Compact.

G. Severability. The provisions of this Compact are not severable.

H. Multiple Originals. This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

I. Notice. Unless otherwise specifically provided for in this Compact, service of notice, except service in litigation, shall be:

1. State. Upon the Director of the Department or its successor agency, and such other officials as the Director may designate in writing.

2. United States. Upon the Secretary of the Interior and such other officials as the Secretary may designate in writing.

ARTICLE VI

FINALITY OF COMPACT

A. Binding Effect.

1. The Effective Date of this Compact is the date of the ratification of this Compact by the Montana Legislature, written approval by the United States Department of the Interior, and written approval by the United States Department of Justice. Once effective, all of the provisions of this Compact shall be binding on:

a. the State and a person or entity of any nature whatsoever using, claiming or in any manner asserting a right under the authority of the State to the use of water; and

b. except as otherwise provided in Article V.A, the United States, a person or entity of any nature whatsoever using, claiming, or in any manner asserting a right under the authority of the United States to the use of water.

2. Following the Effective Date, this Compact may not be modified without the written consent of both parties. Any attempt to unilaterally modify this Compact by either party shall render this Compact voidable at the election of the other party.

B. Settlement of Claims. The parties intend that the Reserved Water Rights described in this Compact are in full and final settlement of the reserved water right claims of the United States for the Upper Missouri River Breaks National Monument. Pursuant to this settlement, by which certain federal Reserved Water Rights are expressly recognized by the State in this Compact, the United States hereby and in full settlement of any and all claims filed by the United States or which could have been filed by the United States for the Monument relinquishes forever all said claims on the Effective Date of this Compact to water within the State of Montana for Reserved Water Rights for the above mentioned unit. The State agrees to recognize the Reserved Water Right

described and quantified herein, and shall, except as expressly provided for herein, treat them in the same manner as any other appropriation.

C. The parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the ..... day of ....., 2013.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [section 1].

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved April 18, 2013

# CHAPTER NO. 225

[SB 107]

AN ACT REVISING LAWS RELATING TO DEVIATE SEXUAL CONDUCT; REVISING THE DEFINITION OF "DEVIATE SEXUAL CONDUCT"; AND AMENDING SECTIONS 27-2-216, 41-3-102, 45-1-205, 45-2-101, 45-5-505, 46-1-502, AND 52-3-803, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 27-2-216, MCA, is amended to read:

**"27-2-216. Tort actions — childhood sexual abuse.** (1) An action based on intentional conduct brought by a person for recovery of damages for injury suffered as a result of childhood sexual abuse must be commenced not later than:

(a) 3 years after the act of childhood sexual abuse that is alleged to have caused the injury; or

(b) 3 years after the plaintiff discovers or reasonably should have discovered that the injury was caused by the act of childhood sexual abuse.

(2) It is not necessary for a plaintiff to establish which act, in a series of acts of childhood sexual abuse, caused the injury that is the subject of the suit. The plaintiff may compute the period referred to in subsection (1)(a) from the date of the last act by the same perpetrator.

(3) As used in this section, "childhood sexual abuse" means any act committed against a plaintiff who was less than 18 years of age at the time the act occurred and that would have been a violation of 45-5-502, 45-5-503, 45-5-504, ~~45-5-505,~~ 45-5-507, 45-5-625, or prior similar laws in effect at the time the act occurred.

(4) The provisions of 27-2-401 apply to this section."

**Section 2.** Section 41-3-102, MCA, is amended to read:

**"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

(1) (a) "Abandon", "abandoned", and "abandonment" mean:

(i) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(ii) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

(iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

(iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(b) The terms do not include the voluntary surrender of a child to the department solely because of parental inability to access publicly funded services.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, *or* foster parent or an adult who resides in the same home in which the child resides;

(b) a person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, because of religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual physical or psychological harm to a child;

(ii) substantial risk of physical or psychological harm to a child; or

(iii) abandonment.

(b) (i) The term includes:

(A) actual physical or psychological harm to a child or substantial risk of physical or psychological harm to a child by the acts or omissions of a person responsible for the child's welfare; or

(B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an unlawful clandestine laboratory, as prohibited by 45-9-132.

(ii) For the purposes of this subsection (7), "dangerous drugs" means the compounds and substances described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

(c) In proceedings under this chapter in which the federal Indian Child Welfare Act is applicable, this term has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C. 1912(f).

(d) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute physical or psychological harm to a child.

(8) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

(9) "Department" means the department of public health and human services provided for in 2-15-2201.

(10) "Family group decisionmaking meeting" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

(11) "Indian child" means any unmarried person who is under 18 years of age and who is either:

(a) a member of an Indian tribe; or

(b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(12) "Indian child's tribe" means:

(a) the Indian tribe in which an Indian child is a member or eligible for membership; or

(b) in the case of an Indian child who is a member of or eligible for membership in more than one Indian tribe, the Indian tribe with which the Indian child has the more significant contacts.

(13) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control have been transferred by the child's parent.

(14) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized by:

(a) the state of Montana; or

(b) the United States secretary of the interior as being eligible for the services provided to Indians or because of the group's status as Indians, including any Alaskan native village as defined in federal law.

(15) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-1-503 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(16) "Parent" means a biological or adoptive parent or stepparent.

(17) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

(18) "Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

(19) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

(20) "Physical neglect" means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child.

(21) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;

(ii) commits or allows sexual abuse or exploitation of the child;

(iii) induces or attempts to induce a child to give untrue testimony that the child or another child was abused or neglected by a parent or other person responsible for the child's welfare;

(iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(vi) abandons the child.

(b) The term does not include a youth not receiving supervision solely because of parental inability to control the youth's behavior.

(22) (a) "Protective services" means services provided by the department:

(i) to enable a child alleged to have been abused or neglected to remain safely in the home;

(ii) to enable a child alleged to have been abused or neglected who has been removed from the home to safely return to the home; or

(iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances and the best interests of the child prevent reunification with parents or a return to the home.

(b) The term includes emergency protective services provided pursuant to 41-3-301, voluntary protective services provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to parts 4 and 6 of this chapter.

(23) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission of acts of violence against another person residing in the child's home.

(b) The term may not be construed to hold a victim responsible for failing to prevent the crime against the victim.

(24) "Qualified expert witness" as used in cases involving an Indian child in proceedings subject to the federal Indian Child Welfare Act means:

(a) a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child-rearing practices;

(b) a lay expert witness who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's tribe; or

(c) a professional person who has substantial education and experience in providing services to children and families and who possesses significant knowledge of and experience with Indian culture, family structure, and child-rearing practices in general.

(25) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(26) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(27) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, ~~deviate sexual conduct,~~ sexual abuse, ritual abuse *of a minor*, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

(28) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(29) (a) "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment.

(b) This definition does not apply to any provision of this code that is not in this chapter.

(30) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(31) "Unfounded" means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

(32) "Unsubstantiated" means that after an investigation, the investigator was unable to determine by a preponderance of the evidence that the reported abuse, neglect, or exploitation has occurred.

(33) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (33), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

(34) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned."

**Section 3.** Section 45-1-205, MCA, is amended to read:

**"45-1-205. General time limitations.** (1) (a) A prosecution for deliberate, mitigated, or negligent homicide may be commenced at any time.

(b) Except as provided in subsection (9), a prosecution for a felony offense under 45-5-502, 45-5-503, or 45-5-507(4) or (5) may be commenced within 10 years after it is committed, except that it may be commenced within 10 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred. A prosecution for a misdemeanor offense under those provisions may be commenced within 1 year after the offense is committed, except that it may be commenced within 5 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred.

(c) Except as provided in subsection (9), a prosecution under 45-5-504, ~~45-5-505,~~ 45-5-507(1), (2), (3), or (6), 45-5-625, or 45-5-627 may be commenced within 5 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred.

(2) Except as provided in subsection (7)(b) or as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The periods prescribed in subsection (2) are extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination of the minority or incompetency;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an

aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) must be extended in a prosecution for unlawful use of a computer, and prosecution must be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) The period prescribed in subsection (2) is extended in a prosecution for misdemeanor fish and wildlife violations under Title 87, and prosecution must be brought within 3 years after an offense is committed.

(6) The period prescribed in subsection (2)(b) is extended in a prosecution for misdemeanor violations of the laws regulating the activities of outfitters and guides under Title 37, chapter 47, and prosecution must be brought within 3 years after an offense is committed.

(7) (a) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(b) A prosecution for theft under 45-6-301 may be commenced at any time during the 5 years following the date of the theft, whether or not the offender is in possession of or otherwise exerting unauthorized control over the property at the time the prosecution is commenced. After the 5-year period ends, a prosecution may be commenced at any time if the offender is still in possession of or otherwise exerting unauthorized control over the property, except that the prosecution must be commenced within 1 year after the investigating officer discovers that the offender still possesses or is otherwise exerting unauthorized control over the property.

(8) A prosecution is commenced either when an indictment is found or an information or complaint is filed.

(9) If a suspect is conclusively identified by DNA testing after a time period prescribed in subsection (1)(b) or (1)(c) has expired, a prosecution may be commenced within 1 year after the suspect is conclusively identified by DNA testing.

(10) A prosecution for reckless driving resulting in death may be commenced within 3 years after the offense is committed.

(11) A prosecution of careless driving resulting in death may be commenced within 3 years after the offense is committed."

**Section 4.** Section 45-2-101, MCA, is amended to read:

**"45-2-101. General definitions.** Unless otherwise specified in the statute, all words must be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.

(2) "Administrative proceeding" means a proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons other than the offender.

(4) (a) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to another person or entity in whose welfare the beneficiary is interested.

(b) Benefit does not include an advantage promised generally to a group or class of voters as a consequence of public measures that a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or an impairment of physical condition and includes mental illness or impairment.

(6) "Child" or "children" means any individual or individuals under 18 years of age, unless a different age is specified.

(7) "Cohabit" means to live together under the representation of being married.

(8) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan that results in the repeated commission of the same offense or that affects the same person or the same persons or the property of the same person or persons.

(9) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to that device in a system or network.

(10) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(11) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(12) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(13) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(14) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(15) "Conduct" means an act or series of acts and the accompanying mental state.

(16) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(17) "Correctional institution" means a state prison, detention center, multijurisdictional detention center, private detention center, regional correctional facility, private correctional facility, or other institution for the incarceration of inmates under sentence for offenses or the custody of individuals awaiting trial or sentence for offenses.

(18) "Deception" means knowingly to:

(a) create or confirm in another an impression that is false and that the offender does not believe to be true;

(b) fail to correct a false impression that the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance that the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

(19) "Defamatory matter" means anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or occupation.

(20) "Deprive" means:

(a) to withhold property of another:

(i) permanently;

(ii) for such a period as to appropriate a portion of its value; or

(iii) with the purpose to restore it only upon payment of reward or other compensation; or

(b) to dispose of the property of another and use or deal with the property so as to make it unlikely that the owner will recover it.

(21) "Deviate sexual relations" means ~~sexual contact or sexual intercourse between two persons of the same sex or~~ any form of sexual intercourse with an animal.

(22) "Document" means, with respect to offenses involving the medicaid program, any application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or other form.

(23) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in a state prison for a term exceeding 1 year.

(24) "Forcible felony" means a felony that involves the use or threat of physical force or violence against any individual.

(25) A "frisk" is a search by an external patting of a person's clothing.

(26) "Government" includes a branch, subdivision, or agency of the government of the state or a locality within it.

(27) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to a person or entity in whose welfare the affected person is interested.

(28) A "house of prostitution" means a place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(29) "Human being" means a person who has been born and is alive.

(30) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(31) "Inmate" means a person who is confined in a correctional institution.

(32) (a) "Intoxicating substance" means a controlled substance, as defined in Title 50, chapter 32, and an alcoholic beverage, including but not limited to a beverage containing 1/2 of 1% or more of alcohol by volume.

(b) Intoxicating substance does not include dealcoholized wine or a beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

(33) An "involuntary act" means an act that is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(34) "Juror" means a person who is a member of a jury, including a grand jury, impaneled by a court in this state in an action or proceeding or by an officer authorized by law to impanel a jury in an action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(35) "Knowingly"—a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

(36) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter 6.

(37) "Medicaid agency" has the meaning in 53-6-155.

(38) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.

(39) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic, or other form:

(i) that is used to claim specific services or items as payable or reimbursable under the medicaid program; or

(ii) that states income, expense, or other information that is or may be used to determine entitlement to or the rate of payment under the medicaid program.

(b) The term includes related documents submitted as a part of or in support of the claim.

(40) "Mentally defective" means that a person suffers from a mental disease or defect that renders the person incapable of appreciating the nature of the person's own conduct.

(41) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling the person's own conduct as a result of the influence of an intoxicating substance.

(42) "Misdemeanor" means an offense for which the sentence imposed upon conviction is imprisonment in the county jail for a term or a fine, or both, or for which the sentence imposed is imprisonment in a state prison for a term of 1 year or less.

(43) "Negligently"—a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the person consciously disregards a risk that the result will occur or that the circumstance exists or when the person disregards a risk of which the person should be aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.

(44) "Nolo contendere" means a plea in which the defendant does not contest the charge or charges against the defendant and neither admits nor denies the charge or charges.

(45) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance of the labor or service.

(46) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

(47) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present, including any outbuilding that is immediately adjacent to or in close proximity to an occupied structure and that is habitually used for personal use or employment. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(48) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(49) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(50) (a) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society.

(b) Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(51) "Official proceeding" means a proceeding heard or that may be heard before a legislative, a judicial, an administrative, or another governmental agency or official authorized to take evidence under oath, including any referee, hearings examiner, commissioner, notary, or other person taking testimony or deposition in connection with the proceeding.

(52) "Other state" means a state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(53) "Owner" means a person other than the offender who has possession of or other interest in the property involved, even though the interest or possession

is unlawful, and without whose consent the offender has no authority to exert control over the property.

(54) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which the person directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(55) "Peace officer" means a person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the person's authority.

(56) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(57) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of a government or subdivision of government.

(58) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(59) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(60) "Premises" includes any type of structure or building and real property.

(61) "Property" means a tangible or intangible thing of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments that represent or embody rights concerning anything of value, including labor or services, or that are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things that are part of or affixed to a building;

(g) electricity, gas, and water;

(h) birds, animals, and fish that ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

(j) other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine- or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and copies thereof.

(62) "Property of another" means real or personal property in which a person other than the offender has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.

(63) "Public place" means a place to which the public or a substantial group has access.

(64) (a) "Public servant" means an officer or employee of government, including but not limited to legislators, judges, and firefighters, and a person participating as a juror, adviser, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term "public servant" includes one who has been elected or designated to become a public servant.

(b) The term does not include witnesses.

(65) "Purposely"—a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

(66) (a) "Serious bodily injury" means bodily injury that:

(i) creates a substantial risk of death;

(ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ; or

(iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ.

(b) The term includes serious mental illness or impairment.

(67) "Sexual contact" means touching of the sexual or other intimate parts of the person of another, directly or through clothing, in order to knowingly or purposely:

(a) cause bodily injury to or humiliate, harass, or degrade another; or

(b) arouse or gratify the sexual response or desire of either party.

(68) (a) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by a body member of another person, or penetration of the vulva or anus of one person by a foreign instrument or object manipulated by another person to knowingly or purposely:

(i) cause bodily injury or humiliate, harass, or degrade; or

(ii) arouse or gratify the sexual response or desire of either party.

(b) For purposes of subsection (68)(a), any penetration, however slight, is sufficient.

(69) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(70) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.

(71) "Statute" means an act of the legislature of this state.

(72) "Stolen property" means property over which control has been obtained by theft.

(73) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in the peace officer's presence.

(74) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(75) "Telephone" means any type of telephone, including but not limited to a corded, uncorded, cellular, or satellite telephone.

(76) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit a criminal offense;

(d) accuse a person of a criminal offense;

(e) expose a person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of a person;

(g) reveal information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause the action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the person making the threat demands or receives property that is not for the benefit of groups that the person purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(77) (a) "Value" means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness less any portion of the indebtedness that has been satisfied.

(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than $1,500 by the standards set forth in subsection (77)(a), its value is considered to be an amount less than $1,500.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(78) "Vehicle" means a device for transportation by land, water, or air or by mobile equipment, with provision for transport of an operator.

(79) "Weapon" means an instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(80) "Witness" means a person whose testimony is desired in an official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

**Section 5.** Section 45-5-505, MCA, is amended to read:

**"45-5-505. Deviate sexual conduct.** (1) A person who knowingly engages in deviate sexual relations or who causes another to engage in deviate sexual relations commits the offense of deviate sexual conduct.

(2) A person convicted of the offense of deviate sexual conduct shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

~~(3) The fact that a person seeks testing or receives treatment for the HIV-related virus or another sexually transmitted disease may not be used as a basis for a prosecution under this section and is not admissible in evidence in a prosecution under this section.~~"

**Section 6.** Section 46-1-502, MCA, is amended to read:

**"46-1-502. Mediation.** (1) At any time after the commencement of a prosecution and before the verdict, the court may, at its suggestion or upon motion of a party and with the consent of all the parties, refer the proceeding to mediation by a mediator chosen by the court.

(2) The proceeding may not be referred for mediation if the offense charged is:

(a) deliberate homicide, as described in 45-5-102;

(b) mitigated deliberate homicide, as described in 45-5-103;

(c) intimidation, as described in 45-5-203;

(d) partner or family member assault, as described in 45-5-206;

(e) assault on a minor, as described in 45-5-212;

(f) stalking, as described in 45-5-220;

(g) aggravated kidnapping, as described in 45-5-303;

(h) a sex crime, as described in 45-5-502, 45-5-503, 45-5-504, ~~45-5-505,~~ or 45-5-507;

(i) endangering the welfare of children, as described in 45-5-622;

(j) sexual abuse of children, as described in 45-5-625; or

(k) ritual abuse of a minor, as described in 45-5-627.

(3) Any aspect of or issue in the proceeding may be the subject of the mediation, including but not limited to the charge, a plea bargain, or a recommended sentence.

(4) At any point during mediation, a party may withdraw from the mediation without penalty or sanction.

(5) This section does not prohibit the parties from engaging in traditional plea negotiations."

**Section 7.** Section 52-3-803, MCA, is amended to read:

**"52-3-803. Definitions.** As used in this part, the following definitions apply:

(1) "Abuse" means:

(a) the infliction of physical or mental injury; or

(b) the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person or a person with a developmental disability without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Exploitation" means:

(a) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money, assets, or property;

(b) an act taken by a person who has the trust and confidence of an older person or a person with a developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money, assets, or property;

(c) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability done in the course of an offer or sale of insurance or securities in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of the person's money, assets, or property.

(4) "Incapacitated person" has the meaning given in 72-5-101.

(5) "Long-term care facility" means a facility defined in 50-5-101.

(6) "Mental injury" means an identifiable and substantial impairment of a person's intellectual or psychological functioning or well-being.

(7) "Neglect" means the failure of a person who has assumed legal responsibility or a contractual obligation for caring for an older person or a person with a developmental disability or who has voluntarily assumed responsibility for the person's care, including an employee of a public or private residential institution, facility, home, or agency, to provide food, shelter, clothing, or services necessary to maintain the physical or mental health of the older person or the person with a developmental disability.

(8) "Older person" means a person who is at least 60 years of age. For purposes of prosecution under 52-3-825(2) or (3), the person 60 years of age or older must be unable to provide personal protection from abuse, sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.

(9) "Person with a developmental disability" means a person 18 years of age or older who has a developmental disability, as defined in 53-20-102.

(10) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

(11) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, ~~or~~ incest, *or sexual abuse of children* as described in Title 45, chapter 5, part 5*, and Title 45, chapter 8, part 2*."

**Section 8. Directions to code commissioner.** Section 45-5-505 is intended to be renumbered and codified as an integral part of Title 45, chapter 8, part 2.

Approved April 18, 2013

# CHAPTER NO. 226

[SB 245]

AN ACT REVISING INVESTMENT PROVISIONS FOR FIRE RELIEF ASSOCIATIONS; AMENDING SECTION 19-18-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 19-18-402, MCA, is amended to read:

**"19-18-402. Investment of fund by trustees.** (1) Subject to the provisions of 19-18-403, when ~~so~~ directed by a majority vote of the members of the association, the board of trustees may invest the surplus money in the fund or any part ~~thereof~~ *of the surplus money* in:

(a) time or saving deposits in a solvent bank, building and loan association, savings and loan association, or credit union operating in the county ~~where~~ *in which* the city or town is located;

(b) bonds or other securities of the United States government; or

(c) general obligation bonds or warrants of any state, county, or city.

~~(2) At the time of purchase the investments must be stamped in boldface type substantially as follows: "property of the .... fire department relief association and negotiable only upon the order of the board of trustees of such association".~~

*(2) Unless otherwise required under 19-18-403, a change in investment type is subject to a majority vote of the board of trustees of the association.*"

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 18, 2013

# CHAPTER NO. 227

[SB 278]

AN ACT ADOPTING THE CHARLES M. RUSSELL NATIONAL WILDLIFE REFUGE COMPACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. United States of America, fish and wildlife service, Charles M. Russell national wildlife refuge-Montana compact ratified.**

This compact is entered into by the State of Montana and the United States of America to settle for all time any and all claims to federal reserved water rights for the Charles M. Russell National Wildlife Refuge administered by the U.S. Fish and Wildlife Service within the State of Montana.

ARTICLE I

RECITALS

WHEREAS, the State of Montana, in 1979 pursuant to Title 85, Chapter 2 of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State of Montana including all federal reserved and appropriative water rights;

WHEREAS, 85-2-228, MCA, provides that a federal reserved water right with a priority date of July 1, 1973, or later be subject to the same process and adjudication as a federal reserved water right with a priority date before July 1, 1973;

WHEREAS, 85-2-703 and 85-2-228(3), MCA, provide that the Montana Reserved Water Rights Compact Commission may negotiate settlement of claims by the federal government to non-Indian reserved waters within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of the Charles M. Russell National Wildlife Refuge as articulated in Executive Order 7509 of December 11, 1936;

WHEREAS, the Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516-517 (1968);

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this compact on behalf of the United States Department of Interior pursuant to 43 U.S.C. 1457 (1986, Supp. 1992);

NOW THEREFORE, the State of Montana and the United States agree as follows:

ARTICLE II

DEFINITIONS

For purposes of this compact only, the following definitions shall apply:

(1) "Abstract" means copies of the documents collectively entitled "Abstracts of U.S. Fish and Wildlife Service Water Rights for the Charles M. Russell National Wildlife Refuge" referenced in this compact as Appendices 1-3.

(2) "Acre-foot" or "Acre-feet" or "AF" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet of water.

(3) "Charles M. Russell National Wildlife Refuge" means the federal reservation of land that was designated under the Act of June 25, 1910, ch. 421, 36 Stat. 847, as amended by the Act of August 24, 1912, ch. 369, 37 Stat. 497.

(4) "Coextensive" means equal or coincident in space, time or scope. As applied to this compact, "Coextensive" rights to instream flow are non-additive water rights that constitute a usufructuary interest held by two or more parties with each party being subject to the same limits on quantity of water regardless of whether one or both parties are exercising the right.

(5) "Department" means the Montana Department of Natural Resources and Conservation or its successor.

(6) "Effective Date" means the date on which the compact is given ratification by the Montana Legislature, written approval by the United States Department of the Interior, and written approval by the United States Department of Justice, whichever occurs later.

(7) "Groundwater" means any water that is beneath the ground surface.

(8) "Instream Flow" means the water that the Parties agree must remain in the stream for non-consumptive uses to protect and maintain water flow and Wildlife Habitat throughout the Refuge for the purposes of the federal reservation.

(9) "Non-Consumptive Use" means a beneficial use of water that does not cause a reduction in the source of supply or result in a reduction in the quantity or quality of water and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

(10) "Order" means Executive Order 7509, withdrawing from the public domain the Fort Peck Game Range, signed December 11, 1936.

(11) "Parties" means the State of Montana and the United States.

(12) "Recognized Under State Law" when referring to a water right or use means a water right or use protected by state law, but does not include state recognition of a federal or tribal reserved water right arising under federal law.

(13) "Refuge" means the Charles M. Russell National Wildlife Refuge.

(14) "Reserved Right" means collectively the United States' water rights for stock, wildlife, and Wildlife Habitat within Refuge as described herein.

(15) "Restricted Reach" means the portion of stream reach subject to the on-stream impoundment limitation described in Articles III.E. and IV.C. and depicted in Appendix 5 of this compact.

(16) "Stacked" means a series of impoundments on the same stream placed in proximity to one another such that water impounded by a down-stream dam reaches an elevation less than or equal to five feet below the elevation of the base of the embankment of the next upstream dam.

(17) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, "state" means the Director of the Montana Department of Natural Resources and Conservation or the Director's designee.

(18) "United States" means the federal government and all officers, agencies, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, "United States" means the Secretary of the Department of the Interior or the Secretary's designee.

(19) "Wildlife Habitat" means a combination of food, water, shelter, and space that sustains wildlife and includes, but is not limited to, riparian areas and the stream flows that sustain them. This definition may not be construed to increase the quantity of the water rights set forth in Article III of this compact.

## ARTICLE III
## WATER RIGHT

The Parties agree that the following water rights are in settlement of the reserved water rights claims of the United States for the Refuge. All water rights described in this Article are subject to Article IV of this compact as well as any specific additional conditions set forth below.

A. Priority date. The Reserved Right for stock, wildlife, and Wildlife Habitat uses within the Refuge described herein has a priority date of December 11, 1936. The United States agrees to subordinate its 1936 Reserved Right to water rights Recognized Under State Law existing on the Effective Date of this compact. Accordingly, any water right Recognized Under State Law with a priority date prior to the Effective Date of this compact is functionally senior in priority to any component of the Reserved Right and is not subject to a call for enforcement or administration by the United States in the exercise of the Reserved Right. The final decree for the United States' Reserved Right must include the above prohibition on call.

B. Quantified instream rights. The United States holds water rights in the following named streams from the point furthest upstream where the Refuge boundary crosses the mainstem stream channel to its confluence with Fort Peck Lake or the Missouri River. The water right is in the amount of one (1) or one-half (1/2) cubic feet per second (cfs) for instream use for the purposes of stock, wildlife, and Wildlife Habitat as set forth in Table 1 and the Abstracts attached to this compact as Appendix 1, and as depicted in Appendix 4. The period of use is from March 1 to June 30. The United States may exercise its quantified instream rights during the period of use provided by this Compact if water is available.

Table 1

| Stream Name | Amount(cfs) | Upstream Limit | Downstream Limit |
|---|---|---|---|
| Alkali Creek | 0.5 | NWSW Sec.27 19N29E | SESW Sec.36 19N29E |
| Antelope Creek | 0.5 | NWNE Sec.3 22N23E | SESE Sec.21 22N23E |
| Armells Creek | 1.0 | NWSW Sec.18 21N23E | NWSW Sec.32 22N24E |
| Ash Creek | 0.5 | NWNW Sec.28 22N42E | SESW Sec.27 22N42E |
| Bear Creek | 0.5 | NENE Sec.15 25N42E | SWSE Sec.10 25N42E |
| Beauchamp Creek | 0.5 | NWNE Sec.16 22N28E | SESE Sec.35 22N28E |
| Big Coulee Creek | 0.5 | NWSW Sec.16 21N33E | SWSW Sec.12 21N33E |
| Big Dry Creek | 1.0 | SWSW Sec.26 20N42E | NESW Sec.12 20N42E |
| Billy Creek | 0.5 | SESE Sec.33 22N34E | NWNE Sec.22 22N34E |
| Box Creek, North Fork | 0.5 | SWSW Sec.18 23N42E | NENE Sec.19 23N42E |
| Box Creek, South Fork | 0.5 | SWNW Sec.19 23N42E | SENE Sec.19 23N42E |
| Bridge Coulee | 0.5 | SWNW Sec.1 20N42E | NENE Sec.12 20N42E |
| Cabin Coulee | 0.5 | SESW Sec.21 23N35E | SWSE Sec.5 22N36E |
| Carroll Coulee | 0.5 | SWNW Sec.31 21N26E | SENE Sec.22 21N26E |
| Cart Trail Coulee | 0.5 | NWNW Sec.35 23N33E | NENW Sec.1 22N33E |
| Cat Creek | 0.5 | NWSW Sec.29 23N42E | SWSW Sec.28 23N42E |
| Cattle Creek | 0.5 | SWSE Sec.15 22N39E | SWSE Sec.10 22N39E |
| CK Creek | 0.5 | NWNE Sec.1 22N26E | SESE Sec.12 21N27E |
| Crooked Creek (Garfield County) | 0.5 | SESE Sec.19 22N39E | NENE Sec.19 22N39E |
| Sacagawea River/ Crooked Creek | 0.5 | SWSW Sec.27 20N29E | SWNW Sec.36 20N29E |
| Dawson Creek | 0.5 | NWSW Sec.6 23N42E | SWSE Sec.6 23N42E |
| Devils Creek | 0.5 | NENE Sec.16 21N32E | SENW Sec.5 21N32E |
| Doney Coulee | 0.5 | NWNE Sec.30 23N34E | SESW Sec.29 23N34E |
| Duck Creek | 0.5 | NWNW Sec.1 23N37E | NWSE Sec.1 23N37E |
| Duval Creek | 0.5 | NENW Sec.5 22N24E | NWSE Sec.34 22N24E |
| Fifth Coulee | 0.5 | SWNW Sec.33 25N39E | SESE Sec.2 24N39E |

| | | | |
|---|---|---|---|
| Fourchette Creek | 1.0 | NWNW Sec.15 22N30E | NWSE Sec.8 22N31E |
| Germaine Coulee | 0.5 | SESE Sec.22 19N30E | SWSW Sec.16 19N30E |
| Gilbert Creek | 0.5 | SWSE Sec.17 22N40E | NESE Sec.4 22N40E |
| Hawley Creek | 0.5 | NENW Sec.35 22N29E | NENE Sec.2 21N28E |
| Hell Creek | 0.5 | SESE Sec.16 21N37E | NWNW Sec.13 21N37E |
| Hilliard Coulee | 0.5 | NENE Sec.20 26N42E | NWSW Sec.17 26N42E |
| Kill Woman Creek | 0.5 | NENE Sec.3 22N32E | SESE Sec.10 22N32E |
| King Coulee | 0.5 | NWNW Sec.6 23N37E | SESW Sec.9 23N37E |
| Lone Tree Creek | 0.5 | NWSW Sec.34 22N42E | NESW Sec.34 22N42E |
| Lost Creek | 0.5 | SWSE Sec.36 21N31E | NWNW Sec.33 21N31E |
| Middle Eighth Coulee | 0.5 | NENE Sec.28 24N38E | SWNE Sec.35 24N38E |
| Nelson Creek | 0.5 | SESW Sec.26 21N43E | NENW Sec.27 21N43E |
| Nichols Coulee | 0.5 | SWSW Sec.7 22N27E | SESE Sec.10 21N27E |
| North Fork Rock Creek | 0.5 | NENE Sec.21 23N43E | SWSE Sec.17 23N43E |
| Norville Creek | 0.5 | NWNW Sec.36 24N41E | NWNW Sec.31 24N42E |
| Renick Coulee | 0.5 | SESE Sec.24 23N40E | NENE Sec.23 23N40E |
| Ried Coulee | 0.5 | SWSW Sec.18 21N38E | NWNE Sec.13 21N37E |
| Rock Creek | 1.0 | NENE Sec.6 22N25E | NWNE Sec.11 21N25E |
| Sand Arroyo | 0.5 | NWNE Sec.20 24N43E | NESW Sec.20 24N43E |
| Sand Creek | 0.5 | SWSW Sec.16 21N24E | NENE Sec.9 21N25E |
| Sandburn Coulee | 0.5 | SESE Sec.1 19N30E | SESE Sec.2520N30E |
| Seven Blackfoot Creek | 0.5 | SWSE Sec.13 21N33E | NENW Sec.13 21 N33E |
| Sevenmile Creek | 0.5 | NENW Sec.6 22N26E | SESE Sec.7 21N27E |
| Seventh Coulee | 0.5 | NWSW Sec.18 24N39E | SWNW Sec.20 24N39E |
| Sherman Coulee | 0.5 | NESE Sec.33 19N30E | NENE Sec.30 19N30E |
| Siparyann Creek | 1.0 | NWNW Sec.2 22N24E | SESE Sec.32 22N25E |
| Sixth Coulee | 0.5 | NWNW Sec.5 24N39E | SWNW Sec.14 24N39E |
| Snap Creek | 0.5 | SWSW Sec.23 21N42E | SENE Sec.26 21N42E |
| Snow Creek | 0.5 | SWSW Sec.3 21N36E | NESW Sec.2 21N36E |
| Soda Creek | 0.5 | SWNW Sec.33 21N29E | SWNW Sec.8 20N30E |
| South Fork Duck Creek | 0.5 | NWNW Sec.21 25N39E | SWNW Sec.14 25N39E |
| South Fork Rock Creek | 0.5 | SENE Sec.33 23N43E | NWNE Sec.32 23N43E |
| Spring Creek | 0.5 | NESE Sec.11 24N42E | SESE Sec.10 24N42E |
| Nancy Russell Creek/ Squaw Creek | 0.5 | SESE Sec.29 20N31E | SWNE Sec.30 20N31E |
| Sutherland Creek | 0.5 | SWNW Sec.13 23N36E | SWSW Sec.18 23N37E |
| Telegraph Creek* | 0.5 | NENW Sec.30 23N31E | SWSE Sec.31 23N31E |
| Timber Creek (McCone) | 0.5 | NENE Sec.17 20N43E | SWSE Sec.6 20N43E |
| Two Calf Creek | 0.5 | NWNW Sec.30 22N23E | NENW Sec.28 22N23E |
| Upper Eighth Coulee | 0.5 | NWSW Sec.33 24N38E | SENE Sec.4 23N38E |
| Valentine Creek* | 0.5 | NWNE Sec.10 21N30E | SENW Sec.14 22N30E |
| Wilder Creek | 0.5 | NENW Sec.12 22N25E | SWSE Sec.6 21N26E |
| Wyatt Coulee | 0.5 | NWNW Sec.22 23N34E | NESW Sec.22 23N34E |

*The downstream end of the quantified reaches of Telegraph Creek and Valentine Creek end at their confluence with Fourchette Creek.

C. Instream Flow right on Musselshell River. The United States holds a water right in the Musselshell River from the point furthest upstream where the mainstem river channel enters U.S. Fish and Wildlife Service owned land within the Refuge (near the SESE of section 11, T.18N, R.29E) to its confluence with Fort Peck Lake as described in the Abstract attached to this compact as

Appendix 2. The water right is in the amount of a minimum instream flow of seventy (70) cfs. The water right is for the purposes of stock, wildlife, and Wildlife Habitat and must be Coextensive with any other non-consumptive instream uses during the specified period of use. The period of use for this right is from March 1 to June 30.

D. Wells, ponds, and springs. Water rights for wells, developed springs, and ponds will be recognized and quantified as set forth in the Abstracts attached to this compact as Appendix 3.

E. Conditions to be applied to permits issued after the Effective Date of the Compact. On the Restricted Reaches set forth in Table 2 and depicted in Appendix 5, no new on-stream impoundments may be constructed after the Effective Date of this Compact, except as provided by Article IV.C.

Table 2

| Name of Group | Name at Endpoint | Upper or Lower | Quarter Quarter | Section | Township Range |
|---|---|---|---|---|---|
| Armells Creek | Armells Creek | Upper | NENE | 12 | 20N21E |
| | Armells Creek | Lower | SWSW | 32 | 22N24E |
| | Fargo Coulee | Upper | NESE | 13 | 20N22E |
| | UT of Fargo Coulee | Upper | SENW | 33 | 21N23E |
| | UT of Fargo Coulee | Upper | NENW | 1 | 20N22E |
| Ash Creek | Ash Creek | Upper | SWSW | 11 | 22N41E |
| | Ash Creek | Lower | SESW | 27 | 22N42E |
| Bear Creek | Bear Creek | Upper | NENE | 15 | 25N42E |
| | Bear Creek | Lower | SWSE | 10 | 25N42E |
| Beauchamp Creek | Beauchamp Creek | Upper | NESW | 14 | 24N26E |
| | Beauchamp Creek | Lower | SESE | 35 | 22N28E |
| Billy Creek | Billy Creek | Upper | SENE | 17 | 21N34E |
| | Billy Creek | Lower | NWNE | 22 | 22N34E |
| Bobcat Creek | Bobcat Creek | Upper | NENE | 29 | 25N42E |
| | UT of Bobcat Creek | Upper | NESW | 29 | 25N42E |
| | Bobcat Creek | Lower | NWNW | 30 | 25N41E |
| Box Creek, North Fork | Box Creek, North Fork | Upper | SENE | 4 | 23N41E |
| | UT of Box Creek, North Fork | Upper | NESW | 9 | 23N41E |
| | Box Creek, North Fork | Lower | NENE | 19 | 23N42E |
| Box Creek, South Fork | Box Creek, South Fork | Upper | NENW | 22 | 23N41E |
| | Box Creek, South Fork | Lower | SENE | 19 | 23N42E |
| Box Elder Creek | Box Elder Creek | Upper | NESW | 29 | 23N32E |
| | Box Elder Creek | Lower | SENE | 30 | 23N31E |
| Bridge Coulee | Bridge Coulee | Upper | SESW | 33 | 21N42E |
| | Bridge Coulee | Lower | NENE | 12 | 20N42E |
| | Carpenter Creek | Upper | NWNW | 15 | 23N35E |
| Carroll Coulee | Carroll Coulee | Upper | SWNW | 11 | 20N25E |
| | UT of Carroll Coulee | Upper | SESE | 27 | 21N25E |
| | UT of Carroll Coulee | Upper | SWSW | 1 | 20N25E |
| | UT of Carroll Coulee | Upper | NWNW | 3 | 20N25E |
| | Carroll Coulee | Lower | SENE | 22 | 21N26E |
| Cat Creek | Cat Creek | Upper | NWNW | 34 | 23N41E |
| | Cat Creek | Lower | SWSW | 28 | 23N42E |
| CK Creek | CK Creek | Upper | NESE | 22 | 24N25E |
| | CK Creek | Lower | SESE | 12 | 21N27E |
| | Cottonwood Creek | Upper | NWNW | 36 | 24N24E |

| | | | | | |
|---|---|---|---|---|---|
| Crooked Creek (Garfield County) | Crooked Creek (Garfield County) | Upper | NWNE | 4 | 21N39E |
| | Crooked Creek (Garfield County) | Lower | NENE | 19 | 22N39E |
| Crooked Creek/ Sacagawea River | Crooked Creek/ Sacagawea River | Upper | SWNW | 30 | 20N28E |
| | Crooked Creek/ Sacagawea River | Lower | SENE | 35 | 20N29E |
| Dawson Creek | Dawson Creek | Upper | NENE | 3 | 23N41E |
| | Dawson Creek | Lower | SWSE | 6 | 23N42E |
| Deadman Coulee | Deadman Coulee | Upper | SESE | 20 | 21N32E |
| | Deadman Coulee | Lower | SWNE | 22 | 21N31E |
| Devils Creek | Devils Creek | Upper | SESW | 30 | 21N33E |
| | Devils Creek | Lower | SENW | 5 | 21N32E |
| Doney Coulee | Doney Coulee | Upper | SESW | 13 | 23N33E |
| | Doney Coulee | Lower | SESW | 29 | 23N34E |
| Duval Creek | Duval Creek | Upper | NENW | 5 | 22N24E |
| | Duval Creek | Lower | NWSE | 34 | 22N24E |
| East Fork Crooked Creek | East Fork Crooked Creek | Upper | NWNW | 25 | 22N39E |
| | East Fork Crooked Creek | Lower | SWSE | 10 | 22N39E |
| Fifth Coulee | Fifth Coulee | Upper | NWNW | 32 | 25N39E |
| | Fifth Coulee | Lower | SESE | 2 | 24N39E |
| Fourchette Creek | Fourchette Creek | Upper | NESE | 29 | 23N29E |
| | Fourchette Creek | Lower | NWSW | 5 | 22N31E |
| Germaine Coulee | Germaine Coulee | Upper | SESE | 24 | 19N30E |
| | Germaine Coulee | Lower | SWSW | 16 | 19N30E |
| Gilbert Creek | Gilbert Creek | Upper | SENE | 29 | 22N40E |
| | Gilbert Creek | Lower | NESE | 4 | 22N40E |
| Hell Creek | Hell Creek | Upper | NWSE | 27 | 21N36E |
| | Hell Creek | Lower | NWNW | 13 | 21N37E |
| Hell Hole Coulee | Hell Hole Coulee | Upper | NENE | 19 | 23N34E |
| | Hell Hole Coulee | Lower | NENE | 28 | 23N34E |
| | Karsten Coulee | Upper | NWNW | 12 | 22N28E |
| Kill Woman Creek | Kill Woman Creek | Upper | NESE | 27 | 23N32E |
| | Kill Woman Creek | Lower | SESE | 10 | 22N32E |
| King Coulee | King Coulee | Upper | SWNE | 36 | 24N36E |
| | King Coulee | Lower | SESW | 9 | 23N37E |
| | Little Cottonwood Creek | Upper | NWNE | 9 | 23N24E |
| Lone Tree Creek | Lone Tree Creek | Upper | NENW | 27 | 22N41E |
| | Lone Tree Creek | Lower | NESW | 34 | 22N42E |
| Lost Creek (east Garfield Co.) | Lost Creek (east Garfield Co.) | Upper | SWNE | 8 | 22N42E |
| | Lost Creek (east Garfield Co.) | Lower | SWSW | 3 | 22N42E |
| Lost Creek (west Garfield Co.) | Lost Creek (west Garfield Co.) | Upper | SWSW | 32 | 21N32E |
| | Lost Creek (west Garfield Co.) | Lower | SENW | 33 | 21N31E |
| Middle Eighth Coulee | Middle Eighth Coulee | Upper | NENW | 21 | 24N38E |
| | Middle Eighth Coulee | Lower | SWNE | 35 | 24N38E |
| North Fork Rock Creek | North Fork Rock Creek | Upper | NWNW | 36 | 24N43E |
| | North Fork Rock Creek | Lower | NWNE | 20 | 23N43E |
| Norville Creek | Norville Creek | Upper | NESE | 28 | 24N41E |
| | UT of Norville Creek | Upper | SESE | 21 | 24N41E |

| | | | | | |
|---|---|---|---|---|---|
| | Norville Creek | Lower | NWNW | 31 | 24N42E |
| | Plum Creek | Upper | SENW | 3 | 23N35E |
| Renick Coulee | Renick Coulee | Upper | NWNW | 32 | 23N41E |
| | Renick Coulee | Lower | NWNE | 23 | 23N40E |
| Ried Coulee | Ried Coulee | Upper | NESE | 32 | 21N38E |
| | Ried Coulee | Lower | NENE | 13 | 21N37E |
| Rock Creek | Rock Creek | Upper | SWNE | 30 | 24N25E |
| | Rock Creek | Lower | NWNE | 11 | 21N25E |
| Sage Creek | Sage Creek | Upper | NENE | 8 | 23N41E |
| | Sage Creek | Lower | SWSW | 31 | 24N41E |
| Sand Creek | Sand Creek | Upper | NENE | 1 | 20N23E |
| | UT of Sand Creek | Upper | SWSE | 35 | 21N24E |
| | UT of Sand Creek | Upper | SWSE | 24 | 21N23E |
| | UT of Sand Creek | Upper | SWSE | 33 | 21N24E |
| | UT of Sand Creek | Upper | SWSW | 26 | 21N23E |
| | UT of Sand Creek | Upper | SWSE | 14 | 21N23E |
| | Sand Creek | Lower | NENE | 9 | 21N25E |
| Seven Blackfoot Creek | Seven Blackfoot Creek | Upper | SWNW | 23 | 20N34E |
| | Seven Blackfoot Creek | Lower | NENW | 13 | 21N33E |
| Sevenmile Creek | Sevenmile Creek | Upper | SESW | 14 | 23N25E |
| | Sevenmile Creek | Lower | SESE | 7 | 21N27E |
| Sherman Coulee | Sherman Coulee | Upper | NWSW | 1 | 18N30E |
| | Sherman Coulee | Lower | NENE | 30 | 19N30E |
| Short Creek | Short Creek | Upper | SENE | 10 | 21N42E |
| | Short Creek | Lower | SESE | 11 | 21N42E |
| Siparyann Creek | Siparyann Creek | Upper | NENE | 5 | 23N24E |
| | Siparyann Creek | Lower | SESE | 32 | 22N25E |
| Sixth Coulee | Sixth Coulee | Upper | SWNW | 31 | 25N39E |
| | Sixth Coulee | Lower | SWNW | 14 | 24N39E |
| Snap Creek | Snap Creek | Upper | NENE | 17 | 21N42E |
| | Snap Creek | Lower | NENE | 26 | 21N42E |
| Snow Creek | Snow Creek | Upper | NWSW | 14 | 21N35E |
| | Snow Creek | Lower | NESW | 2 | 21N36E |
| Soda Creek | UT of Soda Creek | Upper | SWNE | 30 | 21N29E |
| | UT of Soda Creek | Upper | NESW | 31 | 21N29E |
| | UT of Soda Creek | Upper | NWNE | 29 | 21N29E |
| | UT of Soda Creek | Upper | SESW | 31 | 21N29E |
| | UT of Soda Creek | Upper | NENW | 36 | 21N28E |
| | Soda Creek | Lower | SWNW | 8 | 20N30E |
| Spring Creek | Spring Creek | Upper | NWNE | 12 | 24N42E |
| | UT of Spring Creek | Upper | NESW | 33 | 25N42E |
| | UT of Spring Creek | Upper | NENW | 3 | 24N42E |
| | UT of Spring Creek | Upper | NENE | 14 | 24N42E |
| | UT of Spring Creek | Upper | NWNW | 34 | 25N42E |
| | Spring Creek | Lower | SESE | 10 | 24N42E |
| Stole Creek | Stole Creek | Upper | SWSE | 4 | 24N42E |
| | Stole Creek | Lower | SESE | 9 | 24N42E |
| Sutherland Creek | Sutherland Creek | Upper | SWSW | 30 | 24N36E |
| | UT of Sutherland Creek | Upper | NWNE | 34 | 24N36E |
| | Sutherland Creek | Lower | SWSW | 18 | 23N37E |
| Telegraph Creek | Telegraph Creek | Upper | SESE | 25 | 24N31E |
| | Telegraph Creek | Lower | NWNE | 6 | 22N31E |

| | | | | | |
|---|---|---|---|---|---|
| Two Calf Creek | Two Calf Creek | Upper | NENE | 22 | 22N21E |
| | Two Calf Creek | Lower | NWNE | 28 | 22N23E |
| UT of Musselshell River | UT of Musselshell River | Upper | NWSW | 17 | 19N29E |
| | UT of Musselshell River | Lower | SWNW | 30 | 19N30E |
| UT1 of Fort Peck Lake | UT1 of Fort Peck Lake | Upper | NWNE | 14 | 22N40E |
| | UT1 of Fort Peck Lake | Lower | NENW | 2 | 22N40E |
| UT2 of Fort Peck Lake | UT2 of Fort Peck Lake | Upper | NENE | 17 | 24N41E |
| | UT2 of Fort Peck Lake | Upper | SWNW | 21 | 24N41E |
| | UT2 of Fort Peck Lake | Upper | NENE | 21 | 24N41E |
| | UT2 of Fort Peck Lake | Lower | SWNW | 15 | 24N41E |
| UT3 of Fort Peck Lake | UT3 of Fort Peck Lake | Upper | NWSW | 35 | 26N42E |
| | UT of UT3 of Fort Peck Lake | Upper | SENW | 34 | 26N42E |
| | UT3 of Fort Peck Lake | Lower | SENW | 4 | 25N42E |
| UT4 of Fort Peck Lake | UT4 of Fort Peck Lake | Upper | NENE | 20 | 25N42E |
| | UT4 of Fort Peck Lake | Lower | SENE | 8 | 23N42E |
| UT5 of Fort Peck Lake | UT5 of Fort Peck Lake | Upper | SENE | 21 | 25N42E |
| | UT of UT5 of Fort Peck Lake | Upper | SENW | 22 | 25N42E |
| | UT5 of Fort Peck Lake | Lower | SESW | 10 | 25N42E |
| UT6 of Fort Peck Lake | UT6 of Fort Peck Lake | Upper | NWNE | 19 | 25N41E |
| | UT6 of Fort Peck Lake | Lower | SESE | 24 | 25N41E |
| UT7 of Fort Peck Lake | UT7 of Fort Peck Lake | Upper | SESE | 14 | 24N42E |
| | UT7 of Fort Peck Lake | Lower | NWNE | 15 | 24N42E |
| UT8 of Fort Peck Lake | UT8 of Fort Peck Lake | Upper | NWSE | 13 | 24N42E |
| | UT8 of Fort Peck Lake | Lower | SENW | 24 | 24N42E |
| West Fork Sand Arroyo | West Fork Sand Arroyo | Upper | SENE | 9 | 24N43E |
| | West Fork Sand Arroyo | Lower | NESW | 20 | 24N43E |
| Wyatt Coulee | Wyatt Coulee | Upper | SWNE | 12 | 23N33E |
| | Wyatt Coulee | Lower | NESW | 22 | 23N34E |

## ARTICLE IV
## COMPACT IMPLEMENTATION

A. Quantified reaches. Flows of designated quantified reaches set forth in Table 1 and Appendix 1 that are not already appropriated as of the Effective Date of this compact will be available for future development, subject to the Reserved Right and applicable permit conditions described herein. The Department may approve new uses after the Effective Date of this compact, but the Department shall condition any permit or approval of new uses to provide that such uses may not cause the quantified reaches to fall below the minimum flows set forth in Table 1 and Appendix 1 during the time period from March 1 to June 30. Appropriations occurring after the Effective Date of this compact will be subject to call by the United States in the exercise of the Reserved Right at any time streamflows are available but fall below the levels set forth in Table 1 and Appendix 1 of this compact, as measured where each quantified stream enters Fort Peck Lake or the Missouri River, or at the closest upstream confluence for those streams that intersect another stream before reaching Fort Peck Lake or the Missouri River, with a proper device for measurement of the waters flowing in the quantified reach.

B. Musselshell River. Musselshell River flows that are not already appropriated as of the Effective Date of this compact will be available for future development subject to the Reserved Right and applicable permit conditions described herein. The Department may approve new uses after the Effective Date of this compact but shall condition any permit or approval of new uses to provide that such uses may not cause the flow of the Musselshell River to fall

below seventy (70) cfs where the mainstem river channel enters U.S. Fish and Wildlife Service owned land within the Refuge during the period from March 1 to June 30. Appropriations occurring after the Effective Date of this compact will be subject to a call by the United States in the exercise of the Reserved Right at any time streamflow falls below 70 cfs for five (5) consecutive days.

C. Conditions to be applied to permits issued after the Effective Date of the compact. Impoundments of less than the capacity and appropriation limits excepted from permitting under 85-2-306, MCA, may be constructed on the stream reaches identified in Table 2 and Appendix 5. These impoundments may not be Stacked to achieve a volume greater than the statutory exception. The Department may permit no new on-stream impoundments that do not meet the permit exception requirements of 85-2-306, MCA, on the Restricted Reaches identified in Table 2 and Appendix 5.

1. Reclamation, repair, or rehabilitation of an existing impoundment may not be considered a new impoundment, except that reclamation, repair, or rehabilitation cannot cause the impoundment to exceed the storage volume listed on the statement of claim.

2. Off-stream impoundments larger than the capacity and appropriation limits excepted from permitting by 85-2-306, MCA, may be constructed and filled in accordance with state permitting requirements from a diversion works located on the stream reaches identified in Table 2 and Appendix 5; and

3. On-stream impoundments larger than the capacity and appropriation limits excepted from permitting by 85-2-306, MCA, may be constructed and filled in accordance with state permitting requirements on the streams identified in Table 2 and Appendix 5 upstream of the designated Restricted Reach.

D. Uses exempted from curtailment by the United States' exercise of the Reserved Right during times of shortage. During times when there is insufficient water to satisfy the Reserved Right, and curtailment of junior water rights is otherwise contemplated under Article III, the following water rights will not be subject to call or curtailment for the benefit of the Reserved Right:

1. Non-Consumptive Uses located upstream of the instream reaches identified in Table I and Appendix 1.

2. Groundwater uses of thirty-five (35) gallons per minute (gpm) or less not to exceed ten (10) AF per year.

3. Stockwater impoundments of less than fifteen (15) AF capacity and total appropriation less than thirty (30) AF per year.

4. Temporary emergency appropriations under 85-2-113(3), MCA.

5. An application submitted pursuant to 85-20-1401, MCA, Article VI.

6. An application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required for:

a. Remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

b. Aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251-1387; or

c. Remedial actions taken pursuant to Title 75, chapter 10, part 7.

E. Action for enforcement of provisions of Article III. The United States may file an original action in a court of competent jurisdiction to enforce the provisions of Article III at any time. The United States cannot be required to

exhaust any administrative remedies in order to enforce Article III of this compact.

ARTICLE V
GENERAL PROVISIONS

A. The Parties recognize that the U.S. Fish and Wildlife Service has an interest in maintaining water flow and wildlife habitat throughout the Refuge.

B. No effect on tribal rights or other federal reserved water rights.

1. The relationship between the water rights of the U.S. Fish and Wildlife Service described herein and any rights to water of an Indian Tribe in Montana, or of any federally derived water right of an individual, or of the United States on behalf of a Tribe or individual shall be determined by the rule of priority.

2. Nothing in this compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any Indian Tribes and Tribal members in the State of Montana.

3. Nothing in this compact is otherwise intended to conflict with or abrogate a right or claim of an Indian Tribe regarding boundaries or property interests in the State of Montana.

4. Nothing in this compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any other federal agency or federal lands in the State of Montana other than those of the U.S. Fish and Wildlife Service for the Charles M. Russell National Wildlife Refuge.

C. General Disclaimers. Nothing in this Compact may be construed or interpreted:

1. As a precedent for the litigation of reserved water rights or the interpretation or administration of existing or future compacts between the United States and the State; or of the United States and any other state;

2. As a waiver by the United States of its right under state law to raise objections in state court to individual water rights claimed pursuant to the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this compact, or, except as provided in this compact, any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this compact;

3. As a waiver by the United States of its right to seek relief from a conflicting water use not entitled to protection under the terms of this compact;

4. To establish a precedent for other agreements between the State and the United States or an Indian tribe;

5. To determine the relative rights, inter se, of persons using water under the authority of state law or to limit the rights of the parties or a person to litigate an issue not resolved by this compact;

6. To authorize the taking of a water right that is vested under state or federal law;

7. To create or deny substantive rights through headings or captions used in this compact;

8. To expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the Effective Date of this compact;

9. To affect or determine the applicability of any state or federal law, including, without limitation, environmental and public safety laws, on activities of the U.S. Fish and Wildlife Service;

10. To affect the right of the State to seek fees or reimbursement for costs or the right of the United States to contest the imposition of fees or costs, pursuant to a ruling by a state or federal court of competent jurisdiction or an act of Congress;

11. To affect, in any manner, the entitlement to or quantification of other federal water rights. This compact is binding on the United States solely in regard to the water rights of the United States for the Charles M. Russell National Wildlife Refuge, and this compact does not affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this compact.

D. Use of water right. Non-use of all or a part of the Reserved Right may not constitute abandonment of the right. The Reserved Right need not be applied to a use deemed beneficial under state law, but must be restricted to uses necessary to fulfill the purposes outlined in the Order.

E. Coextensive with other non-consumptive instream water uses. The Reserved Right for Instream Flows for the Refuge described in this compact must be Coextensive with any other non-consumptive instream water uses, and may not be cumulative to other instream uses.

F. Appropriation pursuant to State law. Nothing in this compact may prevent the United States from seeking a water appropriation pursuant to state law for use on the reserved land within the Refuge or for use outside the boundaries of the federal reservation for which a water right is described in this compact. A water right obtained in this manner shall be Recognized Under State Law and must be administered pursuant to state law.

G. Reservation of rights. The Parties expressly reserve all rights not granted, described, or relinquished in this compact.

H. Severability. The provisions of this compact are not severable.

I. Multiple originals. This compact is executed in quintuplicate. Each of the five (5) compacts bearing original signatures must be deemed an original.

J. Notice. Unless otherwise specifically provided for in this compact, service of notice, except service in litigation, must be:

1. State. Upon the Director of the Department or its successor agency, and such other officials as the Director may designate in writing.

2. United States. Upon the Secretary of the Interior and such other officials as the Secretary may designate in writing.

## ARTICLE VI
## FINALITY OF COMPACT

A. Binding effect.

1. The Effective Date of this Compact is the date of the ratification of this compact by the Montana legislature, written approval by the United States Department of the Interior, and written approval by the United States Department of Justice. Once effective, all of the provisions of this compact shall be binding on:

a. The State and a person or entity of any nature whatsoever using, claiming or in any manner asserting a right under the authority of the State to the use of water; and

b. Except as otherwise provided in Article V, Section B, the United States, a person or entity of any nature whatsoever using, claiming, or in any manner asserting a right under the authority of the United States to the use of water.

2. Following the Effective Date, this compact may not be modified without the written consent of the Parties. Any attempt to unilaterally modify this compact by either Party shall render this compact voidable at the election of the other Party.

B. Settlement of claims. The Parties intend that the Reserved Right described in this compact is in full and final settlement of the reserved water right claims of the United States for the Charles M. Russell National Wildlife Refuge. Pursuant to this settlement, by which certain federal reserved water rights are expressly recognized by the State in this compact, the United States hereby and in full settlement of any and all claims filed by the United States or which could have been filed by the United States for the Refuge relinquishes forever all said claims on the Effective Date of this compact to water within the State of Montana for federal reserved water rights for the above mentioned unit. The State agrees to recognize the Reserved Right described and quantified herein, and shall, except as expressly provided for herein, treat them in the same manner as any other appropriation.

C. The parties agree to defend the provisions and purposes of this compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the ___ day of ___, 2013.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [section 1].

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved April 18, 2013

# CHAPTER NO. 228

[SB 306]

AN ACT REVISING THE DEFINITION OF "PARTNERS" UNDER THE OFFENSE OF PARTNER OR FAMILY MEMBER ASSAULT; AMENDING SECTION 45-5-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 45-5-206, MCA, is amended to read:

**"45-5-206. Partner or family member assault — penalty.** (1) A person commits the offense of partner or family member assault if the person:

(a) purposely or knowingly causes bodily injury to a partner or family member;

(b) negligently causes bodily injury to a partner or family member with a weapon; or

(c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family member.

(2) For the purposes of Title 40, chapter 15, 45-5-231 through 45-5-234, 46-6-311, and this section, the following definitions apply:

(a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These

relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(b) "Partners" means spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship ~~with a person of the opposite sex~~.

(3) (a) (i) An offender convicted of partner or family member assault shall be fined an amount not less than $100 or more than $1,000 and be imprisoned in the county jail for a term not to exceed 1 year or not less than 24 hours for a first offense.

(ii) An offender convicted of a second offense under this section shall be fined not less than $300 or more than $1,000 and be imprisoned in the county jail not less than 72 hours or more than 1 year.

(iii) Upon a first or second conviction, the offender may be ordered into misdemeanor probation as provided in 46-23-1005.

(iv) On a third or subsequent conviction for partner or family member assault, the offender shall be fined not less than $500 and not more than $50,000 and be imprisoned for a term not less than 30 days and not more than 5 years. If the term of imprisonment does not exceed 1 year, the person shall be imprisoned in the county jail. If the term of imprisonment exceeds 1 year, the person shall be imprisoned in the state prison.

(v) If the offense was committed within the vision or hearing of a minor, the judge shall consider the minor's presence as a factor at the time of sentencing.

(b) (i) For the purpose of determining the number of convictions under this section, a conviction means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or in another state for a violation of a similar statute, which forfeiture has not been vacated. A prior conviction for domestic abuse under this section is a prior conviction for purposes of subsection (3)(a).

(ii) A conviction for assault with a weapon under 45-5-213, if the offender was a partner or family member of the victim, constitutes a conviction for the purpose of calculating prior convictions under this section.

(4) (a) An offender convicted of partner or family member assault is required to pay for and complete a counseling assessment with a focus on violence, controlling behavior, dangerousness, and chemical dependency. An investigative criminal justice report, as defined in 45-5-231, must be copied and sent to the offender intervention program, as defined in 45-5-231, to assist the counseling provider in properly assessing the offender's need for counseling and treatment. Counseling providers shall take all required precautions to ensure the confidentiality of the report. If the report contains confidential information relating to the victim's location or not related to the charged offense, that information must be deleted from the report prior to being sent to the offender intervention program.

(b) The offender shall complete all recommendations for counseling, referrals, attendance at psychoeducational groups, or treatment, including any indicated chemical dependency treatment, made by the counseling provider. The counseling provider must be approved by the court. The counseling must include a preliminary assessment for counseling, as defined in 45-5-231. The offender shall complete a minimum of 40 hours of counseling. The counseling may include attendance at psychoeducational groups, as defined in 45-5-231, in addition to the assessment. The preliminary assessment and counseling that

holds the offender accountable for the offender's violent or controlling behavior must be:

(i) with a person licensed under Title 37, chapter 17, 22, or 23;

(ii) with a professional person as defined in 53-21-102; or

(iii) in a specialized domestic violence intervention program.

(c) The minimum counseling and attendance at psychoeducational groups provided in subsection (4)(b) must be directed to the violent or controlling conduct of the offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the minimum 40 hours. Subsection (4)(b) does not prohibit the placement of the offender in other appropriate treatment if the court determines that there is no available treatment program directed to the violent or controlling conduct of the offender.

(5) In addition to any sentence imposed under subsections (3) and (4), after determining the financial resources and future ability of the offender to pay restitution as provided for in 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable actual medical, housing, wage loss, and counseling costs.

(6) In addition to the requirements of subsection (5), if financially able, the offender must be ordered to pay for the costs of the offender's probation, if probation is ordered by the court.

(7) The court may prohibit an offender convicted under this section from possession or use of the firearm used in the assault. The court may enforce 45-8-323 if a firearm was used in the assault.

(8) The court shall provide an offender with a written copy of the offender's sentence at the time of sentencing or within 2 weeks of sentencing if the copy is sent electronically or by mail."

**Section 2. Effective date.** [This act] is effective on passage and approval.

**Section 3. Applicability.** [This act] applies to offenses committed on or after [the effective date of this act].

Approved April 18, 2013

# CHAPTER NO. 229

[HB 146]

AN ACT PROHIBITING THE DEPARTMENT OF ENVIRONMENTAL QUALITY FROM COLLECTING ANNUAL LICENSE FEES FOR A SOLID WASTE FACILITY UNTIL THE FACILITY RECEIVES SOLID WASTE; AMENDING SECTION 75-10-115, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 75-10-115, MCA, is amended to read:

**"75-10-115. Solid waste management fee.** (1) The department may prepare rules for adoption by the board, pursuant to 75-10-104 and 75-10-106, that set fees for the management and regulation of solid waste at facilities subject to regulation pursuant to part 2 of this chapter. Upon adoption by the board, the department may collect the fees. These fees may include:

(a) a license application fee that reflects the cost of reviewing a new solid waste management system or a substantial change to an existing facility; *from the time an application is made until the license is issued or denied;*

(b) a flat annual license renewal fee that reflects a minimal base fee related to the fixed costs of an annual inspection and license renewal. ~~and that is~~ *The initial annual fee year for a new facility commences on the date that the facility initially receives waste. The fee must be* based upon the categorization of solid waste management systems into separate classes identified by the following criteria:

(i) the quantity of solid waste received by the solid waste management system;

(ii) the nature of the solid waste received; and

(iii) the nature of the waste management occurring within the solid waste management system~~; and~~.

(c) a tonnage or volume-based fee on solid waste disposal.

~~(2)~~*(2)* All fees collected must be deposited in the solid waste management account provided for in 75-10-117."

**Section 2. Effective date.** [This act] is effective on passage and approval.

**Section 3. Applicability.** [This act] applies to fees collected after [the effective date of this act].

Approved April 19, 2013

# CHAPTER NO. 230

[HB 256]

AN ACT REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO PROVIDE WRITTEN NOTICE DISCLOSING THE AVAILABILITY OF AN ENVIRONMENTAL ASSESSMENT TO OWNERS OF PROPERTY WITHIN A 1-MILE-WIDE FACILITY SITING CORRIDOR FOR CERTAIN FACILITIES UNDER THE MAJOR FACILITY SITING ACT; REQUIRING THAT A CERTIFICATE ISSUED UNDER THE MAJOR FACILITY SITING ACT MUST INCLUDE CONFIRMATION THAT NOTICE OF THE ENVIRONMENTAL REVIEW WAS PROVIDED; AMENDING SECTION 75-20-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 75-20-303, MCA, is amended to read:

**"75-20-303. Opinion issued with decision — contents.** (1) In rendering a decision on an application for a certificate, the department shall issue an opinion stating its reasons for the action taken.

(2) If the department has found that any regional or local law or regulation that would be otherwise applicable is unreasonably restrictive, it shall state in its opinion the reasons that it is unreasonably restrictive.

(3) A certificate issued by the department must include the following:

(a) an environmental evaluation statement related to the facility being certified. The statement must include but is not limited to analysis of the following information:

(i) the environmental impact of the proposed facility; and

(ii) any adverse environmental effects that cannot be avoided by issuance of the certificate;

(b) a plan for monitoring environmental effects of the proposed facility;

(c) a plan for monitoring the certified facility site between the time of certification and completion of construction;

(d) a time limit as provided in subsection (4); ~~and~~

*(e) a statement confirming that notice was provided pursuant to subsection (5); and*

~~(e)~~*(f)* a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) (a) The department shall issue as part of the certificate the following time limits:

(i) For a facility as defined in 75-20-104(8)(a) that is more than 30 miles in length and for a facility defined in 75-20-104(8)(b), construction must be completed within 10 years.

(ii) For a facility as defined in 75-20-104(8)(a) that is 30 miles or less in length, construction must be completed within 5 years.

(iii) For a facility as defined in 75-20-104(8)(c), construction must begin within 6 years and continue with due diligence in accordance with preliminary construction plans established in the certificate.

(b) Unless extended, a certificate lapses and is void if the facility is not constructed or if construction of the facility is not commenced within the time limits provided in this section.

(c) The time limit may be extended for a reasonable period upon a showing by the applicant to the department that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and (4)(a)(ii). Under this subsection, a good faith effort includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of a permit or certificate.

(d) Construction may begin immediately upon issuance of a certificate unless the department finds that there is substantial and convincing evidence that a delay in the commencement of construction is necessary and should be established for a particular facility.

(5) (a) For a facility defined in 75-20-104(8)(a) and (8)(b), the environmental review conducted pursuant to Title 75, chapter 1, parts 1 through 3, prepared by the department must designate a 1-mile-wide facility siting corridor along the facility route.

*(b) The department shall provide written notice of the availability of the draft environmental review to each owner of property within the 1-mile-wide facility siting corridor identified in the environmental review as the department's preferred alternative facility siting corridor. No more than 60 days prior to the availability of the draft environmental review, the names and addresses of the property owners must be obtained from the property tax rolls of the county where the property is located. Except as provided in subsection (5)(c), the notice must:*

*(i) be delivered personally or by first-class mail. If delivered personally, the property owner shall sign a receipt verifying that the property owner received the statement.*

*(ii) inform the property owner that the property owner's property is located within the department's preferred alternative 1-mile-wide facility siting corridor;*

*(iii) inform the property owner about how a copy of the environmental review may be obtained; and*

*(iv) inform the property owner of the property owner's rights under this chapter concerning the location of the facility and that more information concerning those rights may be obtained from the department.*

*(c) If there is more than one name listed on the property tax rolls for a single property, the notice must be mailed to the first listed property owner at the address on the property tax rolls.*

*(d) By mailing the notice as provided in subsection (5)(c), the notice requirements in subsection (5)(b) are satisfied.*

~~(b)~~*(e)* The department shall site a corridor of at least 500 feet in width for the facility within the 1-mile-wide corridor in accordance with 75-20-301. *If the department determines that it will select a facility siting corridor that is completely or partially different from the preferred alternative facility siting corridor described in the draft environmental review, it shall, before issuing the certificate, provide notice of its intended facility siting corridor and an opportunity to comment to property owners within the 1-mile-wide facility siting corridor that deviates from the preferred alternative. Property owners must be determined and notice must be given in the same manner as provided in subsection (5)(b).*

~~(c)~~*(f)* If the certificate holder complies with subsection (6), a certificate holder may modify the siting of the facility within the 1-mile-wide corridor without complying with the provisions of 75-20-219 if the alternate siting is done in a manner that minimizes the impact on residential areas, crop land, and sensitive sites.

(6) (a) A certificate holder may submit an adjustment of the location of a facility outside the corridor designated pursuant to subsection (5) to the department. The adjustment must be accompanied by the written agreement of the affected property owner and all contiguous property owners that would be affected. The submission must include a map showing the approved facility location and the proposed adjustment.

(b) The certificate holder may construct the facility as described in the submission unless the department notifies the certificate holder within 15 days of the submission that the department has determined that:

(i) the adjustment would change the basis of any finding required under 75-20-301 to the extent that the department would have selected a different location for the facility; or

(ii) the adjustment would materially increase unmitigated adverse impacts.

(c) Siting of a facility within the corridor designated pursuant to subsection (5) or an adjustment pursuant to subsection (6)(a) is not subject to:

(i) Title 75, chapter 1, part 2;

(ii) a certificate amendment under 75-20-219; or

(iii) a board review under 75-20-223."

**Section 2. Effective date.** [This act] is effective on passage and approval.

**Section 3. Applicability.** [This act] applies to applications for a certificate under the Major Facility Siting Act filed on or after [the effective date of this act].

Approved April 19, 2013

# CHAPTER NO. 231

[HB 459]

AN ACT PROHIBITING A HEALTH CARE PROVIDER OR HEALTH CARE FACILITY FROM REFUSING OR CONDITIONING THE PROVISION OF HEALTH CARE IF A PERSON REFUSES TO PROVIDE INFORMATION RELATING TO FIREARM OWNERSHIP, POSSESSION, OR USE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Privacy in health care — ownership of firearms.** (1) No health care provider or health care facility may:

(a) refuse to provide health care to a person because the person declines to answer any questions concerning the person's ownership, possession, or use of firearms; or

(b) inquire about a person's ownership, possession, or use of firearms as a condition of receiving health care.

(2) For the purposes of this section:

(a) the terms "health care", "health care facility", and "health care provider" have the meanings provided in 50-16-504; and

(b) the term "possession" does not apply to the presence of a firearm on the person of a patient at the time of treatment.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 50, chapter 16, and the provisions of Title 50, chapter 16, apply to [section 1].

Approved April 19, 2013

# CHAPTER NO. 232

[SB 209]

AN ACT AUTHORIZING RESORT AREA DISTRICTS TO ISSUE BONDS AND PROVIDE FOR REPAYMENT; AMENDING SECTIONS 7-6-1506, 7-6-1541, AND 7-6-1542, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-6-1506, MCA, is amended to read:

**"7-6-1506. Use of resort community tax ~~revenues~~ *revenue* — bond issue — pledge.** (1) Unless otherwise restricted by the voter-approved tax authorization provided for in 7-6-1504, a resort community *or a resort area district as defined in 7-6-1531* may appropriate and expend ~~revenues~~ *revenue* derived from a resort tax for any activity, undertaking, or administrative service that the municipality *or resort area district* is authorized by law to perform, including costs resulting from the imposition of the tax.

(2) A resort community may issue bonds to provide, install, or construct any of the public facilities, improvements, or undertakings authorized under 7-7-4101, 7-7-4404, and 7-12-4102.

*(3)* Bonds issued under this section must be authorized by a resolution of the governing body, stating the terms, conditions, and covenants of the municipality *or resort area district* as the governing body considers appropriate. The bonds may be sold at a discount at a public or private sale.

~~(3)~~*(4)* A resort community may pledge for repayment of bonds issued under this section the ~~revenues~~ *revenue* derived from a resort tax, special assessments levied for and ~~revenues~~ *revenue* collected from the facilities, improvements, or undertakings for which the bonds are issued, and any other source of revenue authorized by the legislature to be imposed or collected by the resort community. ~~Such~~ *The* bonds do not constitute debt for purposes of any statutory debt limitation, provided that in the resolution authorizing the issuance of the bonds the municipality determines that the resort tax ~~revenues~~ *revenue*, special assessments levied for and ~~revenues~~ *revenue* from ~~such~~ *the* facilities, improvements or undertakings, or other sources of revenue, if any, pledged to the payment of the bonds will be sufficient in each year to pay the principal ~~thereof~~ and interest ~~thereon~~ *on the bonds* when due.

*(5)* Bonds may not be issued pledging proceeds of the resort tax for repayment unless the municipality in the resolution authorizing issuance of the bonds determines that in any fiscal year the annual ~~revenues~~ *revenue* expected to be derived from the resort tax, less the amount required to reduce property taxes pursuant to 7-6-1507, equals at least 125% of the average amount of the principal and interest payable from the resort tax ~~revenues~~ *revenue* on the bonds and any other outstanding bonds payable from the resort tax except any bonds to be refunded upon the issuance of the proposed bonds."

**Section 2.** Section 7-6-1541, MCA, is amended to read:

**"7-6-1541. General powers of resort area district.** (1) A resort area district created under 7-6-1531 through 7-6-1550 may:

(a) have perpetual succession;

(b) sue and be sued in any court of competent jurisdiction;

(c) acquire by any legal means real and personal property necessary to the full exercise of its powers; ~~and~~

(d) make contracts, employ labor, and do all acts necessary for the full exercise of its powers*; and*

*(e) issue and repay bonds as provided in 7-6-1542*.

(2) (a) The board for a resort area district that does not have perpetual succession may submit the question of extension of the term of the resort area district directly to the voters. If the electorate extends the term of the resort area district, the provisions of this part continue to apply.

(b) The board may not submit a question to the voters to extend the term of a resort area district until the expiration of at least half the existing term of the resort tax, as provided for in 7-6-1504. If a vote to extend the term fails, successive votes to extend the term may be taken no more than once each year.

(3) The board shall exercise the powers described in 7-6-1531 through 7-6-1550."

**Section 3.** Section 7-6-1542, MCA, is amended to read:

**"7-6-1542. Resort area district board powers related to administration and expenditure of resort tax revenue — *authorization to issue bonds — restrictions.*** *(1)* The board of a resort area district created under 7-6-1531 through 7-6-1550 may:

~~(1)~~*(a)* appropriate and expend revenue from a resort tax for any activity, undertaking, or administrative service authorized in the resolution creating a resort area and adopting a resort tax; ~~and~~

~~(2)~~*(b)* adopt administrative ordinances necessary to aid in the collection or reporting of resort taxes and in the expenditure of resort tax revenue*; and*

*(c) except as provided in subsection (2), if approved by four of the five board members, issue bonds to provide, install, or construct any of the public facilities, improvements, or capital projects authorized as provided in subsection (1)(a) and pledge for repayment of the bonds the revenue derived from the resort tax.*

*(2) A resort area district may not issue bonds to construct any single-purpose public facility, improvement, or capital project in an amount exceeding $500,000 without the approval of a majority of the qualified electors residing within the boundaries of the resort area district voting at a special election at a time to be determined by the board. For the purpose of this subsection, the board may authorize a special election by majority vote.*

*(3) The provisions of 7-6-1506(3) apply to the issuance of bonds by a resort area district, and the board shall conclude that the projected useful life of the public facilities, improvements, or capital projects will be greater than the term of the bonds that were issued to construct the public facilities, improvements, or capital projects.*

*(4) Resort tax revenue that is pledged by a resort area district to the repayment of bonds must be sufficient to pay the principal and interest on the bonds in each year when the principal and interest is due. Bonds do not constitute debt for the purpose of any statutory debt limitation. A resort area district may not issue bonds pledging proceeds of the resort tax for repayment unless the board in the resolution authorizing issuance of the bonds determines that the annual principal and interest payment on the bonds issued will not cumulatively exceed 25% of the average of resort tax revenue received by the district during the preceding 5 years. Bonds may not be issued for a term longer than the remaining duration of the resort area district*."

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 19, 2013

# CHAPTER NO. 233

[SB 271]

AN ACT REVISING LAWS GOVERNING DISSOLUTION OF WATER AND SEWER DISTRICTS; ALLOWING A PROCESS OF DISSOLUTION TO BE INITIATED BY A DISTRICT BOARD AND REFERRED TO THE ELECTORS OF A DISTRICT UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTION 7-13-2351, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-13-2351, MCA, is amended to read:

**"7-13-2351. Dissolution of district *by petition*.** (1) *A district may be dissolved as provided in [section 2] or this section.*

*(2)* Upon receipt of a petition to dissolve the district, signed by more than 50% of the ~~freeholders~~ *property owners* of the district, the board of directors shall set a date for a public hearing on dissolution of the district. The hearing date may be not earlier than 45 days or later than 60 days after the date on which the board schedules the date of the hearing. A notice of the public hearing on the dissolution must be published as provided in 7-1-2121. The published notice must include notice to creditors of the district to present claims owed by the district to the board of directors prior to the date set for the dissolution hearing.

~~(2)~~*(3)* At the dissolution hearing the board of directors shall hear testimony of all persons interested in whether the district should be dissolved and shall determine whether there are any outstanding debts of the district.

~~(3)~~*(4)* After the hearing, if the board determines that dissolution of the district is in the best interest of the public and that there are no outstanding debts of the district, it may resolve to recommend that the district be dissolved. A copy of the resolution must be sent to the county commissioners of the county or counties in which the district is located.

~~(4)~~*(5)* The district is dissolved after the approval of the dissolution by all the boards of county commissioners of the counties in which the district is located. An instrument approving dissolution must be filed with the clerk and recorder of the county or counties in which the district is located, who shall then ~~cause a copy of the instrument to be filed with~~ *notify* the secretary of state.

~~(5)~~*(6)* Any assets of the district after dissolution ~~shall~~ *must* be distributed according to a specific plan adopted by the board of directors after a public hearing and ~~set forth~~ *as provided* in the resolution recommending that the district be dissolved."

**Section 2. Dissolution of district by special election.** (1) The board of directors may, after notice is given as provided in 7-1-2121, hold a hearing for dissolution of the district if:

(a) the district has no facilities;

(b) the district provides no services;

(c) the board is not a party to any existing contracts and is not engaged in any contract proposals for facilities or services; and

(d) the district has not had outstanding debts for at least 3 years.

(2) At the dissolution hearing, the board of directors shall hear testimony of all persons interested in whether the district should be dissolved.

(3) If the board of directors determines that the dissolution of the district is in the best interests of the public, the board may resolve to recommend that the district be dissolved. The recommendation must include a specific plan for distribution of any remaining assets after dissolution and must be provided to the board of county commissioners in each county in which the district is located.

(4) Upon receipt of a recommendation for dissolution, the board of county commissioners in each county in which the district lies shall order a referendum on the proposed dissolution. The referendum must be held in conjunction with a regular or primary election or must be conducted by mail ballot election as provided in Title 13, chapter 19.

(5) If the majority of votes cast at the election by qualified electors of the district are in favor of dissolving the district, each board of county commissioners shall by order declare the district dissolved.

(6) Upon dissolution of the district by each board of county commissioners, the clerk of each county in which the district was located shall immediately send written notice to the secretary of state and shall record a certificate stating that the district is dissolved.

(7) Any assets of the district after dissolution must be distributed according to the plan adopted by the board of directors under subsection (3).

**Section 3. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 7, chapter 13, part 23, and the provisions of Title 7, chapter 13, part 23, apply to [section 2].

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 19, 2013

# CHAPTER NO. 234

[HB 23]

AN ACT REVISING ETHICS VIOLATION LAWS FOR THE OFFICE OF THE COMMISSIONER OF POLITICAL PRACTICES; PROHIBITING THE COMMISSIONER FROM ENGAGING IN PRIVATE BUSINESS DURING THE OFFICE HOURS OF THE COMMISSIONER; PROVIDING FOR THE RESOLUTION OF CHARGES OF ETHICS VIOLATIONS BY THE COMMISSIONER OF POLITICAL PRACTICES; AND AMENDING SECTIONS 2-2-136, 13-37-108, AND 13-37-111, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-2-136, MCA, is amended to read:

**"2-2-136. Enforcement for state officers, legislators, and state employees — referral of complaint involving county attorney.** (1) (a) A person alleging a violation of this part by a state officer, legislator, or state employee may file a complaint with the commissioner of political practices. The commissioner does not have jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint. The commissioner also has jurisdiction over complaints against a county attorney that are referred by a local government review panel pursuant to 2-2-144 or filed by a person directly with the commissioner pursuant to 2-2-144(6). *If a complaint is filed against the commissioner or another individual employed in the office of the commissioner, the complaint must be resolved in the manner provided for in 13-37-111(5).* The commissioner may request additional information from the complainant or the person who is the subject of the complaint to make an initial determination of whether the complaint states a potential violation of this part.

(b) The commissioner may dismiss a complaint that is frivolous, does not state a potential violation of this part, or does not contain sufficient allegations to enable the commissioner to determine whether the complaint states a potential violation of this part. If the issues presented in a complaint have been addressed and decided in a prior decision and the commissioner determines that no additional factual development is necessary, the commissioner may issue a summary decision without holding an informal contested case hearing on the complaint.

(c) Except as provided in subsection (1)(b), if the commissioner determines that the complaint states a potential violation of this part, the commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter 4, part 6. The commissioner shall issue a decision based upon the record established before the commissioner.

(2) (a) Except as provided in subsection (2)(b), if the commissioner determines that a violation of this part has occurred, the commissioner may impose an administrative penalty of not less than $50 or more than $1,000.

(b) If the commissioner determines that a violation of 2-2-121(4)(b) has occurred, the commissioner may impose an administrative penalty of not less than $500 or more than $10,000.

(c) If the violation was committed by a state employee, the commissioner may also recommend that the employing state agency discipline the employee.

The employing entity of a state employee may take disciplinary action against an employee for a violation of this part, regardless of whether the commissioner makes a recommendation for discipline. The commissioner may assess the costs of the proceeding against the person bringing the charges if the commissioner determines that a violation did not occur or against the officer or employee if the commissioner determines that a violation did occur.

(3) A party may seek judicial review of the commissioner's decision, as provided in chapter 4, part 7, of this title, after a hearing, a dismissal, or a summary decision issued pursuant to subsection (1)(b).

(4) Except for records made public in the course of a hearing held under subsection (1) and records that are open for public inspection pursuant to Montana law, a complaint and records obtained or prepared by the commissioner in connection with an investigation or complaint are confidential documents and are not open for public inspection. The complainant and the person who is the subject of the complaint shall maintain the confidentiality of the complaint and any related documents released to the parties by the commissioner until the commissioner issues a decision. However, the person who is the subject of a complaint may waive, in writing, the right of confidentiality provided in this subsection. If a waiver is filed with the commissioner, the complaint and any related documents must be open for public inspection. The commissioner's decision issued after a hearing is a public record open to inspection.

(5) When a complaint is filed, the commissioner may issue statements or respond to inquiries to confirm that a complaint has been filed, to identify against whom it has been filed, and to describe the procedural aspects and status of the case.

(6) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part."

**Section 2.** Section 13-37-108, MCA, is amended to read:

**"13-37-108. Commissioner of political practices — restrictions.** During the commissioner's term of office, the commissioner may not knowingly, as defined in 45-2-101:

(1) hold another position of public trust or engage in any other occupation or business if the position of public trust or the other occupation or business interferes with or is inconsistent with the commissioner executing the duties of the commissioner's office;

*(2) engage in any other occupation or business during the business hours of the commissioner's office unless the commissioner is in a leave status from the office;*

~~(2)~~*(3)* participate in any political activity or in a political campaign;

~~(3)~~*(4)* make a contribution to a candidate or political committee or for or against a ballot issue or engage in any activity that is primarily intended to support or oppose a candidate, political committee, or ballot issue;

~~(4)~~*(5)* attend an event that is held for the purpose of raising funds for or against a candidate, political committee, or ballot issue;

~~(5)~~*(6)* participate in a matter pertaining to the commissioner's office that:

(a) is a conflict of interest or results in the appearance of a conflict of interest between public duty and private interest pursuant to Title 2, chapter 2; or

(b) involves a relative of the commissioner."

**Section 3.** Section 13-37-111, MCA, is amended to read:

**"13-37-111. Investigative powers and duties — recusal.** (1) Except as provided in 13-35-240 *and this section*, the commissioner is responsible for investigating all of the alleged violations of the election laws contained in chapter 35 of this title or this chapter and in conjunction with the county attorneys is responsible for enforcing these election laws.

(2) The commissioner may:

(a) investigate all statements filed pursuant to the provisions of chapter 35 of this title or this chapter and shall investigate alleged failures to file any statement or the alleged falsification of any statement filed pursuant to the provisions of chapter 35 of this title or this chapter. Upon the submission of a written complaint by any individual, the commissioner shall investigate any other alleged violation of the provisions of chapter 35 of this title, this chapter, or any rule adopted pursuant to chapter 35 of this title or this chapter.

(b) inspect any records, accounts, or books that must be kept pursuant to the provisions of chapter 35 of this title or this chapter that are held by any political committee or candidate, as long as the inspection is made during reasonable office hours; and

(c) administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, bank account statements of a political committee or candidate, or other records that are relevant or material for the purpose of conducting any investigation pursuant to the provisions of chapter 35 of this title or this chapter.

(3) If the commissioner determines that considering a matter would give rise to the appearance of impropriety or a conflict of interest, the commissioner is recused from participating in the matter.

*(4) The commissioner is recused from participating in any decision in which the commissioner is accused of violating 13-37-108 or any other ethical standard.*

*(5) (a) If a campaign finance or ethics complaint is filed in the office of the commissioner against the commissioner, a supervisor within the commissioner's office shall within 10 business days forward the complaint to the attorney general, who shall within 45 days appoint a deputy in the case of a finance complaint or a deputy and a hearing officer in the case of an ethics complaint to make a determination in the matter of the complaint. The attorney general shall, to the extent practicable, ensure that there is no conflict of interest in the appointment of the deputy or hearing officer or in the provision of any legal advice to the office of the commissioner.*

*(b) A deputy appointed pursuant to this subsection must, in addition to complying with the requirements of subsection (6)(b), be an attorney licensed to practice law in Montana who is engaged in the private practice of law and who has liability insurance applicable to the purposes for which the deputy is appointed.*

*(c) If a complaint is filed against the commissioner, another employee in the office of the commissioner may not provide the commissioner with any information or documents concerning a complaint against the commissioner beyond that information or those documents normally provided to persons in matters before the commissioner.*

~~(4)~~*(6)* (a) If the commissioner is recused pursuant to this section, the commissioner shall*, except as provided in subsection (5),* appoint a deputy, subject to subsection ~~(4)(b)~~ *(6)(b)*.

(b) The deputy:

(i) may not be an employee of the office of the commissioner;

(ii) must have the same qualifications as specified for the commissioner in 13-37-107;

(iii) with respect to only the specific matter from which the commissioner is recused, has the same authority, duties, and responsibilities as the commissioner would have absent the recusal; and

(iv) may not exercise any powers of the office that are not specifically related to the matter for which the deputy is appointed.

~~(5)~~*(7) (a)* ~~The~~ *Except as provided in subsection (7)(b), the* appointment of the deputy is effectuated by a contract between the commissioner and the deputy. ~~The contract~~ *A contract executed pursuant to this subsection (7)* must specify the deputy's term of appointment, which must be temporary, the matter assigned to the deputy, the date on which the matter assigned must be concluded by the deputy, and any other items relevant to the deputy's appointment, powers, or duties.

*(b) If a deputy is appointed pursuant to subsection (5), the appointment of the deputy is effectuated by a contract between the supervisor who forwarded the complaint to the attorney general and the deputy or the deputy and the hearing officer, but the contract is construed to be with the office of the commissioner.*"

Approved April 22, 2013

# CHAPTER NO. 235

[HB 24]

AN ACT CREATING THE STATE PARKS AND RECREATION BOARD; PROVIDING POWERS AND DUTIES; GRANTING RULEMAKING AUTHORITY; RENAMING THE FISH, WILDLIFE, AND PARKS COMMISSION; AMENDING SECTIONS 2-15-3110, 2-15-3113, 2-15-3401, 2-15-3402, 2-15-3404, 23-1-101, 23-1-102, 23-1-106, 23-1-108, 23-1-110, 23-1-121, 23-1-122, 23-2-301, 23-2-403, 23-2-404, 23-2-408, 23-2-410, 37-47-310, 75-1-220, 77-1-405, 85-2-102, 87-1-101, 87-1-106, 87-1-202, 87-1-209, 87-1-218, 87-1-301, 87-1-303, 87-1-401, 87-1-622, AND 87-4-432, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. State parks and recreation board — composition.** (1) There is a state parks and recreation board.

(2) The board consists of five members appointed by the governor, as prescribed in 2-15-124. The governor shall appoint one member from each of the following districts:

(a) District No. 1, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite, and Lewis and Clark Counties;

(b) District No. 2, consisting of Deer Lodge, Silver Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin, Park, and Sweet Grass Counties;

(c) District No. 3, consisting of Glacier, Toole, Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith Basin, Fergus, Blaine, Meagher, and Wheatland Counties;

(d) District No. 4, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone, Richland, Dawson, and Wibaux Counties;

(e) District No. 5, consisting of Golden Valley, Musselshell, Stillwater, Carbon, Yellowstone, Big Horn, Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and Prairie Counties.

(3) Appointments must be made without regard to political affiliation and must be made solely for the wise management of state parks and outdoor recreational resources administered pursuant to Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, and 9.

(4) A person appointed to the board must be informed or experienced in the conservation and protection of state parks, heritage resources, natural resources, tourism promotion and development, or outdoor recreation.

(5) A vacancy on the board must be filled by the governor in the same manner and from the district in which the vacancy occurs.

(6) The board is designated as a quasi-judicial board for purposes of 2-15-124, except that the requirement that at least one member be an attorney does not apply.

**Section 2. Powers and duties of board — rulemaking — meetings.** (1) Except as provided in subsection (2), for state parks, primitive parks, state recreational areas, public camping grounds, state historic sites, state monuments, and other heritage and recreational resources, land, and water administered pursuant to Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, and 9, the board shall:

(a) set the policies and provide direction to the department for:

(i) the management, protection, conservation, and preservation of these properties, lands, and waters and their appropriate role relative to tourism and the economic health of Montana;

(ii) coordinating, integrating, promoting, and furthering opportunities for education and recreation at these sites, including but not limited to camping, hiking, snowmobiling, off-highway vehicle use, horseback riding, mountain biking, boating, and swimming;

(b) work with the commission to maintain hunting and angling opportunities on these lands and waters;

(c) establish the rules of the department governing the use of these properties and lands. The rules must be adopted in the interest of public health, public safety, public welfare, and protection of property and public resources in regulating recreation, including picnicking, camping, and swimming, and sanitation. These rules are subject to review and approval by the department of public health and human services with regard to issues of public health and sanitation before becoming effective. Copies of the rules must show that endorsement.

(d) review and approve all acquisitions or transfers of interest in these properties, lands, and waters by the department, except as provided in 87-1-209(4);

(e) review and approve the budget of the department for the administration of these properties, lands, and waters prior to its transmittal to the office of budget and program planning;

(f) review and approve construction projects that have an estimated cost of more than $5,000;

(g) work with local, state, and federal agencies to evaluate, integrate, coordinate, and promote recreational opportunities statewide; and

(h) encourage citizen involvement in management planning for these properties, lands, and waters.

(2) Pursuant to 87-1-301(1), the board does not oversee department activities related to the administration of fishing access sites.

(3) The members of the board shall hold quarterly or other meetings for the transaction of business at times and places considered necessary and proper. The meetings must be called by the presiding officer or by a majority of the board and must be held at the time and place specified in the call for the meeting. A majority of the members constitutes a quorum for the transaction of any business. The board shall keep a record of all the business it transacts. The presiding officer and secretary shall sign all orders, minutes, or documents for the board.

**Section 3.** Section 2-15-3110, MCA, is amended to read:

**"2-15-3110. Livestock loss board — purpose, membership, and qualifications.** (1) There is a livestock loss board. The purpose of the board is to administer the programs called for in the Montana gray wolf management plan and established in 2-15-3111 through 2-15-3113, with funds provided through the accounts established in 81-1-110, in order to minimize losses caused by wolves to livestock producers and to reimburse livestock producers for livestock losses from wolf predation.

(2) The board consists of seven members, appointed by the governor, as follows:

(a) three members from a list of names recommended by the board of livestock;

(b) three members from a list of names recommended by the fish~~,~~ *and* wildlife~~, and parks~~ commission; and

(c) one member of the general public.

(3) Each board member must have knowledge of or have experience in at least one of the following:

(a) the raising of livestock in Montana;

(b) livestock marketing, valuations, sales, or breeding associations;

(c) the interaction of wolves with livestock and livestock mortality caused by wolves;

(d) wildlife conservation;

(e) administration; and

(f) fundraising.

(4) The board is designated as a quasi-judicial board for the purposes of 2-15-124. Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the board.

(5) The board is allocated to the department of livestock for administrative purposes only as provided in 2-15-121.

(6) The board shall adopt rules to implement the provisions of 2-15-3110 through 2-15-3114 and 81-1-110 through 81-1-112."

**Section 4.** Section 2-15-3113, MCA, is amended to read:

**"2-15-3113. Additional powers and duties of livestock loss board.** (1) The livestock loss board shall:

(a) process claims;

(b) seek information necessary to ensure that claim documentation is complete;

(c) provide payments authorized by the board for confirmed and probable livestock losses, along with a written explanation of payment;

(d) submit monthly and annual reports to the board of livestock summarizing claims and expenditures and the results of action taken on claims and maintain files of all claims received, including supporting documentation;

(e) provide information to the board of livestock regarding appealed claims and implement any decision by the board;

(f) prepare the annual budget for the board; and

(g) provide proper documentation of staff time and expenditures.

(2) The livestock loss board may enter into an agreement with any Montana tribe, if the tribe has adopted a wolf management plan for reservation lands that is consistent with the state wolf management plan, to provide that tribal lands within reservation boundaries are eligible for mitigation grants pursuant to 2-15-3111 and that livestock losses on tribal lands within reservation boundaries are eligible for reimbursement payments pursuant to 2-15-3112.

(3) The livestock loss board shall:

(a) coordinate and share information with state, federal, and tribal officials, livestock producers, nongovernmental organizations, and the general public in an effort to reduce livestock losses caused by wolves;

(b) establish an annual budget for the prevention, mitigation, and reimbursement of livestock losses caused by wolves;

(c) perform or contract for the performance of periodic program audits and reviews of program expenditures, including payments to individuals, incorporated entities, and producers who receive loss reduction grants and reimbursement payments;

(d) adjudicate appeals of claims;

(e) investigate alternative or enhanced funding sources, including possible agreements with public entities and private wildlife or livestock organizations that have active livestock loss reimbursement programs in place;

(f) meet as necessary to conduct business; and

(g) report annually to the governor, the legislature, members of the Montana congressional delegation, the board of livestock, the fish*,* *and* wildlife~~, and parks~~ commission, and the public regarding results of the programs established in 2-15-3111 through 2-15-3113.

(4) The livestock loss board may sell or auction any wolf carcasses or parts of wolf carcasses received pursuant to 87-1-217. The proceeds, minus the costs of the sale including the preparation of the carcass or part of the carcass for sale, must be deposited into the livestock loss reduction and mitigation special revenue account established in 81-1-110(2)(a) and used for the purposes of 2-15-3111 through 2-15-3114."

**Section 5.** Section 2-15-3401, MCA, is amended to read:

**"2-15-3401. Department of fish, wildlife, and parks — head.** There is a department of fish, wildlife, and parks. The department head is the director of fish, wildlife, and parks appointed by the governor in accordance with 2-15-111. The director is the secretary of the*:*

*(1) fish and wildlife* commission *established in 2-15-3402; and*

*(2) state parks and recreation board established in [section 1]*."

**Section 6.** Section 2-15-3402, MCA, is amended to read:

**"2-15-3402. Fish~~,~~ *and* wildlife~~, and parks~~ commission.** (1) There is a fish~~,~~ *and* wildlife~~, and parks~~ commission.

(2) The commission consists of five members. At least one member must be experienced in the breeding and management of domestic livestock. The governor shall appoint one member from each of the following districts:

(a) District No. 1, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite, and Lewis and Clark Counties;

(b) District No. 2, consisting of Deer Lodge, Silver Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin, Park, and Sweet Grass Counties;

(c) District No. 3, consisting of Glacier, Toole, Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith Basin, Fergus, Blaine, Meagher, and Wheatland Counties;

(d) District No. 4, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone, Richland, Dawson, and Wibaux Counties;

(e) District No. 5, consisting of Golden Valley, Musselshell, Stillwater, Carbon, Yellowstone, Big Horn, Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and Prairie Counties.

(3) Appointments must be made without regard to political affiliation and must be made solely for the wise management of fish, wildlife, ~~and state parks~~ and ~~other outdoor~~ *related* recreational resources of this state. A person may not be appointed to the commission unless the person is informed or interested and experienced in the subject of fish, wildlife, ~~parks,~~ and ~~outdoor~~ recreation and the requirements for the conservation and protection of fish, wildlife, ~~parks,~~ and ~~outdoor~~ recreational resources.

(4) A vacancy occurring on the commission must be filled by the governor in the same manner and from the district in which the vacancy occurs.

(5) The fish~~,~~ *and* wildlife~~, and parks~~ commission is designated as a quasi-judicial board for purposes of 2-15-124. Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the commission."

**Section 7.** Section 2-15-3404, MCA, is amended to read:

**"2-15-3404. Fish, wildlife, and parks crimestoppers board.** (1) There is a fish, wildlife, and parks crimestoppers board.

(2) (a) The board consists of five members, four of whom are appointed by the director of the department of fish, wildlife, and parks~~,~~ as follows:

(i) a person within the department responsible for the enforcement of fish and wildlife laws;

(ii) a member of a hunter's, angler's, or conservation group;

(iii) a member who is actively engaged in agricultural production; and

(iv) a member of the public with an interest in parks and recreation.

(b) The fifth member is a member of the fish~~,~~ *and* wildlife~~, and parks~~ commission who must be designated by the commission.

(3) The board shall elect a presiding officer from its members.

(4) A member must be appointed for a term of 2 years and may be reappointed.

(5) (a) A vacancy must be filled within 14 days of occurrence in the same manner as the original appointment.

(b) A vacancy does not impair the right of the remaining members to exercise the powers of the board.

(6) The board is allocated to the department of fish, wildlife, and parks for administrative purposes only as provided in 2-15-121."

**Section 8.** Section 23-1-101, MCA, is amended to read:

**"23-1-101. ~~Purpose~~ *Purposes — definitions.*** *(1)* For the ~~purpose~~ *purposes* of conserving the scenic, historic, archaeologic, scientific, and recreational resources of the state, ~~and~~ providing for their use and enjoyment, ~~thereby~~ *and* contributing to the cultural, recreational, and economic life of the people and their health, the department ~~of fish, wildlife, and parks (hereinafter referred to as department) is~~ *and board are* ~~hereby~~ vested with the duties and powers ~~hereinafter~~ set forth *in this part*.

*(2) For the purposes of this part, the following definitions apply:*

*(a) "Board" means the state parks and recreation board established in [section 1].*

*(b) "Commission" means the fish and wildlife commission established in 2-15-3402.*

*(c) "Department" means the department of fish, wildlife, and parks established in 2-15-3401.*

*(d) "Director" means the director of fish, wildlife, and parks as provided in 2-15-3401.*"

**Section 9.** Section 23-1-102, MCA, is amended to read:

**"23-1-102. Powers and duties of department ~~of fish, wildlife, and parks~~.** (1) The department shall make a study to determine the scenic, historic, archaeologic, scientific, and recreational resources of the state. ~~The~~ *The* department may*:*

*(a)* by purchase, lease, agreement, or acceptance of donations acquire for the state any areas, sites, or objects that in its opinion should be held, improved, and maintained as state parks, state recreational areas, state monuments, or state ~~historical~~ *historic* sites.*;* ~~The department, with the consent of the commission, may~~

*(b) with the consent of the board,* acquire by condemnation, pursuant to Title 70, chapter 30, lands or structures for the purposes provided in 87-1-209(2).*;*

~~(2)~~*(c)* ~~The department may~~ accept in the name of the state, in fee or otherwise, any areas, sites, or objects conveyed, entrusted, donated, or devised to the state.*; and*

*(d) lease those portions of designated lands that are necessary for the proper administration of the lands in keeping with the basic purposes of this part.*

*(2)* ~~It~~ *The department* may accept gifts, grants, bequests, or contributions of money or other property to be spent or used for any of the purposes of this part.

(3) A contract, for any of the purposes of this part, may not be entered into or another obligation incurred until money has been appropriated by the legislature or is otherwise available. If the contract or obligation pertains to acquisition of areas or sites in excess of either 100 acres or $100,000 in value, the board of land commissioners shall specifically approve the acquisition.

(4) The department has jurisdiction, custody, and control of all state parks, recreational areas, public camping grounds, ~~historical~~ *historic* sites, and monuments, except wayside camps and other public conveniences acquired, improved, and maintained by the department of transportation and contiguous to the state highway system. The department may designate lands under its

control as state parks, state ~~historical~~ *historic* sites, *or* state monuments~~,~~ or by any other designation that it considers appropriate. The department may remove or change the designation of any area or portion of an area and may name or change the name of any area. ~~The department may lease those portions of designated lands that are necessary for the proper administration of the lands in keeping with the basic purpose of this part.~~"

**Section 10.** Section 23-1-106, MCA, is amended to read:

**"23-1-106. Rules — penalties — enforcement.** (1) The department *and the board* may make rules governing the use, occupancy, and protection of the property under ~~its~~ *their* control.

(2) ~~Any~~ *A* person who violates ~~any of the rules made by the department~~ *subsection (3) or a rule established* pursuant to ~~subsection (1)~~ *this section* is guilty of a misdemeanor and shall be fined not more than $500 or be imprisoned in the county jail for not more than 6 months.

(3) ~~It is unlawful and a misdemeanor punishable as provided in subsection (2) to~~ *A person may not* refuse to exhibit for inspection any park permit, proof of age, or proof of residency upon request by a fish and game warden, park ranger, or peace officer.

(4) The department shall enforce the provisions of this chapter and rules implementing this chapter. The director ~~of the department~~ shall employ all necessary and qualified personnel for enforcement purposes.

(5) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this chapter and rules of the department and the ~~fish, wildlife, and parks commission~~ *board*; and

(c) to report violations to the county attorney of the county in which they occur."

**Section 11.** Section 23-1-108, MCA, is amended to read:

**"23-1-108. Acquisition of certain state parks, monuments, or ~~historical~~ *historic* sites.** (1) Any person, association, or representative of a governing unit may submit a proposal for the acquisition of a site or area described in 23-1-102 from the income of the trust fund created in 15-35-108 to the department ~~of fish, wildlife, and parks~~ by July 1 of the year preceding the convening of a legislative session.

(2) The ~~fish, wildlife, and parks commission~~ *board* shall present to the legislature by the 15th day of any legislative session a list of areas, sites, or objects that were proposed for purchase for use as state parks, state recreational areas, state monuments, or state ~~historical~~ *historic* sites with the money contained in the parks account.

(3) The legislature must appropriate funds from this account before any park, area, monument, or site may be purchased."

**Section 12.** Section 23-1-110, MCA, is amended to read:

**"23-1-110. Improvement or development of state park or fishing access site — required public involvement — rules.** (1) ~~The fish, wildlife, and parks commission shall adopt rules establishing a policy whereby any~~ *Any* proposed improvement or development of a state park or fishing access site that significantly changes park or fishing access site features or use patterns is

subject to notice of proposed modifications, both statewide and locally, and to opportunity for a public meeting and public comment on the advisability and acceptability of the proposal. *Rules to govern the notice, meeting, and comment process must be adopted:*

*(a) for state parks by the board; and*

*(b) for fishing access sites by the commission.*

(2) The department shall prepare a public report regarding any project that is subject to the provisions of subsection (1). The report must include conclusions relating to the following aspects of the proposal:

(a) the desires of the public as expressed to the department;

(b) the capacity of the park or fishing access site for development;

(c) environmental impacts associated with the improvement or development;

(d) the long-range maintenance of the improvements;

(e) the protection of natural, cultural, and historical park or fishing access site features;

(f) potential impacts on tourism; and

(g) site-specific modifications as they relate to the park or fishing access site system as a whole."

**Section 13.** Section 23-1-121, MCA, is amended to read:

**"23-1-121. Park rangers — qualifications — powers and duties.** (1) The department is authorized to establish a corps of park rangers and to select and appoint park rangers who must be qualified by their experience, training, skill, and interest in the protection, conservation, and stewardship of the natural and cultural resources and parks administered by the department.

(2) Park rangers shall*:*

*(a)* enforce the laws of this state and the rules of the department and the ~~fish, wildlife, and parks commission~~ *board* that provide for the protection, conservation, and stewardship of the natural and cultural resources in the state parks system.*;*

~~(3) Park rangers shall~~

*(b)* protect campers, picnickers, and other park users;

*(c)* keep the peace;

*(d)* supervise public use; ~~and~~

*(e)* maintain public order in all units of the state parks system.*; and*

~~(4)~~*(f)* ~~Park rangers shall~~ perform all other duties prescribed by the department."

**Section 14.** Section 23-1-122, MCA, is amended to read:

**"23-1-122. Enforcement powers of park rangers and game wardens.** (1) Park rangers appointed pursuant to 23-1-121 and fish and game wardens appointed pursuant to 87-1-501 are authorized officers with the authority to enforce the laws and adopted rules relating to parks and outdoor recreation contained in chapters 1 and 2 of this title, except chapter 2, part 7.

(2) An authorized officer may:

(a) arrest, in accordance with Title 46, chapter 6, any person within an area managed by the department upon probable cause to believe that the person has committed an offense against chapters 1 and 2 of this title, except chapter 2, part

7, or rules of the department*, the board,* or the ~~fish, wildlife, and parks~~ commission;

(b) enforce the disorderly conduct and public nuisance laws under 45-8-101 and 45-8-111 as they apply to the operation of motorboats on waters within areas managed by the department under this part; and

(c) exercise other powers of peace officers in the enforcement of:

(i) laws relating to parks and outdoor recreation contained in chapters 1 and 2 of this title, except chapter 2, part 7;

(ii) rules of the department*, the board,* and the ~~fish, wildlife, and parks~~ commission; and

(iii) judgments obtained for violations of the laws and rules specified in this subsection (2)(c)."

**Section 15.** Section 23-2-301, MCA, is amended to read:

**"23-2-301. Definitions.** For purposes of this part, the following definitions apply:

(1) "Barrier" means an artificial obstruction located in or over a water body, restricting passage on or through the water, that totally or effectively obstructs the recreational use of the surface water at the time of use. A barrier may include but is not limited to a bridge or fence or any other artificial obstacle to the natural flow of water.

(2) "Class I waters" means surface waters, other than lakes, that:

(a) lie within the officially recorded federal government survey meander lines of the waters;

(b) flow over lands that have been judicially determined to be owned by the state by reason of application of the federal navigability test for state streambed ownership;

(c) are or have been capable of supporting the following commercial activities: log floating, transportation of furs and skins, shipping, commercial guiding using multiperson watercraft, public transportation, or the transportation of merchandise, as these activities have been defined by published judicial opinion as of April 19, 1985; or

(d) are or have been capable of supporting commercial activity within the meaning of the federal navigability test for state streambed ownership.

(3) "Class II waters" means all surface waters that are not class I waters, except lakes.

(4) "Commission" means the fish~~,~~ *and* wildlife~~, and parks~~ commission provided for in 2-15-3402.

(5) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

(6) "Diverted away from a natural water body" means a diversion of surface water through a constructed water conveyance system, including but not limited to:

(a) an irrigation or drainage canal or ditch;

(b) an industrial, municipal, or domestic water system, excluding the lake, stream, or reservoir from which the system obtains water;

(c) a flood control channel; or

(d) a hydropower inlet and discharge facility.

(7) "Lake" means a body of water where the surface water is retained by either natural or artificial means and the natural flow of water is substantially impeded.

(8) "Occupied dwelling" means a building used for a human dwelling at least once a year.

(9) "Ordinary high-water mark" means the line that water impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value. A flood plain adjacent to surface waters is not considered to lie within the surface waters' high-water marks.

(10) "Recreational use" means with respect to surface waters: fishing, hunting, swimming, floating in small craft or other flotation devices, boating in motorized craft unless otherwise prohibited or regulated by law, or craft propelled by oar or paddle, other water-related pleasure activities, and related unavoidable or incidental uses.

(11) "Supervisors" means the board of supervisors of a soil conservation district, the directors of a grazing district, or the board of county commissioners if a request pursuant to 23-2-311(3)(b) is not within the boundaries of a conservation district or if the request is refused by the board of supervisors of a soil conservation district or the directors of a grazing district.

(12) "Surface water" means, for the purpose of determining the public's access for recreational use, a natural water body, its bed, and its banks up to the ordinary high-water mark."

**Section 16.** Section 23-2-403, MCA, is amended to read:

**"23-2-403. Definitions.** As used in this part, the following definitions apply:

*(1) "Board" means the state parks and recreation board established in [section 1].*

~~(1)~~*(2)* "Commission" means the fish~~,~~ *and* wildlife~~, and parks~~ commission ~~provided for~~ *established* in 2-15-3402.

~~(2)~~*(3)* "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401."

**Section 17.** Section 23-2-404, MCA, is amended to read:

**"23-2-404. Applicability.** This part applies to that portion of the Smith River waterway located in Meagher and Cascade Counties lying between ~~the~~ Camp Baker ~~state fishing access site~~ in Meagher County and the confluence of the Smith River with the Missouri River. This description does not prevent the department from naming or renaming areas pursuant to 23-1-102."

**Section 18.** Section 23-2-408, MCA, is amended to read:

**"23-2-408. Rulemaking authority.** The ~~commission~~ *board* has authority to provide for the administration of the Smith River waterway. The ~~commission~~ *board* may adopt rules to:

(1) regulate and allocate recreational and commercial floating and camping to preserve the biological and social benefits of recreational and commercial use of the Smith River waterway in its natural state. Recreational use may be restricted to preserve the experience of floating, fishing, and camping in a natural environment and to protect the river's fish, wildlife, water, and canyon resources. The restrictions must:

(a) consider the tolerance of adjacent landowners to recreational use;

(b) consider the capability of the river and adjoining lands to accommodate floating and camping use; and

(c) ensure an acceptable level of user satisfaction, including minimizing user conflicts and providing for a level of solitude.

(2) restrict recreational use, if necessary, through the implementation of a permit system. An allocation of a portion of the permits may be made to licensed outfitters to preserve the availability of outfitting services to the public.

(3) regulate the activities of recreational and commercial users of the water and land in the Smith River waterway that are legally accessible to the public and regulate the land in the river corridor that is under the control of the department and ~~commission~~ *the board*:

(a) for the purposes of safety, health, and protection of property;

(b) to preserve the experience of floating, fishing, and camping in a natural environment;

(c) to protect the river's fish, wildlife, water, and canyon resources; and

(d) to minimize conflicts between recreationists and private landowners; and

(4) establish recreational and commercial user fees for floating and camping on the Smith River waterway."

**Section 19.** Section 23-2-410, MCA, is amended to read:

**"23-2-410. Penalty — enforcement.** (1) A person who violates a rule of the ~~commission~~ *board* adopted pursuant to this part is guilty of a misdemeanor punishable by a fine of not less than $50 or more than $500~~,~~ *or* by imprisonment in a county jail for not more than 6 months, or ~~by~~ both ~~fine and imprisonment~~.

(2) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this part and rules of the department, the board, and the commission; and

(c) to report violations to the county attorney of the county in which they occur."

**Section 20.** Section 37-47-310, MCA, is amended to read:

**"37-47-310. Transfer or amendment of outfitter's license — transfer of river-use days to new owner of fishing outfitter business.** (1) An outfitter's license may not be transferred.

(2) An individual person may, upon proper showing, have that person's outfitter's license amended to indicate that the license is being held for the use and benefit of a named proprietorship, partnership, or corporation.

(3) Subject to approval by the board, a person designated by the family of an outfitter who is deceased or incapacitated due to physical or mental disease or injury or who is unable to carry out the responsibilities of an outfitter due to the outfitter's status as an active member of the military may continue to provide outfitting services for the outfitter's unexpired license year, or until the family sells the outfitting business, until the designee obtains an outfitter license.

(4) *(a)* When a fishing outfitter's business is sold or transferred in its entirety, any river-use days that have been allocated to that fishing outfitter

through the fishing outfitter's historic use of or activities on restricted-use streams are transferable to the new owner of the fishing outfitter's business. Upon the sale or transfer of a fishing outfitter's business, the outfitter who sells or transfers the business shall notify the new owner that the use of any transferred river-use days is subject to change pursuant to rules adopted by the fish~~,~~ *and* wildlife~~, and parks~~ commission and that a property right does not attach to the transferred river-use days.

*(b) Any transferred river-use days on the Smith River are subject to change pursuant to rules adopted by the state parks and recreation board pursuant to 23-2-408.*"

**Section 21.** Section 75-1-220, MCA, is amended to read:

**"75-1-220. Definitions.** For the purposes of this part, the following definitions apply:

(1) "Alternatives analysis" means an evaluation of different parameters, mitigation measures, or control measures that would accomplish the same objectives as those included in the proposed action by the applicant. For a project that is not a state-sponsored project, it does not include an alternative facility or an alternative to the proposed project itself. The term includes alternatives required pursuant to Title 75, chapter 20.

(2) "Appropriate board" means, for administrative actions taken under this part by the:

(a) department of environmental quality, the board of environmental review, as provided for in 2-15-3502;

(b) department of fish, wildlife, and parks, the fish~~,~~ *and* wildlife~~, and parks~~ commission, as provided for in 2-15-3402*, and the state parks and recreation board, as provided for in [section 1]*;

(c) department of transportation, the transportation commission, as provided for in 2-15-2502;

(d) department of natural resources and conservation for state trust land issues, the board of land commissioners, as provided for in Article X, section 4, of the Montana constitution;

(e) department of natural resources and conservation for oil and gas issues, the board of oil and gas conservation, as provided for in 2-15-3303; and

(f) department of livestock, the board of livestock, as provided for in 2-15-3102.

(3) "Complete application" means, for the purpose of complying with this part, an application for a permit, license, or other authorization that contains all data, studies, plans, information, forms, fees, and signatures required to be included with the application sufficient for the agency to approve the application under the applicable statutes and rules.

(4) "Cumulative impacts" means the collective impacts on the human environment within the borders of Montana of the proposed action when considered in conjunction with other past, present, and future actions related to the proposed action by location or generic type.

(5) "Environmental review" means any environmental assessment, environmental impact statement, or other written analysis required under this part by a state agency of a proposed action to determine, examine, or document the effects and impacts of the proposed action on the quality of the human and physical environment within the borders of Montana as required under this part.

(6) "Project sponsor" means any applicant, owner, operator, agency, or other entity that is proposing an action that requires an environmental review. If the action involves state agency-initiated actions on state trust lands, the term also includes each institutional beneficiary of any trust as described in The Enabling Act of Congress (approved February 22, 1899, 25 Stat. 676), as amended, the Morrill Act of 1862 (7 U.S.C. 301 through 308), and the Morrill Act of 1890 (7 U.S.C. 321 through 329).

(7) "Public scoping process" means any process to determine the scope of an environmental review.

(8) (a) "State-sponsored project" means:

(i) a project, program, or activity initiated and directly undertaken by a state agency;

(ii) except as provided in subsection (8)(b)(i), a project or activity supported through a contract, grant, subsidy, loan, or other form of funding assistance from a state agency, either singly or in combination with one or more other state agencies; or

(iii) except as provided in subsection (8)(b)(i), a project or activity authorized by a state agency acting in a land management capacity for a lease, easement, license, or other authorization to act.

(b) The term does not include:

(i) a project or activity undertaken by a private entity that is made possible by the issuance of permits, licenses, leases, easements, grants, loans, or other authorizations to act by the:

(A) department of environmental quality pursuant to Titles 75, 76, or 82;

(B) department of fish, wildlife, and parks pursuant to Title 87, chapter 4, part 4;

(C) board of oil and gas conservation pursuant to Title 82, chapter 11; or

(D) department of natural resources and conservation or the board of land commissioners pursuant to Titles 76, 77, 82, and 85; or

(ii) a project or activity involving the issuance of a permit, license, certificate, or other entitlement for permission to act by another agency acting in a regulatory capacity, either singly or in combination with other state agencies."

**Section 22.** Section 77-1-405, MCA, is amended to read:

**"77-1-405. Island parks established — development limited.** (1) In order to retain the integrity of the recreational experience associated with Montana's river and lake islands, development of undisputed state-owned or state-leased island property, which is hereby designated as island parks, including islands designated as state property under 70-18-203, lying within and surrounded by a navigable river, stream, or lake is limited, after April 30, 1997, to:

(a) the installation of minimal signage indicating that the island is a designated island park in which development has been limited and encouraging the public to help in maintaining the island park's primitive character by packing out trash;

(b) necessary latrine facilities if approved by the ~~fish, wildlife, and parks commission~~ *state parks and recreation board established in [section 1]*;

(c) footings or pilings necessary for the construction of a bridge; and

(d) oil and gas leasing.

(2) Improvements made to and agricultural operations on state-owned or state-leased island property prior to April 30, 1997, may be maintained or continued, but further development is limited as provided in this section.

(3) Notwithstanding the provisions of 77-1-203 regarding multiple-use management, the legislature finds that the highest and best use of island property administered as school trust land, except islands designated as natural areas pursuant to Title 76, chapter 12, is for recreation and grazing and that those islands should be left in as primitive state as possible to protect from the loss of potential future revenue that could result from the failure to leave the islands in an undeveloped condition.

(4) For purposes of this section, state ownership or state lease of island property is disputed if the dispute arises before, on, or after April 30, 1997."

**Section 23.** Section 85-2-102, MCA, is amended to read:

**"85-2-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to change an appropriation right to instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource in accordance with 85-2-436;

(d) in the case of the United States department of agriculture, forest service:

(i) instream flows and in situ use of water created in 85-20-1401, Article V; or

(ii) to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with 85-2-320;

(e) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(f) a use of water for aquifer recharge or mitigation; or

(g) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(2) "Aquifer recharge" means either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water.

(3) "Aquifer storage and recovery project" means a project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or another department-approved method. The stored water may be either pumped from the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use.

(4) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks through a change in an appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource authorized under 85-2-436;

(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(e) a use of water for aquifer recharge or mitigation; or

(f) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(5) "Certificate" means a certificate of water right issued by the department.

(6) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(7) "Commission" means the fish~~,~~ *and* wildlife~~, and parks~~ commission provided for in 2-15-3402.

(8) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information for the department to begin evaluating the information.

(9) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(10) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(11) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(12) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(13) "Ground water" means any water that is beneath the ground surface.

(14) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(15) "Mitigation" means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water.

(16) "Municipality" means an incorporated city or town organized and incorporated under Title 7, chapter 2.

(17) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(18) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(19) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water.

(b) The term does not mean a private corporation, association, or group.

(20) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(21) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(22) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(23) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(24) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(25) "Water division" means a drainage basin as defined in 3-7-102.

(26) "Water judge" means a judge as provided for in Title 3, chapter 7.

(27) "Water master" means a master as provided for in Title 3, chapter 7.

(28) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(29) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

**Section 24.** Section 87-1-101, MCA, is amended to read:

**"87-1-101. Definitions.** Unless the context requires otherwise, in this title the following definitions apply:

*(1) "Board" means the state parks and recreation board provided for in [section 1].*

~~(1)~~*(2)* "Commission" means the fish~~,~~ *and* wildlife~~, and parks~~ commission provided for in 2-15-3402.

~~(2)~~*(3)* "Department" means the department of fish, wildlife, and parks provided for in Title 2, chapter 15, part 34.

~~(3)~~*(4)* "Director" means the director of fish, wildlife, and parks provided for in 2-15-3401.

~~(4)~~*(5)* "Warden" means a state fish and game warden."

**Section 25.** Section 87-1-106, MCA, is amended to read:

**"87-1-106. Fish, wildlife, and parks offices.** The principal offices of the commission*, the board,* and *the* department ~~shall~~ *must* be located in or near Helena, and suitable and adequate space therefor together with janitor services, light, heat, and water ~~shall~~ *must* be furnished by the state of Montana."

**Section 26.** Section 87-1-202, MCA, is amended to read:

**"87-1-202. Publication of orders and rules.** (1) Except as provided in subsection (2), annual and biennial rules adopted by the commission setting

seasonal hunting, fishing, trapping, and land use regulations *or by the board setting seasonal land use regulations* must be published in a pamphlet format that is made available to the public at all department offices and through all license providers.

(2) Site-specific land use regulations applicable to a particular fishing access site, wildlife management area, park site, or other department land, including but not limited to speed limits, road and off-road restrictions or closures, places where camping is allowed or prohibited, and seasonal closures for management purposes, must be indicated to the public by signs on the premises of the particular fishing access site, wildlife management area, park site, or other department land.

(3) (a) Commission orders setting management seasons, providing for game damage hunts, and closing special seasons pursuant to 87-1-304 may be published by:

(i) use of the department's website;

(ii) use of a telephone hotline number; or

(iii) any other method that is readily available to the public.

(b) The method for notifying the public of the closure of a special season must be stated in the rule that establishes the special season.

(4) Public notification of emergency closures of department lands, public waterways, and hunting, fishing, and trapping seasons that are based on public health, safety, and welfare must be made in the manner and to the extent that the department considers necessary in light of the facts surrounding the emergency, including, when practical, onsite posting of the emergency closure."

**Section 27.** Section 87-1-209, MCA, is amended to read:

**"87-1-209. (Temporary) Acquisition and sale of land or water.** (1) Subject to 87-1-218 *and subsection (8) of this section*, the department, with the consent of the commission *or the board* and, in the case of land acquisition involving more than 100 acres or $100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon land or water for the purposes listed in this subsection. Any acquisition of land or water rights for purposes of this subsection, except that portion of acquisitions made with funds provided under 87-1-242(1), must include an additional 20% above the purchase price to be used for maintenance of land or water acquired by the department. The additional amount above the purchase price or $300,000, whichever is less, must be deposited in the account established in 87-1-230. As used in this subsection, "maintenance" means that term as defined in and consistent with the good neighbor policy in 23-1-127(2). The department may develop, operate, and maintain acquired land or water rights:

(a) for fish hatcheries or nursery ponds;

(b) as land or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

(c) for public hunting, fishing, or trapping areas;

(d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;

(e) for state parks and outdoor recreation;

(f) to extend and consolidate by exchange, land or water rights suitable for these purposes.

(2) The department, with the consent of the ~~commission~~ *board*, may acquire by condemnation, as provided in Title 70, chapter 30, land or structures for the preservation of ~~historical~~ *historic* or archaeological sites that are threatened with destruction or alteration.

(3) (a) Subject to section 2(3), Chapter 560, Laws of 2005, the department, with the consent of the commission *or the board*, may dispose of land and water rights acquired by it on those terms after public notice as required by subsection (3)(b) of this section, without regard to other laws that provide for sale or disposal of state land and with or without reservation, as it considers necessary and advisable. The department, with the consent of the commission *or the board*, may convey department land and water rights for full market value to other governmental entities or to adjacent landowners without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than $20,000. When the department conveys land or water rights to another governmental entity or to an adjacent landowner pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property adjoins the department property being conveyed.

(b) Subject to section 2(3), Chapter 560, Laws of 2005, notice of sale describing the land or water rights to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the land or water right is situated or, if a newspaper is not published in that county, then in any newspaper with general circulation in that county.

(c) The notice must advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids that do not equal or exceed the full market value of the land or water right as determined by the department. If the department does not receive a bid that equals or exceeds fair market value, it may then sell the land or water rights at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.

(4) When necessary and advisable for the management and use of department property, the director is authorized to grant or acquire from willing sellers right-of-way easements for purposes of utilities, roads, drainage facilities, ditches for water conveyance, and pipelines if the full market value of the interest to be acquired is less than $20,000. Whenever possible, easements must include a weed management plan. Approval of the commission *or the board* is not required for grants and acquisitions made pursuant to this subsection. In granting any right-of-way pursuant to this subsection, the department shall obtain a fair market value, but the department is not otherwise required to follow the disposal requirements of subsection (3). The director shall report any easement grant or acquisition made pursuant to this subsection to the commission *or the board* at its next regular meeting.

(5) The department shall convey land and water rights without covenants of warranty by deed executed by the governor or in the governor's absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(6) Subject to 87-1-218, the department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized by the department and appropriated by the legislature.

(7) The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land.

*(8) Approval of the board for the acquisition or disposal of land or water pursuant to this section is required only for land and water administered under Title 23, chapter 1, or Title 23, chapter 2, parts 1 and 4.* (Terminates June 30, 2013—sec. 8, Ch. 427, L. 2009.)

**87-1-209. (Effective July 1, 2013) Acquisition and sale of lands or waters.** (1) Subject to 87-1-218 *and subsection (8) of this section*, the department, with the consent of the commission *or the board* and, in the case of land acquisition involving more than 100 acres or $100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

(a) for fish hatcheries or nursery ponds;

(b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

(c) for public hunting, fishing, or trapping areas;

(d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;

(e) for state parks and outdoor recreation;

(f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) The department, with the consent of the ~~commission~~ *board*, may acquire by condemnation, as provided in Title 70, chapter 30, lands or structures for the preservation of ~~historical~~ *historic* or archaeological sites that are threatened with destruction or alteration.

(3) (a) Subject to section 2(3), Chapter 560, Laws of 2005, the department, with the consent of the commission *or the board*, may dispose of lands and water rights acquired by it on those terms after public notice as required by subsection (3)(b) of this section, without regard to other laws that provide for sale or disposal of state lands and with or without reservation, as it considers necessary and advisable. The department, with the consent of the commission *or the board*, may convey department lands and water rights for full market value to other governmental entities or to adjacent landowners without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than $20,000. When the department conveys land or water rights to another governmental entity or to an adjacent landowner pursuant to this subsection, the department, in addition

to giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property adjoins the department property being conveyed.

(b) Subject to section 2(3), Chapter 560, Laws of 2005, notice of sale describing the lands or waters to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if a newspaper is not published in that county, then in any newspaper with general circulation in that county.

(c) The notice must advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids that do not equal or exceed the full market value of the lands and waters as determined by the department. If the department does not receive a bid that equals or exceeds fair market value, it may then sell the lands or water rights at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.

(4) When necessary and advisable for the management and use of department property, the director is authorized to grant or acquire from willing sellers right-of-way easements for purposes of utilities, roads, drainage facilities, ditches for water conveyance, and pipelines if the full market value of the interest to be acquired is less than $20,000. Whenever possible, easements must include a weed management plan. Approval of the commission *or the board* is not required for grants and acquisitions made pursuant to this subsection. In granting any right-of-way pursuant to this subsection, the department shall obtain a fair market value, but the department is not otherwise required to follow the disposal requirements of subsection (3). The director shall report any easement grant or acquisition made pursuant to this subsection to the commission *or the board* at its next regular meeting.

(5) The department shall convey lands and water rights without covenants of warranty by deed executed by the governor or in the governor's absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(6) Subject to 87-1-218, the department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized by the department and appropriated by the legislature.

(7) The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land.

*(8) Approval of the board for the acquisition or disposal of land or water pursuant to this section is required only for land and water administered under Title 23, chapter 1, or Title 23, chapter 2, parts 1 and 4.*"

**Section 28.** Section 87-1-218, MCA, is amended to read:

**"87-1-218. Notice of proposed land acquisitions.** (1) For all land acquisitions proposed pursuant to 87-1-209, the department shall provide notice to the board of county commissioners in the county where the proposed acquisition is located.

(2) The notice must be provided at least 30 days before the proposed acquisition appears before the commission *or the board* for its consent.

(3) The notice must include:

(a) a description of the proposed acquisition, including acreage and the use proposed by the department;

(b) an estimate of the measures and costs the department plans to undertake in furtherance of the proposed use, including operating, staffing, and maintenance costs;

(c) an estimate of the property taxes payable on the proposed acquisition and a statement that if the department acquires the land pursuant to 87-1-603, the department would pay a sum equal to the amount of taxes that would be payable on the county assessment of the property if it was taxable to a private citizen; and

(d) a draft agenda of the meeting at which the proposed acquisition will be presented to the commission *or the board* and information on how the board of county commissioners may provide comment."

**Section 29.** Section 87-1-301, MCA, is amended to read:

**"87-1-301. Powers of commission.** (1) Except as provided in ~~subsection~~ *subsections* (7) *and (8)*, the commission:

(a) shall set the policies for the protection, preservation, management, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department *related to fish and wildlife* as provided by law;

(b) shall establish the hunting, fishing, and trapping rules of the department;

(c) except as provided in *[section 2] and* 87-1-303(3), shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(d) must have the power within the department to establish wildlife refuges and bird and game preserves;

(e) shall approve all acquisitions or transfers by the department of interests in land or water, except as provided in *[section 2] and* 87-1-209~~(4)~~*(2) and (4)*;

(f) *except as provided in [section 2],* shall review and approve the budget of the department prior to its transmittal to the ~~budget~~ office *of budget and program planning*;

(g) *except as provided in [section 2],* shall review and approve construction projects that have an estimated cost of more than $1,000 but less than $5,000; and

(h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In developing or implementing an elk management plan, the commission shall consider landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a particular hunting district. As used in this subsection (1)(h), "landowner tolerance" means the written or

documented verbal opinion of an affected landowner regarding the impact upon the landowner's property within the particular hunting district where a restriction on elk hunting on public property is proposed.

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's youth and persons with disabilities.

(4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

(i) separate deer licenses from nonresident elk combination licenses;

(ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;

(iii) condition the use of the deer licenses; and

(iv) limit the number of licenses sold.

(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders:

(i) for the biologically sound management of big game populations of elk, deer, and antelope;

(ii) to control the impacts of those elk, deer, and antelope populations on uses of private property; and

(iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-321 through 87-1-325.

(5) (a) Subject to the provisions of 87-2-115, the commission may adopt rules establishing license preference systems to distribute hunting licenses and permits:

(i) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and

(ii) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(a), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission.

(b) The commission shall square the number of points purchased by an applicant per species when conducting drawings for licenses and permits.

(6) (a) The commission may adopt rules to:

(i) limit the number of nonresident mountain lion hunters in designated hunting districts; and

(ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting districts.

(b) The commission shall consider, but is not limited to consideration of, the following factors:

(i) harvest of lions by resident and nonresident hunters;

(ii) history of quota overruns;

(iii) composition, including age and sex, of the lion harvest;

(iv) historical outfitter use;

(v) conflicts among hunter groups;

(vi) availability of public and private lands; and

(vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.

(7) The commission may not regulate the use or possession of firearms, firearm accessories, or ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:

(a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the establishment of special archery seasons;

(b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including bows and arrows, traditional handguns, and muzzleloading rifles;

(c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-6-401(1)(f);

(d) the regulation of migratory game bird hunting pursuant to 87-3-403; or

(e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h).

*(8) Pursuant to [section 2], the commission does not oversee department activities related to the administration of state parks, primitive parks, state recreational areas, public camping grounds, state historic sites, state monuments, and other heritage and recreational resources, land, and water administered pursuant to Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, and 9.*"

**Section 30.** Section 87-1-303, MCA, is amended to read:

**"87-1-303. Rules for use of lands and waters.** (1) Except as provided in *[section 2],* 87-1-301(7)*,* and subsection (3) of this section, the commission may adopt and enforce rules governing uses of lands that are acquired or held under easement by the commission or lands that it operates under agreement with or in conjunction with a federal or state agency or private owner. The rules must be adopted in the interest of public health, public safety, and protection of property in regulating the use of these lands. All lease and easement agreements must itemize uses as listed in 87-1-209.

(2) Except as provided in 87-1-301(7), the commission may adopt and enforce rules governing recreational uses of all public fishing reservoirs, public lakes, rivers, and streams that are legally accessible to the public or on reservoirs and lakes that it operates under agreement with or in conjunction with a federal or state agency or private owner. These rules must be adopted in the interest of public health, public safety, public welfare, and protection of property and public resources in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, the operation of motor-driven boats, the operation of personal watercraft, the resolution of conflicts between users of motorized and nonmotorized boats, waterskiing, surfboarding, picnicking, camping, sanitation, and use of firearms on the reservoirs, lakes, rivers, and streams or at designated areas along the shore of the reservoirs, lakes, rivers, and streams. Areas regulated pursuant to the authority contained in this section must be areas that are legally accessible to the public. These rules are subject to review and approval by the department of public health and human services with regard to issues of public health and sanitation before becoming effective. Copies of the rules must show that endorsement.

(3) (a) The commission may not regulate or classify domestic livestock trailing as a commercial activity or commercial use that is subject to licensing, permitting, or fee requirements. Domestic livestock trailing on land owned or controlled by the department is exempt from the requirements of Title 75, chapter 1, parts 1 through 3.

(b) The commission may authorize domestic livestock trailing across land owned or controlled by the department that is designated as a wildlife management area. The commission may adopt rules governing the timing of and the route to be used for domestic livestock trailing activities to the extent that the rules are necessary both to enable the trailing of domestic livestock across the designated wildlife management area and to protect and enhance state lands. The rules may not:

(i) require a fee for domestic livestock trailing or related activities; or

(ii) prohibit or unreasonably interfere with domestic livestock trailing activities.

(4) For the purposes of this section, the following definitions apply:

(a) "Domestic livestock" means domestic animals kept for farm and ranch purposes, including but not limited to horses, cattle, sheep, goats, and dogs.

(b) "Domestic livestock trailing" means the entering upon and crossing of department lands and the use of the lands for forage by domestic livestock for a maximum of 96 consecutive hours."

**Section 31.** Section 87-1-401, MCA, is amended to read:

**"87-1-401. Director to carry out policies.** The director shall carry out the policies of the commission *and the board* and shall adopt rules authorized by law to implement those policies."

**Section 32.** Section 87-1-622, MCA, is amended to read:

**"87-1-622. Forest management plan — sustainable yield study required — definition.** (1) The commission *and the board* shall adopt ~~a~~ forest management ~~plan~~ *plans for lands under their jurisdiction*, based on an annual sustainable yield, to implement the provisions of 87-1-201(9)(a)(iv).

(2) The department, under the direction of the commission, shall, before July 1, 2012, commission a study by a qualified independent third party to determine, using scientific principles, the annual sustainable yield on forested department lands. The department shall direct the qualified independent third party to determine the annual sustainable yield pursuant to all state and federal laws.

(3) The annual timber sale requirement for the timber sale program administered by the department to address fire mitigation, pine beetle infestation, and wildlife habitat enhancement may not exceed the annual sustainable yield.

(4) The commission *and the board* shall review and redetermine the annual sustainable yield *for lands under their jurisdiction* at least once every 5 years.

(5) Expenditures necessary to meet the requirements of this section are authorized to be made by the department pursuant to 87-1-601.

(6) For the purposes of this section, the term "annual sustainable yield" means the quantity of timber that can be harvested from forested department lands each year, taking into account the ability of forested lands to generate replacement tree growth and in accordance with:

(a) the provisions of 87-1-201(9)(a)(iv);

(b) state and federal laws, including but not limited to the laws pertaining to wildlife, recreation, and maintenance of watersheds; and

(c) water quality standards that protect fisheries and aquatic life and that are adopted under the provisions of Title 75, chapter 5."

**Section 33.** Section 87-4-432, MCA, is amended to read:

**"87-4-432. Alternative livestock advisory council — appointment of members — duties.** (1) There is an alternative livestock advisory council to advise the department on the administration of alternative livestock ranches in this state.

(2) The alternative livestock advisory council is composed of five members, appointed by the governor as follows:

(a) one member of the board of livestock or the department of livestock;

(b) one member of the fish~~,~~ *and* wildlife~~, and parks~~ commission or the department;

(c) one member who is a representative of the alternative livestock industry;

(d) one member who is a veterinarian licensed to practice veterinary medicine in this state; and

(e) one member who is a representative of the sportspersons of Montana.

(3) Members of the alternative livestock advisory council shall serve staggered 2-year terms. A member may serve one additional consecutive 2-year term.

(4) The alternative livestock advisory council is attached to the department and the department of livestock in an advisory capacity only, as defined in 2-15-102. The department and the department of livestock shall provide staff support and assistance necessary for the council to perform its functions."

**Section 34. Name change — directions to code commissioner.** (1) Unless otherwise provided, wherever a reference to the fish, wildlife, and parks commission, meaning the commission established in 2-15-3402, appears in legislation enacted by the 2013 legislature that refers to functions of the commission related to fish and wildlife, the code commissioner is directed to change it to an appropriate reference to the fish and wildlife commission.

(2) Unless otherwise provided, wherever a reference to the fish, wildlife, and parks commission, meaning the commission established in 2-15-3402, appears in legislation enacted by the 2013 legislature that refers to functions of the commission related to state parks or recreational resources under Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, and 9, the code commissioner is directed to change it to an appropriate reference to the state parks and recreation board.

**Section 35. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 34, and the provisions of Title 2, chapter 15, part 34, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 23, chapter 1, part 1, and the provisions of Title 23, chapter 1, part 1, apply to [section 2].

**Section 36. Coordination instruction.** If both House Bill No. 392 and [this act] are passed and approved, then [section 1] of House Bill No. 392, amending 22-3-432, is void and 22-3-432 must be amended as follows:

**"22-3-432. Antiquities permits.** (1) A person may not excavate, remove, or restore any heritage property or paleontological remains on lands owned by the

state without first obtaining an antiquities permit from the historic preservation officer.

(2) Antiquities permits are to be granted only after careful consideration of the application for a permit and after consultation with the appropriate state agency. Permits are subject to strict compliance with the following guidelines:

(a) Antiquities permits may be granted only for work to be undertaken by reputable museums, universities, colleges, or other historical, scientific, or educational institutions, societies, or persons with a view toward dissemination of knowledge about cultural properties, provided a permit may not be granted unless the historic preservation officer is satisfied that the applicant possesses the necessary qualifications to guarantee the proper excavation of those sites and objects that may add substantially to knowledge about Montana and its antiquities.

(b) The antiquities permit must specify that a summary report of the investigations, containing relevant maps, documents, drawings, and photographs, must be submitted to the historic preservation officer. The historic preservation officer shall determine the appropriate time period allowable between all work undertaken and submission of the summary report.

(3) ~~All~~ *Except as provided in subsection (5), all* heritage property and paleontological remains collected under an antiquities permit are the permanent property of the state and must be deposited in museums or other institutions within the state or loaned to qualified institutions outside the state, unless otherwise provided for in the antiquities permit.

(4) An antiquities permit is not a substitution for any other type of permit that a state agency may require for other purposes.

*(5) Antiquities permits may be granted for the excavation and removal of paleontological remains at Makoshika state park for the purpose of selling the paleontological remains and using revenue from the sale to benefit Makoshika state park. Antiquities permits granted under this subsection must be used in accordance with rules adopted pursuant to [section 2(2) of House Bill No. 24].*"

**Section 37. Coordination instruction.** If both House Bill No. 392 and [this act] are passed and approved, then [section 2] of House Bill No. 392, amending 23-1-102, is void and [section 2 of this act] must read as follows:

"NEW SECTION. **Section 2. Powers and duties of board — rulemaking — meetings.** (1) Except as provided in subsection (2), for state parks, primitive parks, state recreational areas, public camping grounds, state historic sites, state monuments, and other heritage and recreational resources, land, and water administered pursuant to Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, and 9, the board shall:

(a) set the policies and provide direction to the department for:

(i) the management, protection, conservation, and preservation of these properties, lands, and waters and their appropriate role relative to tourism and the economic health of Montana;

(ii) coordinating, integrating, promoting, and furthering opportunities for education and recreation at these sites, including but not limited to camping, hiking, snowmobiling, off-highway vehicle use, horseback riding, mountain biking, boating, and swimming;

(b) work with the commission to maintain hunting and angling opportunities on these lands and waters;

(c) establish the rules of the department governing the use of these properties and lands. The rules must be adopted in the interest of public health,

public safety, public welfare, and protection of property and public resources in regulating recreation, including picnicking, camping, and swimming, and sanitation. These rules are subject to review and approval by the department of public health and human services with regard to issues of public health and sanitation before becoming effective. Copies of the rules must show that endorsement.

(d) review and approve all acquisitions or transfers of interest in these properties, lands, and waters by the department, except as provided in 87-1-209(4);

(e) review and approve the budget of the department for the administration of these properties, lands, and waters prior to its transmittal to the office of budget and program planning;

(f) review and approve construction projects that have an estimated cost of more than $5,000;

(g) work with local, state, and federal agencies to evaluate, integrate, coordinate, and promote recreational opportunities statewide; and

(h) encourage citizen involvement in management planning for these properties, lands, and waters.

(2) The board may adopt rules establishing conditions for the use of antiquities permits granted pursuant to 22-3-432(5).

(3) Pursuant to 87-1-301(1), the board does not oversee department activities related to the administration of fishing access sites.

(4) The members of the board shall hold quarterly or other meetings for the transaction of business at times and places considered necessary and proper. The meetings must be called by the presiding officer or by a majority of the board and must be held at the time and place specified in the call for the meeting. A majority of the members constitutes a quorum for the transaction of any business. The board shall keep a record of all the business it transacts. The presiding officer and secretary shall sign all orders, minutes, or documents for the board."

**Section 38. Coordination instruction.** If both Senate Bill No. 237 and [this act] are passed and approved and if both amend 23-1-102, then the sections amending 23-1-102 are void and 23-1-102 must be amended as follows:

**"23-1-102. Powers and duties of department ~~of fish, wildlife, and parks.~~** (1) The department shall make a study to determine the scenic, historic, archaeologic, scientific, and recreational resources of the state. ~~The~~ *Subject to 87-1-209, the* department may*:*

*(a)* by purchase, lease, agreement, or acceptance of donations acquire for the state any areas, sites, or objects that in its opinion should be held, improved, and maintained as state parks, state recreational areas, state monuments, or state ~~historical~~ *historic* sites.*;* ~~The department, with the consent of the commission, may~~

*(b) with the consent of the board,* acquire by condemnation, pursuant to Title 70, chapter 30, lands or structures for the purposes provided in 87-1-209(2).*; and*

~~(2)~~*(c)* ~~The department may~~ accept in the name of the state, in fee or otherwise, any areas, sites, or objects conveyed, entrusted, donated, or devised to the state.

*(2)* ~~It~~ *The department* may accept gifts, grants, bequests, or contributions of money or other property to be spent or used for any of the purposes of this part.

(3) A contract, for any of the purposes of this part, may not be entered into or another obligation incurred until money has been appropriated by the legislature or is otherwise available. ~~If the contract or obligation pertains to acquisition of areas or sites in excess of either 100 acres or $100,000 in value, the board of land commissioners shall specifically approve the acquisition.~~

(4) The department has jurisdiction, custody, and control of all state parks, recreational areas, public camping grounds, ~~historical~~ *historic* sites, and monuments, except wayside camps and other public conveniences acquired, improved, and maintained by the department of transportation and contiguous to the state highway system. The department may designate lands under its control as state parks, state ~~historical~~ *historic* sites, *or* state monuments~~,~~ or by any other designation that it considers appropriate. The department may remove or change the designation of any area or portion of an area and may name or change the name of any area. The department may lease those portions of designated lands that are necessary for the proper administration of the lands in keeping with the basic purpose of this part."

**Section 39. Coordination instruction.** If Both Senate Bill No. 344 and [this act] are passed and approved, then [section 9 of this act], amending 23-1-102, is void and 23-1-102 must be amended as follows:

**"23-1-102. Powers and duties of department ~~of fish, wildlife, and parks~~.** (1) The department shall make a study to determine the scenic, historic, archaeologic, scientific, and recreational resources of the state. ~~The~~ *Subject to 87-1-209, the* department may*:*

*(a)* by purchase, lease, agreement, or acceptance of donations acquire for the state any areas, sites, or objects that in its opinion should be held, improved, and maintained as state parks, state recreational areas, state monuments, or state ~~historical~~ *historic* sites.*;* ~~The department, with the consent of the commission, may~~

*(b) with the consent of the board,* acquire by condemnation, pursuant to Title 70, chapter 30, lands or structures for the purposes provided in 87-1-209(2).*; and*

~~(2)~~*(c)* ~~The department may~~ accept in the name of the state, in fee or otherwise, any areas, sites, or objects conveyed, entrusted, donated, or devised to the state.

*(2)* ~~It~~ *The department* may accept gifts, grants, bequests, or contributions of money or other property to be spent or used for any of the purposes of this part.

(3) A contract, for any of the purposes of this part, may not be entered into or another obligation incurred until money has been appropriated by the legislature or is otherwise available. ~~If the contract or obligation pertains to acquisition of areas or sites in excess of either 100 acres or $100,000 in value, the board of land commissioners shall specifically approve the acquisition.~~

(4) The department has jurisdiction, custody, and control of all state parks, recreational areas, public camping grounds, ~~historical~~ *historic* sites, and monuments, except wayside camps and other public conveniences acquired, improved, and maintained by the department of transportation and contiguous to the state highway system. The department may designate lands under its control as state parks, state ~~historical~~ *historic* sites, *or* state monuments~~,~~ or by any other designation that it considers appropriate. The department may remove or change the designation of any area or portion of an area and may name or change the name of any area. The department may lease those portions of designated lands that are necessary for the proper administration of the lands in keeping with the basic purpose of this part."

**Section 40. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 41. Effective date.** [This act] is effective July 1, 2013.

Approved April 22, 2013

# CHAPTER NO. 236

[HB 37]

AN ACT ALLOWING A TEMPORARY CHANGE OF USE OF A WATER RIGHT THROUGH A LEASE; ESTABLISHING REQUIREMENTS FOR A TEMPORARY LEASE; REQUIRING PUBLIC NOTICE; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Temporary lease of appropriation right — requirements — rulemaking.** (1) Applications to temporarily lease an appropriation right that comply with the requirements of this section are not subject to the provisions of 85-2-402, 85-2-407, 85-2-408, or 85-2-436. After obtaining department approval pursuant to this section, an appropriator may temporarily lease an appropriation right.

(2) The amount of water leased may not exceed the total consumptive use of the appropriation right. For an irrigation right, the consumptive volume may not exceed 1 acre-foot per acre irrigated. The department shall determine the consumptive volume limits for other uses by rule.

(3) (a) Each appropriation right leased pursuant to this section:

(i) must have been used within the 5 years prior to the application date;

(ii) may be leased only during the period of diversion for the appropriation right; and

(iii) may not be leased for more than 2 years one time during any consecutive 10-year period.

(b) The volume of water leased may not exceed 180 acre-feet per year.

(c) The point of diversion for the appropriation right may not be changed.

(4) The use of any appropriation rights on the place of use associated with a leased appropriation right is forbidden during the term of the lease.

(5) Storage may not be added to the leased appropriation right at the point of diversion or the original place of use.

(6) This section does not apply to changes in an appropriation right that would result in leased water being transported outside Montana. Proposed out-of-state uses are subject to the provisions of 85-2-402.

(7) Water leased pursuant to this section must be measured at the point of diversion by a meter approved by the department. The appropriator shall report the amount of water measured at the end of the year in which the lease occurred or upon request of the department.

(8) An applicant proposing to lease an appropriation right pursuant to this section shall submit a correct and complete application on a form provided by the department and a fee as established by rule. The application must include:

(a) the name and address of each lessee;

(b) the name of all owners of each appropriation right;

(c) the number of each appropriation right;

(d) the proposed use and the place of use for the leased water;

(e) the source of water to be appropriated;

(f) the start and end dates of the proposed lease;

(g) the proposed diversion flow rate and volume of water to be used during the lease;

(h) evidence that the appropriation right has been used within the last 5 years;

(i) a description of how the existing use of the appropriation rights would cease at the place of use during the lease period, including the number and location of acres to be removed from irrigation, if applicable; and

(j) an analysis of potential adverse effects and description of planned actions to mitigate potential adverse effects.

(9) Within 30 days of receiving the application, the department shall approve or deny the application. An approved application must be correct and complete and meet the requirements of this section. The department may approve an application with conditions.

(10) After approval, the department shall provide notice of the proposed lease that includes the information in subsections (8)(a) through (8)(g). The department shall:

(a) mail individual notice to potentially affected appropriators identified by the department in the area of the point of diversion; and

(b) post the notice on the department's website.

(11) (a) For 60 days from the date that notice is mailed pursuant to subsection (10), the department shall accept correct and complete objections to the proposed lease from any person whose property, water rights, or interests would be adversely affected by the proposed appropriation. The objection must be made on a form provided by the department.

(b) The department shall determine if an objection is valid. A valid objection contains facts indicating that the rights of other appropriators would be adversely affected by the lease of the appropriation right. If the department determines that an objection is valid, the approval for the use of the appropriation right under the lease is canceled and no water may be used pursuant to the lease.

(c) The owner of an appropriation right whose approval is canceled under subsection (11)(b) may request a hearing on the objection pursuant to 2-4-604 within 15 days of notice of the cancellation. The department shall issue an order reinstating approval for the use of the appropriation right under the lease if the applicant proves by a preponderance of the evidence that the water rights of other appropriators will not be adversely affected by the lease.

(12) Leased water may not be put to use until a final determination is made pursuant to subsection (11). The lessee shall provide the department with a copy of the executed lease agreement before the leased water is put to use.

(13) Violations of this section are subject to the provisions of 85-2-114 and 85-2-122. This subsection does not limit the remedies available to an appropriator to enjoin or seek damages from the owner of an appropriation right who leased the water or from a lessee.

(14) The department shall adopt rules to implement this section. The rules must include definitions of consumptive uses and criteria for determining if an

appropriation right has been used in the 5 years prior to the temporary lease application.

(15) The department shall report annually to the water policy interim committee provided for in 5-5-231. The report must include the number of leases, the amount of water leased, and the number of irrigated acres taken out of production.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 4, and the provisions of Title 85, chapter 2, part 4, apply to [section 1].

**Section 3. Effective date.** [This act] is effective July 1, 2013.

**Section 4. Termination.** [This act] terminates July 1, 2019.

Approved April 22, 2013

# CHAPTER NO. 237

[HB 71]

AN ACT CLARIFYING THE INTENT AND DEFINITION OF RESTORATIVE JUSTICE; ELIMINATING THE OFFICE OF RESTORATIVE JUSTICE; AMENDING SECTIONS 2-15-2012, 2-15-2013, AND 46-15-411, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Law and Justice Interim Committee examined the efficacy of restorative justice principles and practices within the criminal justice system as requested by Senate Joint Resolution No. 29 from the 2011 legislative session; and

WHEREAS, the Committee found that restorative justice programs have been established in Gallatin County, Lewis and Clark County, Missoula County, and Flathead County; and

WHEREAS, the Committee found that these programs have proven successful in significantly reducing incarceration rates and the risk that offenders will reoffend;

WHEREAS, this saves the state money that would otherwise need to be spent on providing additional jail and prison capacity at a per-inmate cost averaging about $90 a day or about $33,000 a year; and

WHEREAS, the local programs were initially supported by federal grant money passed through the Montana Board of Crime Control and technical assistance was provided by the Office of Restorative Justice established by the Legislature in 2001 and placed under the Department of Justice; and

WHEREAS, the Office of Restorative Justice under the Department of Justice is no longer functioning and no further restorative justice grants have been applied for.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-15-2012, MCA, is amended to read:

**"2-15-2012. Intent.** The legislature recognizes that incarcerating offenders carries an extremely high cost and may not be the most effective strategy for restoring victims, reforming offenders, and reducing recidivism. It is the intent of 2-15-2013 to *have the board of crime control apply for grants that will provide funds to state and local entities that establish restorative justice programs to* divert *from incarceration* appropriate offenders who are at low risk for violence ~~from incarceration to community programs based on restorative justice and to divert funds from the department of corrections to the department of justice to~~

~~support an office of restorative justice and to support community programs based on restorative justice~~. *It is also the intent that restorative justice programs be supported by federal, state, and local funds.*"

**Section 2.** Section 2-15-2013, MCA, is amended to read:

**"2-15-2013. ~~Office of restorative~~ *Restorative* justice *grants.*** ~~(1) There is an office of restorative justice in the department of justice.~~

~~(2)~~*(1)* The purposes of the ~~office of restorative justice~~ *restorative justice grant programs* are to:

(a) promote the use of restorative justice *practices* throughout the state ~~by balancing the needs of victims, communities, and juvenile and adult offenders~~; *and*

(b) provide technical assistance to *local and state* jurisdictions and organizations interested in implementing the principles of restorative justice~~; and~~.

~~(c) bring additional resources to Montana communities for restorative justice programs.~~

~~(3)~~*(2)* ~~(a)~~ For the purposes of 2-15-2012~~, 2-15-2014,~~*, 2-15-2014,* and this section, the term "restorative justice" means ~~the philosophy of promoting and supporting practices, policies, and programs that focus on repairing the harm of crime, strengthening communities around the state, emphasizing accountability, and providing alternatives to incarceration for offenders who are at low risk for violence~~ *criminal justice practices that elevate the role of crime victims and community members in the criminal justice process, hold offenders directly accountable to the people and communities they have harmed, restore emotional and material losses, and provide a range of opportunities for victim, offender, and community dialogue, negotiation, and problem solving to bring about a greater sense of justice, repair harm, provide restitution, reduce incarceration and recidivism rates, and increase public safety*.

~~(b) Restorative justice is intended to improve the ability of the justice system to meet the needs of victims, to encourage community and victim participation in the criminal justice process, to reduce crime and increase the public sense of safety, to hold offenders accountable, and to provide rehabilitation and reintegration of offenders back into the community.~~

~~(c)~~*(3)* ~~Restorative justice programs~~ *A restorative justice program eligible for grant funding pursuant to this section shall use evidence-based practices, which may* include but are not limited to *facilitated* victim-offender meetings, family group conferencing, sentencing circles, ~~use of~~ victim ~~and community~~ impact ~~statements~~ *panels, offender accountability letters*, restitution programs, constructive community service, victim awareness education, victim empathy programs, school expulsion alternatives, peer mediation, diversion programs, and community panels.

~~(4) Efforts of the office of restorative justice may include but are not limited to:~~

~~(a) providing educational programs on the philosophical framework of restorative justice;~~

~~(b) providing technical assistance to schools, law enforcement, youth courts, probation and parole officers, juvenile corrections programs, and prisons in designing and implementing applications of restorative justice;~~

~~(c) housing a repository for resources and information to coordinate expertise in restorative justice;~~

~~(d) serving as a liaison between victims, the judiciary, and state agencies, such as the department of justice and the department of corrections, that are involved in criminal and juvenile justice efforts, including victim compensation programs;~~

~~(e) providing information to schools, local governments, law enforcement, state agencies, the judiciary, and the legislature regarding systemic changes that may be necessary to enhance further development of restorative justice in the state; and~~

~~(f) securing additional resources for restorative justice programs through a grant program administered by the board of crime control, which may be coordinated with other appropriate grant programs of agencies, and providing sustained funding for successful community programs.~~

*(4) The board shall actively seek federal grant money that may be used for the purposes of this section.*

*(5) The board shall produce a biennial report summarizing the grants provided, how the grant money was spent, and the program data and information reported by grant recipients.*

*(6) The board shall report annually to the law and justice interim committee regarding the status and performance of the restorative justice grant programs established in this section.*"

**Section 3.** Section 46-15-411, MCA, is amended to read:

**"46-15-411. Payment for medical evidence — alleged sexual offenses.** (1) The local law enforcement agency within whose jurisdiction an alleged incident of sexual intercourse without consent, sexual assault, or incest occurs shall pay for the medical examination of a victim of the alleged offense when the examination is directed by the agency or when evidence obtained by the examination is used for the investigation, prosecution, or resolution of an offense.

(2) (a) The ~~office of restorative justice in the~~ department of justice shall, as long as funds are available from an appropriation made for this purpose, pay for the medical examination of a victim of an alleged incident of sexual intercourse without consent, sexual assault, or incest if the cost is not the responsibility of a local law enforcement agency under subsection (1).

(b) In administering the provisions of subsection (2)(a), the ~~office of restorative justice~~ *department* shall:

(i) identify priorities for funding services, activities, and criteria for the receipt of program funds;

(ii) monitor the expenditure of funds by organizations receiving funds under this section;

(iii) evaluate the effectiveness of services and activities under this section; and

(iv) adopt rules necessary to implement this subsection (2).

(3) This section does not require a law enforcement agency or the state to pay any costs of treatment for injuries resulting from the alleged offense."

**Section 4. Effective date.** [This act] is effective July 1, 2013.

Approved April 22, 2013

# CHAPTER NO. 238

[HB 78]

AN ACT REVISING BREAK-IN-SERVICE REQUIREMENTS FOR POSTRETIREMENT EMPLOYMENT IN A POSITION REPORTABLE TO THE TEACHERS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-20-731 AND 19-20-733, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 19-20-731, MCA, is amended to read:

**"19-20-731. Postretirement employment limitations — cancellation and recalculation of benefits — reporting obligation of retired member.** (1) (a) Except as [provided in 19-20-732 or as] otherwise provided in this section, a retired member may be employed ~~by an employer~~ in a position that is reportable to the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:

(i) one-third of the sum of the member's average final compensation; or

(ii) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(b) The maximum compensation that a retired member may earn under subsection (1)(a) without an adjustment of retirement benefits includes all amounts paid to or on behalf of the retired member and the value of all benefits provided to or on behalf of the retired member by the employer, including any amounts deferred for payment to a later year, excluding:

(i) health insurance premiums directly paid by the employer on the retired member's behalf for health care coverage provided by the employer;

(ii) the value of housing provided by the employer to the retired member;

(iii) the amount of employment-related travel expenses reimbursed to the retired member by the employer;

(iv) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and

(v) payroll taxes paid by the employer on behalf of the retired member.

*(c) A member applying for a retirement allowance or resumption or recalculation of a retirement allowance based on a termination date of January 1, 2014, or later is required to complete the break-in-service period set forth in [section 2] before the retired member may be employed in a position reportable to the retirement system.*

(2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a)(i) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.

(3) [Except as provided in 19-20-732,] the retirement benefit of a retired member:

(a) employed and earning more than allowed by subsections (1) and (2) must be temporarily reduced by $1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be suspended if the retired member's earnings over the maximum allowed exceed the gross monthly benefit amount.

(b) employed in one or more part-time positions under one or more contracts providing for an aggregate payment of a total amount that is more than the maximum allowed must be suspended effective on the date on which the retired member returns to employment.

(4) For purposes of this section, the term "employed in a position that is reportable to the retirement system" includes any work performed or service provided by a retired member to or on behalf of an employer, including but not limited to work performed or service provided through a professional employer arrangement, an employee leasing arrangement, as a temporary service contractor, or as an independent contractor.

(5) For purposes of this section, the employment status and maximum compensation of a retired member who is employed in more than one position or under more than one contract, whether with one employer or more than one employer, is the aggregate full-time equivalency and compensation derived from all positions reportable to the retirement system in which the retired member is employed.

(6) Within 30 days of the date of the execution of an agreement for the employment of a retired member or of the first date on which the retired member provides services if no agreement is entered into, the retired member shall provide written notice of the postretirement employment to the retirement system.

(7) For purposes of this section, if a retired member is employed by an employer in a position that is reportable to the retirement system and the retired member is concurrently working for the employer in another position that is not reportable to the system, the position that is not reportable is considered to be part of the position that is reportable to the retirement system. All earnings of the retired member that are generated by these positions are reportable to the retirement system.

(8) The retirement allowance of any retired member who is employed in a position and who elects to participate in the optional retirement program under Title 19, chapter 21, must be suspended until the member is no longer employed in the position and is no longer participating in the optional retirement program. (Bracketed language terminates June 30, 2015—sec. 5, Ch. 129, L. 2009.)"

**Section 2. Break-in-service requirements.** (1) Except as provided in [19-20-732 and] subsection (2), a retired member who first applies for retirement benefits or applies for resumed or recalculated retirement benefits pursuant to 19-20-733 based on a date of termination of January 1, 2014, or later may not be employed in a position reportable to the retirement system pursuant to 19-20-731 until the employee has a break in service of 150 calendar days commencing on the first day following the member's date of termination.

(2) A retired member may be employed by an employer during the break-in-service period only if:

(a) the retired member:

(i) is employed as a substitute classroom teacher to carry on the duties of a regular, licensed teacher who is temporarily absent;

(ii) performs the service after attaining retired member status; and

(iii) performs the service for no more than 45 days during the break-in-service period; or

(b) the retired member continues employment in a position in which the retired member was appropriately reported to the public employees' retirement

system prior to and at the time of retirement with the teachers' retirement system.

(3) If a retired member is employed in a position reportable to the retirement system in violation of this section:

(a) the retired member must be returned to active member status with the retirement system retroactive to the member's date of retirement or the date of resumption of retirement benefits, whichever is later, and the member's retirement benefits must be terminated;

(b) the member shall repay all retirement benefits received in violation of this section, plus interest at the actuarially assumed rate; and

(c) the member and the employer shall pay to the retirement system contributions on all earned compensation paid to the member for service performed during the break-in-service period, plus interest at the actuarially assumed rate.

(4) For purposes of this section, the term "employed in a position reportable to the retirement system" includes any work performed or service provided by a retired member to or on behalf of an employer, including but not limited to work performed or service provided through a professional employer arrangement, an employee leasing arrangement, as a temporary service contractor, or as an independent contractor.

**Section 3.** Section 19-20-733, MCA, is amended to read:

**"19-20-733. Resumption of employment by retired member — suspension of benefits.** ~~(1)~~ [Except as provided in 19-20-732, *and*] *subject to [section 2], the following provisions apply:*

*(1)* ~~if~~ *If* a retired member returns to employment in a position covered by the retirement system and becomes an active contributing member, benefits must be suspended until the member terminates all employment and applies to have benefits reinstated.

(2) ~~Except as provided in subsection (4), upon~~ *Upon* termination and retirement of a previously retired member who was reinstated to active membership pursuant to 19-20-731 before July 1, 2009:

(a) if the member earned less than 1 year of creditable service, the original benefit and retirement option that the member was receiving at the time of suspension of benefits must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later; or

(b) if the member earned 1 year or more of creditable service, retirement benefits must be recalculated under 19-20-804 if the member would qualify for a service retirement benefit under 19-20-801 or under 19-20-802 if the member is eligible for early retirement. The recalculated benefit must include the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were suspended.

(3) ~~(a) Except as provided in subsection (4), upon~~ *Upon* the subsequent retirement of a formerly retired member who was reinstated to active membership pursuant to 19-20-731 on or after July 1, 2009, and earned:

~~(i)~~*(a)* at least 3 years of membership service following suspension of benefits, the member is entitled to resume receiving the suspended benefit in accordance with the retirement benefit option and joint annuitant previously selected, plus

an additional benefit based upon the new creditable service and compensation earned. The second benefit must be calculated as provided under 19-20-804 if the member is eligible for a service retirement benefit or under 19-20-802 if the member is eligible for early retirement. The second benefit must be paid under the same retirement benefit option and with the same joint annuitant originally elected.

~~(ii)~~*(b)* less than 3 years of membership service following suspension of benefits, the member is entitled to resume receiving the suspended benefit in accordance with the retirement benefit option previously selected, plus a refund of the employee contributions contributed after the member was reinstated to active service, plus interest.

~~(b)~~*(4)* If a member dies during the period of reemployment following an initial retirement, the member must be considered as retiring on the day preceding the date of death and benefits must be determined according to the following:

~~(i)~~*(a)* If the member elected the normal form benefit prior to reemployment, the member's designated beneficiary must receive an amount equal to the member's accumulated contributions on deposit.

~~(ii)~~*(b)* If the member elected a retirement option pursuant to 19-20-702 prior to reemployment, the benefits due are payable in accordance with the terms of the original option elected and ~~this~~ subsection (3).

~~(4) If a retired member who has not attained normal retirement age is reemployed with the same employer within 30 days from the member's effective date of retirement or if that member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled.~~ (Bracketed language terminates June 30, 2015—sec. 5, Ch. 129, L. 2009.)"

**Section 4. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 19, chapter 20, part 7, and the provisions of Title 19, chapter 20, part 7, apply to [section 2].

**Section 5. Effective date.** [This act] is effective July 1, 2013.

**Section 6. Termination.** The bracketed language in [section 2] terminates June 30, 2015.

Approved April 22, 2013

# CHAPTER NO. 239

[HB 95]

AN ACT IMPROVING THE ACTUARIAL UNFUNDED LIABILITY OF THE PUBLIC EMPLOYEES', SHERIFFS', AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS BY REQUIRING EMPLOYER AND STATE CONTRIBUTIONS FOR WORKING RETIREES IN THOSE SYSTEMS; AMENDING SECTIONS 19-7-1101 AND 19-13-1101, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Contributions required for retirees who return to work.** (1) Beginning July 1, 2013, each employer shall contribute the amount specified

in 19-3-316 and the state shall contribute the amount specified in 19-3-319 for retired members who return to work in a covered position but who, under the provisions of 19-3-1106(4), have not become active members.

(2) Retired members who return to active service under the provisions of 19-3-1106 are subject to the employee, employer, and state contributions set forth in 19-3-315, 19-3-316, and 19-3-319.

**Section 2.** Section 19-7-1101, MCA, is amended to read:

**"19-7-1101. Reemployment of retired member — *contributions required.*** (1) A retired member who returns to service for 480 hours or more in a calendar year must become an active member of the system. Upon reinstatement as an active member, benefit payments must cease until subsequent retirement.

(2) A retired member who returns to service for less than 480 hours in a calendar year may not become an active member. The retirement benefit of a retired member employed in service must be reduced by $1 for each $3 earned in excess of $5,000 in a calendar year.

*(3) Retired members who return to active service pursuant to subsection (1) are subject to the employee and employer contributions set forth in 19-7-403 and 19-7-404.*

*(4) The employer of a retired member who is returning to work pursuant to subsection (2) shall contribute the amounts specified in 19-7-404.*"

**Section 3.** Section 19-13-1101, MCA, is amended to read:

**"19-13-1101. Reemployment of retired member.** *(1)* A retired member who is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system for a period not to exceed 480 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit.

*(2) If a retired member returns to work in a covered position for more than 480 hours in a calendar year, the member returns to active service and the member's retirement benefits must cease until the member again terminates employment and retires.*

*(3) For each retired member who returns to work pursuant to subsection (1), the employer shall contribute the amount specified in 19-13-605 and the state shall contribute the amount specified in 19-13-604.*

*(4) The earned compensation of retired members who return to active service pursuant to subsection (2) is subject to the employee, state, and employer contributions set forth in 19-13-601, 19-13-604, and 19-13-605.*"

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 19, chapter 3, part 11, and the provisions of Title 19, chapter 3, part 11, apply to [section 1].

**Section 5. Effective date.** [This act] is effective July 1, 2013.

Approved April 22, 2013

## CHAPTER NO. 240

[HB 122]

AN ACT GENERALLY REVISING PROVISIONS RELATED TO FEDERAL TAX QUALIFICATION OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM, THE JUDGES' RETIREMENT SYSTEM, THE HIGHWAY PATROL

OFFICERS' RETIREMENT SYSTEM, THE SHERIFFS' RETIREMENT SYSTEM, THE GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM, THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM, THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM, AND THE DEFERRED COMPENSATION PROGRAM; REVISING THE DEFINITION OF "NORMAL RETIREMENT AGE" TO COMPLY WITH FEDERAL LAW; REVISING MAXIMUM COMPENSATION AND MAXIMUM BENEFIT PROVISIONS, LIMITATIONS ON ELIGIBLE ROLLOVER DISTRIBUTIONS, MILITARY SERVICE CREDIT, AND ELIGIBILITY FOR SERVICE RETIREMENT TO COMPLY WITH FEDERAL LAW; AMENDING SECTIONS 19-2-303, 19-2-405, 19-2-1001, 19-2-1011, 19-2-1014, 19-3-901, 19-5-501, 19-6-501, 19-7-501, 19-8-601, 19-9-801, 19-13-701, AND 19-50-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 19-2-303, MCA, is amended to read:

**"19-2-303. Definitions.** Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumptions adopted by the board.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined benefit retirement plan over the present value of future normal costs in that retirement plan.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member of a defined benefit plan to purchase various types of optional service credit as allowed by the applicable retirement plan.

(8) "Annuity" means:

(a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are not subject to periodic or one-time increases; or

(b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

(9) "Banked holiday time" means the hours reported for work performed on a holiday that the employee may use for equivalent time off or that may be paid to the employee as specified by the employer's policy.

(10) "Benefit" means:

(a) the service retirement benefit, early retirement benefit, or disability retirement or survivorship benefit payment provided by a defined benefit retirement plan; or

(b) a payment or distribution under the defined contribution retirement plan, including a disability payment under 19-3-2141, for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124.

(11) "Board" means the public employees' retirement board provided for in 2-15-1009.

(12) "Contingent annuitant" means:

(a) under option 2 or 3 provided for in 19-3-1501, one natural person designated to receive a continuing monthly benefit after the death of a retired member; or

(b) under option 4 provided for in 19-3-1501, a natural person, charitable organization, estate, or trust that may receive a continuing monthly benefit after the death of a retired member.

(13) "Covered employment" means employment in a covered position.

(14) "Covered position" means a position in which the employee must be a member of the retirement system except as otherwise provided by law.

(15) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

(16) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and that is not a defined benefit plan.

(17) "Department" means the department of administration.

(18) "Designated beneficiary" means the person, charitable organization, estate, or trust for the benefit of a natural person designated by a member or payment recipient to receive any survivorship benefits, lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(19) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

(20) "Disability" or "disabled" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(21) "Distributee" means:

(a) a member;

(b) a member's surviving spouse;

(c) a member's spouse or former spouse who is the alternate payee under a family law order as defined in 19-2-907; or

(d) effective January 1, 2007, a member's nonspouse beneficiary who is a designated beneficiary as defined by section 401(a)(9)(E) of the Internal Revenue Code, 26 U.S.C. 401(a)(9)(E).

(22) "Early retirement benefit" means the retirement benefit payable to a member following early retirement and is the actuarial equivalent of the accrued portion of the member's service retirement benefit.

(23) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

(a) an individual retirement account described in section 408(a) of the Internal Revenue Code, 26 U.S.C. 408(a);

(b) an individual retirement annuity described in section 408(b) of the Internal Revenue Code, 26 U.S.C. 408(b);

(c) an annuity plan described in section 403(a) of the Internal Revenue Code, 26 U.S.C. 403(a);

(d) a qualified trust described in section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);

(e) effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b);

(f) effective January 1, 2002, a plan eligible under section 457(b) of the Internal Revenue Code, 26 U.S.C. 457(b), that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from a plan under this title; or

(g) effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code, 26 U.S.C. 408A.

(24) "Eligible rollover distribution":

(a) means any distribution of all or any portion of the balance from a retirement plan to the credit of the distributee, as provided in 19-2-1011;

(b) effective January 1, 2002, includes a distribution to a surviving spouse or to a spouse or former spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p).

(25) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying retirement contributions pursuant to 7-11-105.

(26) "Employer" means a governmental agency participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as responsible for paying retirement contributions pursuant to 7-11-105.

(27) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

(a) the position exists to perform the element;

(b) there are a limited number of employees to perform the element; or

(c) the element is highly specialized.

(28) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

(29) "Inactive member" means a member who terminates service and does not retire or take a refund of the member's accumulated contributions.

(30) "Internal Revenue Code" has the meaning provided in 15-30-2101.

(31) "Member" means either:

(a) a person with accumulated contributions and service credited with a defined benefit retirement plan or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or

(b) a person with a retirement account in the defined contribution plan.

(32) "Membership service" means the periods of service that are used to determine eligibility for retirement or other benefits.

(33) (a) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a defined benefit retirement plan during any year in the future.

(b) Normal cost does not include any portion of the supplemental costs of a retirement plan.

(34) "Normal retirement age" means the age at which a member is eligible to immediately receive a retirement benefit based on the member's age~~, length of service,~~ or both *age and length of service*, as specified under the member's retirement system, without disability and without an actuarial or similar reduction in the benefit.

(35) "Pension" means benefit payments for life derived from contributions to a retirement plan made from state- or employer-controlled funds.

(36) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system or plan in public trust.

(37) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered by the defined contribution plan members that is allocated to the public employees' retirement system's defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member selection of the defined contribution plan.

(38) "Regular contributions" means contributions required from members under a retirement plan.

(39) "Regular interest" means interest at rates set from time to time by the board.

(40) "Retirement" or "retired" means the status of a member who has:

(a) terminated from service; and

(b) received and accepted a retirement benefit from a retirement plan.

(41) "Retirement account" means an individual account within the defined contribution retirement plan for the deposit of employer and member contributions and other assets for the exclusive benefit of a member of the defined contribution plan or the member's beneficiary.

(42) "Retirement benefit" means:

(a) in the case of a defined benefit plan, the periodic benefit payable as a result of service retirement, early retirement, or disability retirement under a defined benefit plan of a retirement system. With respect to a defined benefit plan, the term does not mean an annuity.

(b) in the case of the defined contribution plan, a benefit as defined in subsection (10)(b).

(43) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan under one of the public employee retirement systems enumerated in 19-2-302.

(44) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

(45) "Service" means employment of an employee in a position covered by a retirement system.

(46) "Service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate retirement benefits or survivorship benefits under a defined benefit retirement plan.

(47) "Service retirement benefit" means the retirement benefit that the member may receive at normal retirement age.

(48) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

(49) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.

(50) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.

(51) "Termination of employment", "termination from employment", "terminated employment", "terminated from employment", "terminate employment", or "terminates employment" means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both; and

(b) the member is no longer receiving compensation for covered employment, other than any outstanding lump-sum payment for compensatory leave, sick leave, or annual leave.

(52) "Termination of service", "termination from service", "terminated from service", "terminated service", "terminating service", or "terminates service" means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both for at least 30 days;

(b) no written or verbal agreement exists between employee and employer that the employee will return to covered employment in the future;

(c) the member is no longer receiving compensation for covered employment; and

(d) the member has been paid all compensation for compensatory leave, sick leave, or annual leave to which the member was entitled. For the purposes of this subsection (52), compensation does not mean compensation as a result of a legal action, court order, or settlement to which the board was not a party.

(53) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

(54) "Vested account" means an individual account within a defined contribution plan that is for the exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions and the income on all contributions in each of the following accounts:

(a) the member's contribution account;

(b) the vested portion of the employer's contribution account; and

(c) the member's account for other contributions.

(55) "Vested member" or "vested" means:

(a) with respect to a defined benefit plan, a member or the status of a member who has at least 5 years of membership service; or

(b) with respect to the defined contribution plan, a member or the status of a member who meets the minimum membership service requirement of 19-3-2116.

(56) "Written application" or "written election" means a written instrument, prescribed by the board or required by law, properly signed and filed with the board, that contains all required information, including documentation that the board considers necessary.

(57) "Written instrument" includes an electronic record containing an electronic signature, as defined in 30-18-102."

**Section 2.** Section 19-2-405, MCA, is amended to read:

**"19-2-405. Employment of actuary — annual investigation and valuation.** (1) The board shall retain a competent actuary who is an enrolled member of the American academy of actuaries and who is familiar with public systems of pensions. The actuary is the technical adviser of the board on matters regarding the operation of the retirement systems.

(2) The board shall require the actuary to make an annual actuarial investigation into the suitability of the actuarial tables used by the retirement systems and an actuarial valuation of the assets and liabilities of each defined benefit plan that is a part of the retirement systems.

(3) The normal cost contribution rate, which is funded by required employee contributions and a portion of the required employer contributions to each defined benefit retirement plan, must be calculated as the level percentage of members' salaries that will actuarially fund benefits payable under a retirement plan as those benefits accrue in the future.

(4) (a) The unfunded liability contribution rate, which is entirely funded by a portion of the required employer contributions to the retirement plan, must be calculated as the level percentage of current and future defined benefit plan members' salaries that will amortize the unfunded actuarial liabilities of the retirement plan over a reasonable period of time, not to exceed 30 years, as determined by the board.

(b) In determining the amortization period under subsection (4)(a) for the public employees' retirement system's defined benefit plan, the actuary shall take into account the plan choice rate contributions to be made to the defined benefit plan pursuant to 19-3-2117 and 19-21-203.

(5) The board shall require the actuary to conduct a periodic actuarial investigation into the actuarial experience of the retirement systems and plans. Copies of the report must be provided to the legislature pursuant to 5-11-210.

(6) The board may require the actuary to conduct any valuation necessary to administer the retirement systems and the plans subject to this chapter.

*(7) The board shall require the actuary to prepare for each employer participating in a retirement system the disclosures or the information required to be included in the disclosures as required by law and by the governmental accounting standards board or its generally recognized successor.*"

**Section 3.** Section 19-2-1001, MCA, is amended to read:

**"19-2-1001. Maximum contribution and benefit limitations.** (1) (a) Employee contributions paid to and retirement benefits paid from a retirement system or plan may not exceed the annual limits on contributions and benefits, respectively, allowed by section 415 of the Internal Revenue Code, 26 U.S.C. 415.

(b) For purposes of determining whether the annual limitations in subsection (1)(a) are met:

(i) all defined benefit plans of the employer, whether or not terminated, must be treated as a single defined benefit plan;

(ii) all defined contribution plans of the employer, whether terminated or not, must be treated as a single defined contribution plan;

(iii) retirement systems and plans established under Title 19 must be prioritized for disqualification purposes above any plans not established under Title 19; and

(iv) retirement systems and plans established under Title 19 that must be aggregated for purposes of the limits in section 415 of the Internal Revenue Code, 26 U.S.C. 415, must be prioritized for qualification purposes based on the system or plan providing the member with the highest benefit.

(2) A member may not receive an annual benefit that exceeds the dollar amount specified in section 415(b)(1)(A) of the Internal Revenue Code, 26 U.S.C. 415(b)(1)(A), subject to the applicable adjustments in section 415(d) of the Internal Revenue Code, 26 U.S.C. 415(d).

(3) Notwithstanding any other provision of law to the contrary, the board may modify a request by a member to make a contribution to a retirement system or plan if the amount of the contribution would exceed the limits provided in section 415 of the Internal Revenue Code, by using the following methods:

(a) If the law requires a lump-sum payment for the purchase of service credit, the board may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under section 415(c) or 415(n) of the Internal Revenue Code, 26 U.S.C. 415(c) or 415(n).

(b) If payment pursuant to subsection (3)(a) will not avoid a contribution in excess of the limits imposed by section 415(c) of the Internal Revenue Code, 26 U.S.C. 415(c), the board shall either reduce the member's contribution to an amount within the limits of that section or refuse the member's contribution.

(4) (a) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under a retirement system or plan to which this section applies, then the requirements of this section will be treated as met only if:

(i) except as provided in subsection (4)(b), the requirements of section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), are met, determined by treating the accrued benefit derived from all the contributions as an annual benefit for purposes of section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b); or

(ii) except as provided in subsection (4)(c), the requirements of section 415(c) of the Internal Revenue Code, 26 U.S.C. 415(c), are met, determined by treating all the contributions as annual additions for purposes of section 415(c) of the Internal Revenue Code, 26 U.S.C. 415(c).

(b) For purposes of applying subsection (4)(a)(i), the retirement system or plan may not fail to meet the reduced limit under section 415(b)(2)(C) of the Internal Revenue Code, 26 U.S.C. 415(b)(2)(C), solely by reason of subsection (4)(a).

(c) For purposes of applying subsection (4)(a)(ii), the retirement system or plan may not fail to meet the percentage limitation under section 415(c)(1)(B) of the Internal Revenue Code, 26 U.S.C. 415(c)(1)(B) solely by reason of this subsection (4).

(5) For purposes of subsection (4), the term "permissive service credit" means service credit:

(a) specifically recognized by a plan subject to this chapter for purposes of calculating a plan member's benefit under the member's plan;

(b) that the plan member has not received under the plan;

(c) that the plan member may receive only by making a voluntary additional contribution, in an amount determined under the plan, that does not exceed the amount necessary to fund the benefit attributable to the service credit; and

(d) effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, service credit for periods for which there is no performance of service, which, notwithstanding subsection (5)(b), may include service credit purchased in order to provide an increased benefit under the plan.

(6) A retirement system or plan fails to meet the requirements of subsection (4) if:

(a) more than 5 years of nonqualified service credit are taken into account; or

(b) any nonqualified service credit is taken into account before the plan member has at least 5 years of participation under the plan.

(7) For purposes of subsection (6), effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:

(a) service, including parental, medical, sabbatical, and similar leave, as an employee of the government of the United States, any state or political subdivision of a state, or any agency or instrumentality of a state or of a political subdivision of a state, other than military service or service for credit that was obtained as a result of a repayment of a refund as described in section 415(k)(3) of the Internal Revenue Code, 26 U.S.C. 415(k)(3);

(b) service, including parental, medical, sabbatical, and similar leave, as an employee, other than an employee described in subsection (7)(a), of an education organization described in section 170(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 170(b)(1)(A)(ii), that is a public, private, or sectarian school that provides elementary or secondary education through grade 12 or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;

(c) service as an employee of an association of employees who are described in subsection (7)(a); or

(d) military service, other than qualified military service under section 414(u) of the Internal Revenue Code, 26 U.S.C. 414(u), recognized by the system or plan.

(8) In the case of service described in subsection (7)(a), (7)(b), or (7)(c), service must be nonqualified service if recognition of the service would cause a plan member to receive a retirement benefit for the same service under more than one plan.

(9) In the case of a trustee-to-trustee transfer after December 31, 2001, to which section 403(b)(13)(A) or 457(e)(17)(A) of the Internal Revenue Code, 26 U.S.C. 403(b)(13)(A) or 457 (e)(17)(A), applies, without regard to whether the transfer is made between plans maintained by the same employer:

(a) the limitations in subsection (7) do not apply in determining whether the transfer is for the purchase of permissive service credit; and

(b) the distribution rules applicable to the plan under federal law apply to those amounts and any benefits attributable to those amounts.

(10) (a) For purposes of this subsection (10), an eligible plan member is an individual who became a member of the plan before January 1, 1998.

(b) For an eligible plan member, the limitation in section 415(c)(1) of the Internal Revenue Code, 26 U.S.C. 415(c)(1), may not be applied to reduce the amount of permissive service credit that may be purchased to an amount less than the amount that was allowed to be purchased under the terms of the applicable law in effect on August 5, 1997.

(11) The limitation year for purposes of section 415 of the Internal Revenue Code, 26 U.S.C. 415, is the calendar year beginning each January 1 and ending December 31.

(12) (a) "Salary", for the purposes of determining compliance with section 415 of the Internal Revenue Code, 26 U.S.C. 415, and for no other purposes, means compensation as defined in 26 CFR 1.415(c)-1 through 1.415(c)-2(d)(4). However:

(i) employee contributions picked up under section 414(h)(2) of the Internal Revenue Code, 26 U.S.C. 414(h)(2), are excluded from salary; and

(ii) the amount of an elective deferral, as defined in section 402(g) of the Internal Revenue Code, 26 U.S.C. 402(g), or any other contribution that is contributed or deferred by the employer at the election of the member and that is not includable in the gross income of the member because of section 125, 403(b), or 457 of the Internal Revenue Code, 26 U.S.C. 125, 403(b), or 457, is included in the definition.

(b) For limitation years beginning after December 31, 2000, the term includes any elective amounts that are not includable in the gross income of the member by reason of section 132(f)(4) of the Internal Revenue Code, 26 U.S.C. 132(f)(4).

(c) For limitation years beginning no later than January 1, 2008, the term includes compensation paid by the later of 2.5 months after a member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if:

(i) the payment is regular compensation for services during the member's regular working hours or compensation for services outside the member's regular working hours such as overtime or shift differential, commissions, bonuses, or other similar payments and, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or

(ii) the payment is for unused accrued bona fide sick, vacation, or other leave that the member would have been able to use if employment had continued.

(d) For limitation years beginning on or after January 1, 2009, the term, as calculated, may not exceed the annual limit under section 401(a)(17) of the Internal Revenue Code, 26 U.S.C. 401(a)(17).

*(e) Beginning January 1, 2009, to the extent required by section 414(u)(12) of the Internal Revenue Code, 26 U.S.C. 414(u)(12), a member receiving from an employer differential wage payments as defined under section 3401(h)(2) of the Internal Revenue Code, 26 U.S.C. 3401(h)(2), must be treated as employed by that employer. The differential wage payments must be treated as compensation for purposes of applying the limits on annual additions under section 415(c) of the Internal Revenue Code, 26 U.S.C. 415(c). This provision must be applied to all similarly situated employees in a reasonably equivalent manner.*

(13) For the purposes of applying the limits on a defined benefit plan member's annual benefit under section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), the following apply:

(a) Prior to January 1, 2009, any automatic adjustment under the retirement system or a plan subject to this chapter must be taken into consideration when determining a member's applicable limit *to the extent required by a reasonable interpretation of 26 CFR 1.415-3(c)*.

(b) On or after January 1, 2009, with respect to a member who does not receive a portion of the member's annual benefit in a lump sum:

(i) a member's applicable limit must be applied to the member's annual benefit in the first limitation year without regard to any automatic cost-of-living increases;

(ii) to the extent the member's annual benefit equals or exceeds the applicable limit, the member is no longer eligible for cost-of-living increases until the benefit plus the accumulated increases are less than the limit; and

(iii) in any subsequent limitation year, the member's annual benefit, including any automatic cost-of-living increase applicable, is subject to the applicable benefit limit, including any adjustment to the dollar limit in section 415(b)(1)(A) of the Internal Revenue Code, 26 U.S.C. 415(b)(1)(A), under section 415(d) of the Internal Revenue Code, 26 U.S.C. 415(d) and the implementing regulations.

(c) On or after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable limit must be applied, taking into consideration automatic cost-of-living increases as required by section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), and applicable U.S. treasury regulations.

(d) (i) A member's annual benefit payable under the member's plan in any limitation year may not be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to section 415(d) of the Internal Revenue Code, 26 U.S.C. 415(d), and the implementing regulations.

(ii) If the form of benefit without regard to the automatic benefit increase feature is not a straight life or a qualified joint and survivor annuity, then this subsection (13)(d) is applied by either reducing the limit in section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent straight life annuity benefit determined using the following assumptions that take into account the death benefits under the form of benefit:

(A) for a benefit paid in a form to which section 417(e)(3) of the Internal Revenue Code, 26 U.S.C. 417(e)(3), does not apply, the actuarially equivalent straight life annuity benefit that is the greater of:

(I) the annual amount of any straight life annuity payable to the member under the member's plan commencing at the same annuity starting date as the form of benefit payable to the member; or

(II) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a 5% interest assumption, or the applicable statutory interest assumption, and the applicable mortality table described in 26 CFR 1.417(e)-1(d)(2); or

(B) for a benefit paid in a form to which section 417(e)(3) of the Internal Revenue Code, 26 U.S.C. 417(e)(3), applies, the actuarially equivalent straight life annuity benefit that is the greatest of:

(I) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table or tabular factor specified in the plan for actuarial experience;

(II) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5% interest assumption, or the applicable statutory interest assumption, and the applicable mortality table for the distribution under 26 CFR 1.417(e)-1(d)(2); or

(III) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using as the applicable interest rate for the distribution under 26 CFR 1.417(e)-1(d)(3) prior to January 1, 2009, the ~~30-year treasury~~ rate in effect for the month prior to retirement or, on or after January 1, 2009, the ~~30-year treasury~~ rate in effect for the first day of the plan year with a 1-year stabilization period and, in either case, the applicable mortality table for the distribution under 26 CFR 1.417(e)-1(d)(2).

(iii) With respect to subsections (13)(d)(ii)(A) and (13)(d)(ii)(B), the board's actuary may reduce the limitation found in section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), for testing purposes using the assumptions specified in subsections (13)(d)(ii)(A) and (13)(d)(ii)(B)."

**Section 4.** Section 19-2-1011, MCA, is amended to read:

**"19-2-1011. Limitations on eligible rollover distributions.** (1) An eligible rollover distribution may not include:

(a) any distribution that is one of a series of substantially equal periodic payments made at least annually for:

(i) the life or the life expectancy of the distributee;

(ii) the joint lives or joint life expectancies of the distributee and the distributee's designated beneficiary; or

(iii) a specified period of 10 years or more;

(b) any distribution to the extent the distribution is required under section 401(a)(9) of the Internal Revenue Code, 26 U.S.C. 401(a)(9);

(c) the portion of any distribution that is not includable in gross income; or

(d) any other distribution that is reasonably expected to total less than $200 during the year.

(2) *(a)* Effective January 1, 2002, a portion of a distribution may not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includable in gross income. However, that portion may be transferred only to:

~~(a)~~*(i)* an individual retirement account or annuity described in section 408(a) or (b) of the Internal Revenue Code, 26 U.S.C. 408(a) or (b);

~~(b)~~*(ii)* a qualified defined contribution plan described in section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);

~~(c)~~*(iii)* a qualified plan described in section 403(a) of the Internal Revenue Code, 26 U.S.C. 403(a);

~~(d)~~*(iv)* on or after January 1, 2007, a qualified defined benefit plan described in section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a); or

~~(e)~~*(v)* an annuity contract described in section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b)~~,~~.

*(b)* ~~that agrees to~~ *The plans described in subsections (2)(a)(ii), (2)(a)(iv), and (2)(a)(v) must* separately account for amounts that are transferred and earnings on those amounts, including separately accounting for the portion of the distribution that is includable in gross income and the portion of the distribution that is not includable."

**Section 5.** Section 19-2-1014, MCA, is amended to read:

**"19-2-1014. Compliance with federal laws regarding military service.** (1) With respect to a member's death occurring on or after January 1, 2007, while the member is performing qualified military service covered under the Heroes Earnings Assistance and Relief Tax Act of 2008, Public Law 110-245, and to the extent required by section 401(a)(37) of the Internal Revenue Code, 26 U.S.C. 401(a)(37), the designated beneficiaries are entitled to benefits that the system would have provided if the member's death had occurred while in covered employment.

(2) With respect to a member's disability occurring on or after January 1, 2009, while the member is performing qualified military service covered under the Heroes Earnings Assistance and Relief Tax Act of 2008, Public Law 110-245, and to the extent required by section ~~401(a)(37)~~ *414(u)(9)* of the Internal Revenue Code, ~~26 U.S.C. 401(a)(37)~~ *26 U.S.C. 414(u)(9)*, the member is entitled to any benefits that the system would have provided had the member become disabled while in covered employment."

**Section 6.** Section 19-3-901, MCA, is amended to read:

**"19-3-901. Eligibility for service retirement.** (1) A member hired prior to July 1, 2011, who has:

(a) attained age 60 and has 5 years of membership service is eligible for service retirement;

(b) attained at least age 65 before or while employed in a position covered by the public employees' retirement system is eligible for service retirement regardless of the member's years of membership service; or

(c) 30 years or more of membership service is eligible for service retirement regardless of the member's age.

(2) A member hired on or after July 1, 2011, who has:

(a) attained age 65 and has 5 years of membership service is eligible for service retirement; or

(b) attained age 70 before or while employed in a position covered by the public employees' retirement system is eligible for service retirement regardless of the member's years of membership service.

(3) ~~In~~ *For purposes of compliance with section 411 of the Internal Revenue Code, 26 U.S.C. 411:*

*(a) in* each of the circumstances described in subsections (1)*(a), (1)(b),* and (2), the member ~~has~~ *is treated as having* attained normal retirement age*; and*

*(b) in each of the circumstances described in subsections (1) and (2), the member has a nonforfeitable right to the service retirement benefit accrued and payable under the provisions of this chapter, subject to the member's right to a refund of the member's accumulated contributions under Title 19, chapter 2, part 6.*"

**Section 7.** Section 19-5-501, MCA, is amended to read:

**"19-5-501. Eligibility for service retirement.** (1) ~~A~~ *Subject to a member's right to a refund of the member's accumulated contributions under Title 19, chapter 2, part 6, a vested* member ~~who has at least 5 years of membership service and~~ *who* has reached the age of 60 has attained normal retirement age and ~~may retire and receive the~~ *is eligible to receive the nonforfeitable* service retirement ~~benefits~~ *benefit* provided in 19-5-502.

(2) Retirement benefits may not be approved by the board while the member is drawing full compensation as a judge or justice. However, benefits may not be withheld for receiving compensation as a judge pro tempore."

**Section 8.** Section 19-6-501, MCA, is amended to read:

**"19-6-501. Eligibility for service retirement benefit.** *(1)* ~~A~~ *Subject to a member's right to a refund of the member's accumulated contributions under Title 19, chapter 2, part 6, a* member ~~has attained normal retirement age and~~ is eligible to receive a *nonforfeitable* service retirement benefit *under 19-6-502* after completing 20 years or more of membership service and terminating service.

*(2) For purposes of compliance with section 411 of the Internal Revenue Code, 26 U.S.C. 411, a vested member who has attained the later of age 50 or the completion of 20 years of membership service has attained normal retirement age and has a nonforfeitable right to the member's service retirement.*"

**Section 9.** Section 19-7-501, MCA, is amended to read:

**"19-7-501. Eligibility for service retirement.** *(1)* ~~A~~ *Subject to a member's right to a refund of the member's accumulated contributions under Title 19, chapter 2, part 6,* member who has completed at least 20 years of membership service ~~has attained normal retirement age and may retire on a~~ *is eligible for a nonforfeitable* service retirement benefit *under 19-7-503.*

*(2) For purposes of compliance with section 411 of the Internal Revenue Code, 26 U.S.C. 411, a vested member who has attained the later of age 50 or the completion of 20 years of membership service has attained normal retirement age and has a nonforfeitable right to the member's service retirement.*"

**Section 10.** Section 19-8-601, MCA, is amended to read:

**"19-8-601. Time of retirement.** (1) *Subject to a member's right to a refund of the member's accumulated contributions under Title 19, chapter 2, part 6, the following members are eligible to receive a nonforfeitable service retirement benefit under 19-8-603:*

*(a)* ~~A~~ *a* member who has completed at least 20 years of membership service, ~~and~~ reached 50 years of age, ~~has attained normal retirement age and may retire~~

~~with a service retirement benefit by filing~~ *and files* a written application with the board~~.~~*; or*

~~(2)~~*(b)* ~~A~~ *a* vested member who terminated service before completing 20 years of membership service ~~may~~ *and applies to* begin receiving a service retirement benefit upon reaching 55 years of age ~~and filing a written application with the board~~.

*(2) For purposes of compliance with section 411 of the Internal Revenue Code, 26 U.S.C. 411, a member described in (1)(a) is treated as having attained normal retirement age and has a nonforfeitable right to the member's service retirement.*"

**Section 11.** Section 19-9-801, MCA, is amended to read:

**"19-9-801. Eligibility for service retirement — commencement of benefit.** ~~A~~ *(1) Subject to a member's right to a refund of the member's accumulated contributions under Title 19, chapter 2, part 6, a* member ~~has attained normal retirement age and~~ is eligible for a *nonforfeitable* service retirement benefit *under 19-9-804* after terminating service if:

~~(1)~~*(a)* the member has completed 20 years or more of membership service; or

~~(2)~~*(b)* the member ~~has completed at least 5 years of membership service~~ *is vested* and *has* reached 50 years of age.

*(2) For purposes of compliance with section 411 of the Internal Revenue Code, 26 U.S.C. 411, a member described in (1)(b) is treated as having attained normal retirement age and has a nonforfeitable right to the member's service retirement.*"

**Section 12.** Section 19-13-701, MCA, is amended to read:

**"19-13-701. Eligibility for service retirement.** (1) ~~A~~ *Subject to a member's right to a refund of the member's accumulated contributions under Title 19, chapter 2, part 6, the following members are eligible to receive a nonforfeitable service retirement benefit under 19-13-704:*

*(a) a* member who has completed 20 years or more of membership service ~~has attained normal retirement age and is eligible for service retirement.~~*; or*

~~(2)~~*(b)* ~~A~~ *a* vested member who terminates service before completing 20 years of service and ~~keeps the member's accumulated contributions on deposit has attained normal retirement age and is eligible for service retirement commencing on the member's minimum retirement date~~ *applies for a service retirement upon reaching age 50*.

*(2) For purposes of compliance with section 411 of the Internal Revenue Code, 26 U.S.C. 411, a member described in subsection (1)(b) is treated as having attained normal retirement age and has a nonforfeitable right to the member's service retirement.*"

**Section 13.** Section 19-50-104, MCA, is amended to read:

**"19-50-104. Eligibility to catch up — normal retirement age.** (1) Except as provided in subsection (2), for the purposes of determining a participant's eligibility to catch up on making the maximum annual deferrals allowable, normal retirement age must be specified in writing by the participant and must be no earlier than:

(a) the age at which the participant is eligible to retire pursuant to the participant's Title 19 retirement system because of the participant's age~~, length of service,~~ or both *age and length of service*, without disability, and with the right to receive immediate retirement benefits without actuarial or similar reduction because of retirement before a specified age; or

(b) 65 years of age if the participant is not a member of a Title 19 retirement plan or system, is a member of a defined contribution retirement plan, or is an independent contractor.

(2) An eligible plan with participants that include qualified police or firefighters, as defined under 26 U.S.C. 415(b)(2)(H)(ii)(I), may either:

(a) designate a normal retirement age for the qualified police or firefighters that is no less than 40 years of age; or

(b) allow a qualified police or firefighter participant to designate a normal retirement age that is between 40 and 70 1/2 years of age.

(3) Qualified police or firefighters, as defined in 26 U.S.C. 415(b)(2)(H)(ii)(I), include:

(a) police who are members of the municipal police officers' retirement system provided for in Title 19, chapter 9;

(b) police who are members of a local police retirement system provided for in Title 19, chapter 19;

(c) firefighters who are members of the firefighters' unified retirement system provided for in Title 19, chapter 13;

(d) firefighters who are members of a local firefighters' retirement system provided for in Title 19, chapter 18; and

(e) firefighters who are members of the defined benefit retirement plan of the public employees' retirement system provided for in Title 19, chapter 3."

**Section 14. Effective date.** [This act] is effective on passage and approval.

**Section 15. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, as follows:

(1) Section 19-2-1001(12)(e) applies retroactively to a member receiving differential wage payments while on active duty in the uniformed services on or after January 1, 2009.

(2) Section 19-2-1001(13)(a) applies retroactively to permissible benefit limitation calculations prior to January 1, 2009.

Approved April 22, 2013

# CHAPTER NO. 241

[HB 187]

AN ACT ALLOWING AND DEFINING OUTFITTER'S ASSISTANTS; PROVIDING RULEMAKING AUTHORITY; REVISING DUTIES AND RESPONSIBILITIES; MODIFYING EXEMPTIONS FROM OVERTIME COMPENSATION; PROVIDING FOR DOCUMENTATION; AMENDING SECTIONS 37-47-101, 37-47-201, 37-47-401, 37-47-403, 37-47-404, 39-3-406, AND 87-6-702, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Outfitter's assistants — exemption from licensing.** (1) An outfitter may hire or retain an outfitter's assistant.

(2) An outfitter's assistant is not required to obtain a license under this chapter.

(3) The outfitter's assistant must carry proof of employment as provided in 37-47-404(4)(b) pending adoption of proof of employment by the board by rule.

(4) (a) An outfitter who employs or retains an outfitter's assistant is responsible for ensuring that the outfitter's assistant:

(i) safeguards the public health, safety, and welfare while providing services; and

(ii) is qualified and competent to perform the tasks of a guide.

(b) The board shall hold an outfitter who employs or retains an outfitter's assistant responsible under the provisions of 37-1-316, 37-47-341, and 37-47-402 for any acts or omissions by the outfitter's assistant in the ordinary course and scope of duties assigned by the outfitter.

(5) The outfitter's assistant may not be employed or retained by an outfitter for more than 15 days in a calendar year unless the outfitter's assistant is actively obtaining a guide's license pursuant to this part and the board determines that the license application is routine for purposes of 37-1-101.

(6) An outfitter may use more than one outfitter's assistant in a calendar year.

(7) An outfitter's assistant may be employed or retained by an outfitter on more than one occasion in a calendar year if:

(a) the outfitter's assistant is not employed or retained for more than 15 days as an outfitter's assistant in that calendar year; or

(b) the outfitter's assistant is actively obtaining a guide's license and the board determines that the license application is routine for purposes of 37-1-101.

**Section 2. Duties of outfitter's assistants.** An outfitter's assistant shall:

(1) act as would a reasonably prudent member of the profession while engaging in providing the services authorized to be performed while employed or retained by a licensed outfitter; and

(2) comply with all standards adopted by board rule.

**Section 3.** Section 37-47-101, MCA, is amended to read:

**"37-47-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Accompany" means to go with or be together with a participant as an escort, companion, or other service provider, with an actual physical presence in the area where the activity is being conducted and within sight or sound of the participant at some time during the furnishing of service.

(2) "Base of operations" means the primary physical location where an outfitter receives mail and telephone calls, conducts regular daily business, and bases livestock, equipment, and staff during the hunting season.

(3) "Board" means the board of outfitters provided for in 2-15-1773.

(4) "Camp" means each individual facility or group of facilities that an outfitter uses to lodge a client for a client's trip or uses to lodge a client in the operating area designated in the outfitter's operations plan, including a motel, campground, bed and breakfast, lodge, tent camp, cabin, camper, trailer, or house.

(5) "Consideration" means something of value given or done in exchange for something of value given or done by another.

(6) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(7) "Guide" means a person who is employed by or who has contracted independently with a licensed outfitter and who accompanies a participant

during outdoor recreational activities that are directly related to activities for which the outfitter is licensed.

(8) "License year" means the period indicated on the face of the license for which the license is valid.

(9) "Net client hunter use" or "NCHU" means the most actual clients served by an outfitter in any NCHU license category in any license year, as documented by verifiable client logs or other documents maintained by the board pursuant to 37-47-201.

(10) "Nonresident" means a person other than a resident.

(11) "Outfitter" means any person, except a person providing services on real property that the person owns for the primary pursuit of bona fide agricultural interests, who for consideration provides any saddle or pack animal; facilities; camping equipment; vehicle, watercraft, or other conveyance; or personal service for any person to hunt, trap, capture, take, kill, or pursue any game, including fish, and who accompanies that person, either part or all of the way, on an expedition for any of these purposes or supervises a licensed guide ~~or~~, professional guide*, or outfitter's assistant* in accompanying that person.

*(12) "Outfitter's assistant" means a person who is employed or retained by and directed by a licensed outfitter to perform the tasks of a guide, but the person may not represent to the public that the person is an outfitter, guide, or professional guide.*

~~(12)~~*(13)* "Participant" means a person using the services offered by a licensed outfitter.

~~(13)~~*(14)* "Professional guide" means a guide who meets experience, training, and testing qualifications for designation as a professional guide, as set by board rule.

~~(14)~~*(15)* "Resident" means a person who qualifies for a resident Montana hunting or fishing license under 87-2-102."

**Section 4.** Section 37-47-201, MCA, is amended to read:

**"37-47-201. Powers and duties of board relating to outfitters, guides, and professional guides.** The board shall:

(1) cooperate with the federal government in matters of mutual concern regarding the business of outfitting and guiding in Montana;

(2) enforce the provisions of this chapter and rules adopted pursuant to this chapter;

(3) establish outfitter standards, guide standards, and professional guide standards;

(4) adopt:

(a) rules to administer and enforce this chapter, including rules prescribing all requisite qualifications for licensure as an outfitter, guide, or professional guide. Qualifications for outfitters must include training, testing, experience in activities similar to the service to be provided, knowledge of rules of governmental bodies pertaining to outfitting and condition and type of gear and equipment, and the filing of an operations plan.

(b) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the public health, safety, and welfare, including evidence of qualification and licensure under this chapter for any person practicing or offering to practice as an outfitter, guide, or professional guide;

(c) rules specifying standards for review and approval of proposed new operations plans involving hunting use. Approval is not required when part or

all of an existing operations plan is transferred from one licensed outfitter to another licensed outfitter.

(d) rules establishing outfitter reporting requirements. The reports must be filed annually and report actual leased acreage actively used by clients during that year and actual leased acres unused by clients during that year, plus any other information designated by the board and developed in collaboration with the department of fish, wildlife, and parks or the review committee established in 87-1-269 that is considered necessary to evaluate the effectiveness of the hunter management and hunting access enhancement programs.

*(e) rules specifying standards for outfitter's assistants and documentation standards for proof of employment or retention required of outfitter's assistants. The rules may also identify data that may be collected regarding use of outfitter's assistants.*

(5) hold hearings and proceedings to suspend or revoke licenses of outfitters, guides, and professional guides for due cause;

(6) maintain records of actual clients served by all Montana outfitters that fulfill the requirements of subsection (4)(d);

(7) maintain records of net client hunter use."

**Section 5.** Section 37-47-401, MCA, is amended to read:

**"37-47-401. Purpose.** It is recognized that some activities conducted by outfitters, guides, ~~and~~ professional guides*, and outfitter's assistants* within the scope of their authorized services are inherently hazardous to participants regardless of all feasible safety measures that may be taken. It is the purpose of this part to define those areas of responsibility and affirmative acts or omissions for which outfitters, guides, ~~and~~ professional guides*, and outfitter's assistants* are liable for loss, damage, or injury and those risks for which the participant expressly assumes or is considered to have voluntarily assumed the risk of loss or damage."

**Section 6.** Section 37-47-403, MCA, is amended to read:

**"37-47-403. Duties of participants.** (1) A participant shall:

(a) act as would a reasonably prudent person when engaging in the activities offered by a licensed outfitter, guide, or professional guide *or by an unlicensed outfitter's assistant* in this state;

(b) receive permission from the outfitter, guide, or professional guide prior to embarking on any self-initiated activity and inform the outfitter, guide, or professional guide of the participant's plans and intentions upon receiving permission to engage in the self-initiated activity.

(2) A participant may not:

(a) interfere with the running or operation of an outfitter's, guide's, ~~or~~ professional guide's*, or outfitter's assistant's* activities when those activities conform to the standards of care set forth in 37-47-402 *or [section 2]*;

(b) use the outfitter's, guide's, ~~or~~ professional guide's*, or outfitter's assistant's* equipment, facilities, or services unless the participant has requested and received permission from the outfitter, guide, ~~or~~ professional guide*, or outfitter's assistant*;

(c) knowingly, purposely, or negligently engage in any type of conduct that contributes to or causes injury to the participant or any other person."

**Section 7.** Section 37-47-404, MCA, is amended to read:

**"37-47-404. Responsibility for violations of law.** (1) A person accompanying a hunting or fishing party as an outfitter, guide, ~~or~~ professional

guide*, or outfitter's assistant* is equally responsible with any person or party engaging the person as an outfitter for any violation of fish and game laws unless the violation is reported to a peace officer by the outfitter, guide, ~~or~~ professional guide*, or outfitter's assistant* and the outfitter, guide, ~~or~~ professional guide*, or outfitter's assistant* was not an active participant. An outfitter, guide, ~~or~~ professional guide*, or outfitter's assistant* who willfully fails or refuses to report any violation of fish and game laws is liable for the penalties provided in this chapter. If a guide*,* ~~or~~ professional guide*, or outfitter's assistant* violates the laws or applicable regulations relating to fish and game, outfitting, or guiding with actual or implied knowledge of an outfitter engaging the guide*,* ~~or~~ professional guide*, or outfitter's assistant*, the outfitter is legally responsible for the violation for all purposes under the laws or regulations if the outfitter fails to report the violation to the proper authority.

(2) An outfitter, guide, ~~or~~ professional guide*, or outfitter's assistant* shall report any violation or suspected violation of fish and game laws that the outfitter, guide, ~~or~~ professional guide*, or outfitter's assistant* knows or reasonably should have known has been committed by the employees, agents, representatives, clients, or participants in the outfitting or guiding activity. The violation or suspected violation must be reported to a peace officer at the earliest possible opportunity.

(3) A person may not hire or retain an outfitter unless the outfitter is currently licensed in accordance with the laws of the state of Montana. A person may not use the services of a guide or professional guide and a guide or professional guide may not offer services unless the services are obtained through an endorsing outfitter.

*(4) (a) Except as provided in subsection (4)(b), an outfitter may not place a hired or retained outfitter's assistant in a position of providing services to participants until the outfitter has documentation as specified by board rule under 37-47-201(4)(e).*

*(b) (i) Prior to adoption of the rules, an outfitter may use temporary documentation to place a hired or retained outfitter's assistant in a position of providing services to participants. The temporary documentation must be mailed to the board within the time period of the outfitter's assistant's service, and a copy must be provided to the outfitter's assistant. The outfitter's assistant shall carry the temporary documentation at all times in the field.*

*(ii) The temporary documentation must include the following:*

*(A) the outfitter's name, license number, and contact information;*

*(B) the outfitter's assistant's name and home address and the starting date and expiration date for the period of service;*

*(C) a brief explanation of why an emergency replacement is needed; and*

*(D) the outfitter's signature, which must be on the original and on the copy of the temporary documentation and must affirm the provisions in this subsection (4)(b)(ii).*

*(iii) The outfitter shall collect the temporary documentation from the outfitter's assistant after the period of service.*

*(iv) The temporary documentation may not be used after adoption of the rules under 37-47-201(4)(e).*"

**Section 8.** Section 39-3-406, MCA, is amended to read:

**"39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, and cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) persons who are not regular employees of a nonprofit organization and who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) persons with disabilities engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) an individual employed in a bona fide executive, administrative, or professional capacity, as these terms are defined by regulations of the commissioner, or in an outside sales capacity pursuant to 29 CFR 541.500;

(k) an individual employed by the United States of America;

(l) resident managers employed in lodging establishments or assisted living facilities who, under the terms of their employment, live in the establishment or facility;

(m) a direct seller as defined in 26 U.S.C. 3508;

(n) a person placed as a participant in a public assistance program authorized by Title 53 into a work setting for the purpose of developing employment skills. The placement may be with either a public or private employer. The exclusion does not apply to an employment relationship formed in the work setting outside the scope of the employment skills activities authorized by Title 53.

(o) a person serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(p) an employee employed in domestic service employment to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves as provided under section 213(a)(15) of the Fair Labor Standards Act, 29 U.S.C. 213, when the person providing the service is employed directly by a family member or an individual who is a legal guardian.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States secretary of transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502;

(b) an employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles or implements to ultimate purchasers;

(e) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(f) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(g) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(h) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways that are not owned or operated for profit, that are not operated on a sharecrop basis, and that are used exclusively for supply and storing of water for agricultural purposes;

(i) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(j) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm if no more than five employees are employed by the establishment;

(k) a driver employed by an employer engaged in the business of operating taxicabs;

(l) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(m) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(n) an employee of a sheriff's office who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(o) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(p) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(q) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(r) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(s) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(t) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

(u) a person employed as a guide, cook, camp tender, ~~or~~ *outfitter's assistant, or* livestock handler by a licensed outfitter as defined in 37-47-101;

(v) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a second- or third-class city or a town;

(w) an employee of the consolidated legislative branch as provided in 5-2-503;

(x) an employee of the state or its political subdivisions employed, at the employee's option, on an occasional or sporadic basis in a capacity other than the employee's regular occupation. Only the hours that the employee was employed in a capacity other than the employee's regular occupation may be excluded from the calculation of hours to determine overtime compensation."

**Section 9.** Section 87-6-702, MCA, is amended to read:

**"87-6-702. Outfitting without ~~a~~ license.** (1) (a) A person may not purposely or knowingly engage in outfitting while not licensed pursuant to Title 37, chapter 47, or purposely or knowingly violate a licensing rule adopted under Title 37, chapter 47.

(b) A person convicted of a violation of subsection (1)(a) is punishable by a fine of not less than $200 or more than $1,000 or imprisonment in the county jail for up to 1 year, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this state for a period set by the court. A sentencing court that imposes a period of license revocation shall consider the provisions of subsection (3).

(2) (a) A person or entity that represents to any other person, any entity, or the public that the person or entity is an outfitter and who commits the offense of outfitting without a license, as described in subsection (1)(a), for any portion of 5 or more days for consideration within 1 calendar year for any person or for consideration valued in excess of $5,000 is punishable by a fine of not more than $50,000 or imprisonment in the state prison for up to 5 years, or both.

(b) A person convicted of a violation of subsection (2)(a) shall forfeit any current hunting, fishing, or trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this state for a minimum of 5 years. A sentencing court that imposes a period of license revocation shall consider the provisions of subsection (3).

(3) A sentencing court that imposes a period of license revocation pursuant to subsection (1)(b) or (2)(b) shall consider and may impose any of the following conditions during the period of revocation:

(a) prohibiting the offender from:

(i) participating in any hunting, fishing, or trapping endeavor as a hunter, angler, trapper, scout, guide, observer, or assistant;

(ii) brokering or participating in any lease of property for hunting, fishing, or trapping, either personally or through an agent or representative;

(iii) participating in any seminar or show that is designed to promote hunting, fishing, or trapping;

(iv) purchasing or possessing any hunting, fishing, or trapping permits; and

(b) imposing any other reasonable condition or restriction that is related to the crime committed or that is considered necessary for the rehabilitation of the offender or for the protection of the citizens or wildlife of this state.

(4) A person convicted of a violation of this section shall reimburse the full amount of any fees received to the person to whom illegal outfitting services were provided.

(5) As used in this section, the following definitions apply:

(a) "Consideration" means remuneration given in exchange for outfitting services supplied based on a business relationship between parties, but not including reimbursement for shared trip expenses.

(b) (i) "Outfitting" means providing hunting or fishing services for consideration, including any saddle or pack animal, facilities, camping equipment, personal service, or vehicle, watercraft, or other conveyance for any person to hunt, fish, trap, capture, take, kill, or pursue any game, including fish. The term includes accompanying that person, either part or all of the way, on an expedition for any of these purposes or supervision of a licensed guide or professional guide in accompanying that person.

(ii) The term does not include*:*

*(A) services provided by an outfitter's assistant who has documentation as provided in 37-47-404(4); or*

*(B)* the provision of the services listed in subsection (5)(b)(i) by a person on real property that the person owns for the primary pursuit of bona fide agricultural interests."

**Section 10. Effective date.** [This act] is effective September 1, 2013.

**Section 11. Termination.** [This act] terminates August 31, 2015.

**Section 12. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 37, chapter 47, part 3, and the provisions of Title 37, chapter 47, part 3, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 37, chapter 47, part 4, and the provisions of Title 37, chapter 47, part 4, apply to [section 2].

Approved April 22, 2013

# CHAPTER NO. 242

[HB 189]

AN ACT INCREASING THE MAXIMUM AMOUNT OF HAIL INSURANCE; REDUCING THE PERCENTAGE OF FEES RETAINED BY THE DEPARTMENT OF REVENUE FOR ADMINISTRATIVE COSTS; IMPOSING A LIMIT ON THE AMOUNT OF FEES COLLECTED THAT ARE TRANSFERRED TO THE GENERAL FUND; AND AMENDING SECTIONS 80-2-208 AND 80-2-232, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 80-2-208, MCA, is amended to read:

**"80-2-208. Maximum insurance.** When the reserve fund is determined actuarially sound, as provided in 80-2-228, the board may write not more than ~~$50~~ *$75* insurance on each acre of crops on nonirrigated land and not more than ~~$76~~ *$114* on each acre on irrigated land. When more than one party desires hail insurance on the same crop, each party is entitled to the share of the maximum provided on each acre as represented by that person's interest in the crop. Either party may insure the party's share in the crop for any amount up to and including the maximum on each acre if the others waive their right to insure."

**Section 2.** Section 80-2-232, MCA, is amended to read:

**"80-2-232. Department of revenue's duty — warrants — transfers to state general fund.** (1) The department of revenue shall receive all money paid under this part and shall place the money in trust for the hail insurance program to the credit of the enterprise fund. All money collected by the board must be deposited in the enterprise fund, and all losses must be paid from that fund. All other costs are administrative expenses and must be paid from the board's enterprise fund. If registered warrants are presented and there is no money to pay the warrants, the warrants must be registered and bear interest at the rate of 4% a year until called for payment by the state treasurer.

(2) The department of revenue may retain ~~2%~~ *1%* of the gross annual fees imposed and collected under this part for administrative costs associated with billing and collection of hail insurance premiums.

(3) Upon authorization from the board of hail insurance, the state treasurer shall transfer out of the board's enterprise fund to the general fund ~~of the state of Montana~~ 1.5% of the gross annual fees imposed and collected ~~in the state of Montana~~ *not to exceed $100,000*."

**Section 3. Coordination instruction.** If both Senate Bill No. 162 and [this act] are passed and approved and both contain a section that amends 80-2-232, then the section of [this act] amending 80-2-232 is void.

Approved April 22, 2013

## CHAPTER NO. 243

[HB 195]

AN ACT CLASSIFYING CERTAIN PARCELS OF GROWING TIMBER AS CLASS TEN PROPERTY FOR PROPERTY TAX PURPOSES; AND AMENDING SECTION 15-6-143, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-6-143, MCA, is amended to read:

**"15-6-143. Class ten property — description — taxable percentage.** (1) Class ten property includes all forest lands*,* as defined in 15-44-102*, and property described in subsection (2)*.

*(2) Any parcel of growing timber totaling less than 15 acres qualifies as class ten property if, in a prior year, the parcel totaled 15 acres or more and qualified as forest land but the number of acres was reduced to less than 15 acres for a public use described in 70-30-102 by the federal government, the state, a county, or a municipality, and since that reduction in acres, the parcel has not been further divided.*

~~(2)~~*(3)* Class ten property is taxed at:

(a) for tax year 2009, 0.34% of its forest productivity value;

(b) for tax year 2010, 0.33% of its forest productivity value;

(c) for tax year 2011, 0.32% of its forest productivity value;

(d) for tax year 2012, 0.31% of its forest productivity value;

(e) for tax year 2013, 0.3% of its forest productivity value; and

(f) for tax years after 2013, 0.29% of its forest productivity value."

Approved April 22, 2013

## CHAPTER NO. 244

[HB 203]

AN ACT REVISING STATE AID TO LIBRARIES; PROVIDING A FORMULA FOR ESTABLISHING THE AMOUNT OF STATE AID; PROVIDING A STATUTORY APPROPRIATION; PROVIDING A COORDINATION INSTRUCTION REGARDING APPROPRIATIONS FOR AID TO PUBLIC LIBRARIES; AMENDING SECTIONS 17-7-502 AND 22-1-327, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; *22-1-327;* 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; 87-1-230; 87-1-603; 87-1-621; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 17, Ch. 593, L. 2005, and sec. 1, Ch. 186, L. 2009, the inclusion of 15-31-906 terminates January 1, 2015; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 8, Ch. 330, L. 2009, the inclusion of 87-1-621 terminates June 30, 2013; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 8, Ch. 427, L. 2009, the inclusion of 87-1-230 terminates June 30, 2013; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 47, Ch. 19, L. 2011, the inclusion of 87-1-621 terminates June 30, 2013; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; and pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017.)"

**Section 2.** Section 22-1-327, MCA, is amended to read:

**"22-1-327. State aid — per capita — per square mile.** *(1)* The commission shall distribute grants to public libraries and public library districts on a per capita and per square mile basis.

*(2) The total amount of annual per capita and per square mile funding to public libraries for each fiscal year is the base amount of 40 cents multiplied by*

*the total number of residents of the state as determined by the most recent decennial census of the population produced by the U.S. bureau of the census.*

*(3) The amount determined under subsection (2) is statutorily appropriated, as provided in 17-7-502, from the general fund to the commission for distribution as state aid to public libraries.*"

**Section 3. Coordination instruction.** If House Bill No. 2 is passed and approved and includes an appropriation to the state library commission to provide state aid to public libraries that is equal to or greater than the amount of funding as calculated in [section 2 of this act, amending 22-1-327], then [section 4 of this act] must read as follows:

"NEW SECTION. **Section 4. Effective date.** [This act] is effective July 1, 2015."

**Section 4. Effective date.** [This act] is effective July 1, 2013.

**Section 5. Termination.** [This act] terminates July 1, 2017.

Approved April 22, 2013

# CHAPTER NO. 245

[HB 250]

AN ACT PROVIDING FOR NAVIGATOR AND PRODUCER CERTIFICATION AND TRAINING RELATED TO HEALTH INSURANCE SOLD ON AN EXCHANGE; PROVIDING TRAINING REQUIREMENTS FOR OTHER PEOPLE WHO ASSIST THOSE SIGNING UP FOR THE EXCHANGE; PROVIDING NAVIGATOR QUALIFICATIONS AND DUTIES; SETTING NAVIGATOR CERTIFICATION FEES; AMENDING SECTIONS 33-2-708, 33-17-102, 33-17-220, AND 33-17-231, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 33-2-708, MCA, is amended to read:

**"33-2-708. (Temporary) Fees and licenses.** (1) (a) Except as provided in 33-17-212(2), the commissioner shall collect a fee of $1,900 from each insurer applying for or annually renewing a certificate of authority to conduct the business of insurance in Montana.

(b) The commissioner shall collect certain additional fees as follows:

(i) nonresident insurance producer's license:

(A) application for original license, including issuance of license, if issued, $100;

(B) biennial renewal of license, $50;

(C) lapsed license reinstatement fee, $100;

(ii) resident insurance producer's license lapsed license reinstatement fee, $100;

(iii) surplus lines insurance producer's license:

(A) application for original license and for issuance of license, if issued, $50;

(B) biennial renewal of license, $100;

(C) lapsed license reinstatement fee, $200;

(iv) insurance adjuster's license:

(A) application for original license, including issuance of license, if issued, $50;

(B) biennial renewal of license, $100;

(C) lapsed license reinstatement fee, $200;

(v) insurance consultant's license:

(A) application for original license, including issuance of license, if issued, $50;

(B) biennial renewal of license, $100;

(C) lapsed license reinstatement fee, $200;

(vi) viatical settlement broker's license:

(A) application for original license, including issuance of license, if issued, $50;

(B) biennial renewal of license, $100;

(C) lapsed license reinstatement fee, $200;

(vii) resident and nonresident rental car entity producer's license:

(A) application for original license, including issuance of license, if issued, $100;

(B) quarterly filing fee, $25;

(viii) an original notification fee for a life insurance producer acting as a viatical settlement broker, in accordance with 33-20-1303(2)(b), $50;

*(ix) navigator certification:*

*(A) application for original certification, including issuance of certificate if issued, $100;*

*(B) biennial renewal of certification, $50;*

*(C) lapsed certification reinstatement fee, $100;*

~~(ix)~~*(x)* 50 cents for each page for copies of documents on file in the commissioner's office.

(c) The commissioner may adopt rules to determine the date by which a nonresident insurance producer, a surplus lines insurance producer, an insurance adjuster, or an insurance consultant is required to pay the fee for the biennial renewal of a license.

(2) (a) The commissioner shall charge a fee of $75 for each course or program submitted for review as required by 33-17-1204 and 33-17-1205, but may not charge more than $1,500 to a sponsoring organization submitting courses or programs for review in any biennium.

(b) Insurers and associations composed of members of the insurance industry are exempt from the charge in subsection (2)(a).

(3) (a) Except as provided in subsection (3)(b), the commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fines and penalties and those amounts received pursuant to 33-2-311, 33-2-705, 33-28-201, and 50-3-109.

(b) The commissioner shall deposit 16.67% of the money collected under 33-2-705 in the special revenue account provided for in 53-4-1115.

(c) All other fees collected by the commissioner pursuant to Title 33 and the rules adopted under Title 33 must be deposited in the state special revenue fund to the credit of the state auditor's office.

(4) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded. (Terminates June 30, 2013—sec. 35(2), Ch. 486, L. 2009.)

**33-2-708. (Effective July 1, 2013) Fees and licenses.** (1) (a) Except as provided in 33-17-212(2), the commissioner shall collect a fee of $1,900 from each insurer applying for or annually renewing a certificate of authority to conduct the business of insurance in Montana.

(b) The commissioner shall collect certain additional fees as follows:

(i) nonresident insurance producer's license:

(A) application for original license, including issuance of license, if issued, $100;

(B) biennial renewal of license, $50;

(C) lapsed license reinstatement fee, $100;

(ii) resident insurance producer's license lapsed license reinstatement fee, $100;

(iii) surplus lines insurance producer's license:

(A) application for original license and for issuance of license, if issued, $50;

(B) biennial renewal of license, $100;

(C) lapsed license reinstatement fee, $200;

(iv) insurance adjuster's license:

(A) application for original license, including issuance of license, if issued, $50;

(B) biennial renewal of license, $100;

(C) lapsed license reinstatement fee, $200;

(v) insurance consultant's license:

(A) application for original license, including issuance of license, if issued, $50;

(B) biennial renewal of license, $100;

(C) lapsed license reinstatement fee, $200;

(vi) viatical settlement broker's license:

(A) application for original license, including issuance of license, if issued, $50;

(B) biennial renewal of license, $100;

(C) lapsed license reinstatement fee, $200;

(vii) resident and nonresident rental car entity producer's license:

(A) application for original license, including issuance of license, if issued, $100;

(B) quarterly filing fee, $25;

(viii) an original notification fee for a life insurance producer acting as a viatical settlement broker, in accordance with 33-20-1303(2)(b), $50;

*(ix) navigator certification:*

*(A) application for original certification, including issuance of certificate if issued, $100;*

*(B) biennial renewal of certification, $50;*

*(C) lapsed certification reinstatement fee, $100;*

~~(ix)~~*(x)* 50 cents for each page for copies of documents on file in the commissioner's office.

(c) The commissioner may adopt rules to determine the date by which a nonresident insurance producer, a surplus lines insurance producer, an

insurance adjuster, or an insurance consultant is required to pay the fee for the biennial renewal of a license.

(2) (a) The commissioner shall charge a fee of $75 for each course or program submitted for review as required by 33-17-1204 and 33-17-1205, but may not charge more than $1,500 to a sponsoring organization submitting courses or programs for review in any biennium.

(b) Insurers and associations composed of members of the insurance industry are exempt from the charge in subsection (2)(a).

(3) (a) Except as provided in subsection (3)(b), the commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fines and penalties and those amounts received pursuant to 33-2-311, 33-2-705, 33-28-201, and 50-3-109.

(b) The commissioner shall deposit 33% of the money collected under 33-2-705 in the special revenue account provided for in 53-4-1115.

(c) All other fees collected by the commissioner pursuant to Title 33 and the rules adopted under Title 33 must be deposited in the state special revenue fund to the credit of the state auditor's office.

(4) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded."

**Section 2. Navigator certification — duties — prohibitions.** (1) An individual or an individual performing navigator duties on behalf of an organization serving as a navigator may not act in the capacity of a navigator unless the individual has met all of the following requirements, as applicable:

(a) is at least 18 years of age;

(b) has completed and submitted the application form provided for in [section 3] and has declared, under penalty of refusal, suspension, or revocation of the navigator's certification, that the statements made in the form are true, correct, and complete to the best of the applicant's knowledge and belief;

(c) has completed a background examination as described in 33-17-220;

(d) has successfully completed the navigator certification and training requirements adopted by the commissioner, as provided in [section 3]; and

(e) has paid all fees required by 33-2-708.

(2) A navigator's duties may include any of the following:

(a) conducting public education activities to raise awareness of the availability of qualified health plans;

(b) distributing fair and impartial general information concerning how to enroll in any qualified health plan offered within the exchange and the availability of the premium tax credits under 26 U.S.C. 36B and the cost-sharing reductions provided under 42 U.S.C. 18071;

(c) assisting consumers to understand how to enroll in a qualified health plan through an exchange or appropriate public programs offering health care coverage, without suggesting that the consumer purchase any particular plan; and

(d) referring consumers to the commissioner's office for assistance with complaints, appeals, grievances, or general information about health insurance.

(3) A navigator may not do any of the following unless the navigator is otherwise licensed or authorized to do so under this chapter:

(a) sell, solicit, or negotiate health insurance; or

(b) enroll an individual or an employee in a qualified health plan offered through an exchange.

**Section 3. Commissioner's duties — navigator certification and training program — training for certified application counselors and others.** (1) The commissioner shall:

(a) develop a navigator certification application form that requires an applicant to disclose potential conflicts of interest and any other information the commissioner considers relevant;

(b) establish a navigator certification and training program for a prospective navigator and the navigator's employees;

(c) approve courses and the number of hours required for the navigator certification and training program;

(d) approve courses for continuing education covering 10 hours in every 24-month period; and

(e) certify an applicant qualified under [section 2(1)] upon the applicant's successful completion of the navigator certification and training program approved by the commissioner.

(2) The commissioner may suspend, revoke, or refuse to issue or renew the navigator certification of a person that has committed an act for which the grounds for denial, suspension, or revocation are described in 33-17-1001 regarding an insurance producer's license.

(3) The commissioner may not certify as a navigator an individual, organization, or business entity that is receiving financial compensation, including monetary or in-kind compensation, gifts, or grants, from an insurer. A navigator certification must be revoked if the navigator receives financial compensation as described in this subsection from an insurer.

(4) The navigator certification and training program established in subsection (1) must include:

(a) a background examination as provided in 33-17-220;

(b) initial training on compliance with all applicable state and federal laws affecting major medical health insurance, exchanges, and qualified health plans;

(c) continuing education as provided in subsection (1)(d); and

(d) an examination.

(5) The commissioner may prescribe training for an application counselor provided for in federal rule and other persons who while not part of the navigator program assist those who sign up for an exchange. The commissioner may require completion of the training before certification by the exchange. The training must be designed for those who assist applicants seeking to enroll in coverage through the exchange.

**Section 4. Producer exchange training — continuing education — certification for exchange sales.** (1) A producer may not sell, solicit, or negotiate insurance through an exchange on or after October 1, 2013, without first completing the initial producer exchange training and certification program provided for in this section and subsequently completing continuing education in every 24-month period, as prescribed and approved by the commissioner.

(2) The continuing education required under this section must be counted toward the total number of hours required in 33-17-1203.

(3) The producer exchange training and certification program and the continuing education courses required in this section must consist of topics related to health insurance offered within an exchange, including but not limited to:

(a) the levels of coverage provided in an exchange;

(b) the eligibility requirements for individuals to purchase insurance through an exchange;

(c) the eligibility requirements for employers to make insurance available to their employees through a small business health options program;

(d) the individual eligibility requirements for medicaid and the healthy Montana kids plan, as provided in Title 53; and

(e) the use of enrollment forms used in an exchange.

**Section 5. Lists of certified producers and navigators.** (1) An exchange operating in this state shall maintain a current list of both of the following:

(a) licensed insurance producers that have met all of the producer exchange training and certification program requirements necessary to sell insurance through an exchange, as provided in [section 4]; and

(b) individuals or entities that have met all the requirements to be certified by the commissioner as navigators.

(2) Upon request, the commissioner shall make available a list of insurance producers that are certified to sell a health benefit plan through an exchange and are operating near the requester's address. The commissioner shall also make available a list of certified navigators.

**Section 6.** Section 33-17-102, MCA, is amended to read:

**"33-17-102. Definitions.** As used in this title, the following definitions apply:

(1) (a) "Adjuster" means a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of an independent contractor or for a fee or commission investigates and negotiates the settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer.

(b) The term does not include a:

(i) licensed attorney who is qualified to practice law in this state;

(ii) salaried employee of an insurer or of a managing general agent;

(iii) licensed insurance producer who adjusts or assists in adjustment of losses arising under policies issued by the insurer;

(iv) licensed third-party administrator who adjusts or assists in adjustment of losses arising under policies issued by the insurer; or

(v) claims examiner as defined in 39-71-116.

(2) "Adjuster license" means a document issued by the commissioner that authorizes a person to act as an adjuster.

(3) (a) "Administrator" means a person who collects charges or premiums from residents of this state in connection with life, disability, property, or casualty insurance or annuities or who adjusts or settles claims on these coverages.

(b) The term does not include:

(i) an employer on behalf of its employees or on behalf of the employees of one or more subsidiaries of affiliated corporations of the employer;

(ii) a union on behalf of its members;

(iii) (A) an insurer that is either authorized in this state or acting as an insurer with respect to a policy lawfully issued and delivered by the insurer in and pursuant to the laws of a state in which the insurer is authorized to transact insurance; or

(B) a health service corporation as defined in 33-30-101;

(iv) a life, disability, property, or casualty insurance producer who is licensed in this state and whose activities are limited exclusively to the sale of insurance;

(v) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(vi) a trust established in conformity with 29 U.S.C. 186 or the trustees, agents, and employees of the trust;

(vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees and employees of the trust;

(viii) a custodian acting pursuant to a custodian account that meets the requirements of section 401(f) of the Internal Revenue Code or the agents and employees of the custodian;

(ix) a bank, credit union, or other financial institution that is subject to supervision or examination by federal or state banking authorities;

(x) a company that issues credit cards and that advances for and collects premiums or charges from the company's credit card holders who have authorized the company to do so, if the company does not adjust or settle claims;

(xi) a person who adjusts or settles claims in the normal course of the person's practice or employment as an attorney and who does not collect charges or premiums in connection with life or disability insurance or annuities; or

(xii) a person appointed as a managing general agent in this state whose activities are limited exclusively to those described in 33-2-1501(10) and Title 33, chapter 2, part 16.

(4) "Administrator license" means a document issued by the commissioner that authorizes a person to act as an administrator.

(5) (a) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(b) The term does not include an individual.

(6) "Consultant" means an individual who for a fee examines, appraises, reviews, evaluates, makes recommendations, or gives advice regarding an insurance policy, annuity, or pension contract, plan, or program.

(7) "Consultant license" means a document issued by the commissioner that authorizes an individual to act as an insurance consultant.

*(8) "Exchange" means a health benefit exchange established by the state of Montana or an exchange established by the United States department of health and human services in accordance with 42 U.S.C. 18031.*

~~(8)~~*(9)* "Home state" means the District of Columbia or any state or territory of the United States in which the insurance producer:

(a) maintains a principal place of residence or a principal place of business; and

(b) is licensed as an insurance producer.

~~(9)~~*(10)* "Individual" means a natural person.

~~(10)~~*(11)* "Insurance producer", except as provided in 33-17-103, means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

~~(11)~~*(12)* "Lapse" means the expiration of the license for failure to renew by the biennial renewal date.

~~(12)~~*(13)* "License" means a document issued by the commissioner that authorizes a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create actual, apparent, or inherent authority in the holder to represent or commit an insurer to a binding agreement.

~~(13)~~*(14)* "Limited line credit insurance" includes credit life insurance, credit disability insurance, credit property insurance, credit unemployment insurance, involuntary unemployment insurance, mortgage life insurance, mortgage guaranty insurance, mortgage disability insurance, gap insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing the credit obligation and that the commissioner determines should be designated as a form of limited line credit insurance.

~~(14)~~*(15)* "Limited line credit insurance producer" means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy.

~~(15)~~*(16)* "Limited lines insurance" means those lines of insurance that the commissioner finds necessary to recognize for the purposes of complying with 33-17-401(3).

~~(16)~~*(17)* "Limited lines producer" means a person authorized by the commissioner to sell, solicit, or negotiate limited lines insurance.

~~(17)~~*(18)* "Lines of authority" means any kind of insurance as defined in Title 33.

*(19) "Navigator" means a person certified by the commissioner under [section 2] and selected to perform the activities and duties identified in 42 U.S.C. 18031, et seq.*

~~(18)~~*(20)* "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract if the person engaged in negotiation either sells insurance or obtains insurance from insurers for purchasers.

~~(19)~~*(21)* "Person" means an individual or a business entity.

~~(20)~~*(22)* "Public adjuster" means an adjuster employed by and representing the interests of the insured.

~~(21)~~*(23)* "Sell" means to exchange a contract of insurance by any means, for money or the equivalent, on behalf of an insurance company.

~~(22)~~*(24)* "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance.

~~(23)~~*(25)* "Suspend" means to bar the use of a person's license for a period of time.

~~(24)~~*(26)* "Uniform application" means the national association of insurance commissioners' uniform application for resident and nonresident insurance producer licensing.

~~(25)~~*(27)* "Uniform business entity application" means the national association of insurance commissioners uniform business entity application for resident and nonresident business entities."

**Section 7.** Section 33-17-220, MCA, is amended to read:

**"33-17-220. Licensing background examination — entity registry criteria.** (1) (a) Each applicant *for a producer's license or navigator certification* shall obtain a complete background examination. The applicant or insurer shall pay the cost of the background examination. The background examination report must provide information to confirm:

(i) the applicant's:

(A) identity;

(B) current address;

(C) professional license certification; and

(D) military service; and

(ii) (A) existing or ongoing criminal investigations and court records relating to the applicant; and

(B) regulatory agencies' disciplinary actions concerning the applicant.

(b) The background examination is confidential and may not be held as part of the licensee's *or navigator's* public file.

(2) For the purpose of obtaining a state and a federal criminal records check pursuant to subsection (1), the commissioner may require a person applying for a license *or navigator certification* to submit a full set of fingerprints to the commissioner. The commissioner shall submit the fingerprints to the Montana department of justice. The Montana department of justice may exchange this fingerprint data with the federal bureau of investigation.

(3) The commissioner may require fingerprints to be collected and remitted in an electronic format to facilitate periodic resubmission of fingerprints.

(4) The commissioner may contract for the collection, transmission, and retention of fingerprints and may agree to a reasonable fee charged by a contractor for these services. If the commissioner contracts for services, the fee for collecting, transmitting, and retaining of fingerprints must be paid directly to the contractor by the applicant or insurer.

(5) The commissioner is authorized to receive criminal history record information in lieu of the Montana department of justice relating to fingerprints submitted to the federal bureau of investigation.

(6) The commissioner may adopt rules to further implement this section, including but not limited to rules on the length of time that a background examination is valid and rules for the electronic filing of fingerprints."

**Section 8.** Section 33-17-231, MCA, is amended to read:

**"33-17-231. Appointment of insurance producers — continuation and termination.** (1) Each insurer appointing an insurance producer in this state shall file with the commissioner the appointment, specifying the kinds of insurance to be transacted by the insurance producer for the insurer. The appointment may be electronically filed. The commissioner may adopt rules to implement electronic filing.

(2) Each appointment remains in effect until the insurance producer's license is revoked or otherwise terminated unless written notice of earlier termination of the appointment is filed with the commissioner by the insurer or the insurance producer. The written notice may be electronically filed. The

commissioner may adopt rules to implement electronic filing. Termination of the insurer's authority in Montana also terminates the appointment.

(3) Subject to the insurance producer's contract rights, an insurer may terminate an insurance producer's appointment at any time. The insurer shall promptly give written notice of the termination to the commissioner and to the insurance producer. The commissioner may require reasonable proof that the insurer has given notice to the insurance producer.

(4) As part of the notice of termination given the commissioner, the insurer shall file with the commissioner a statement of the facts relative to the termination and the cause of termination. Any information or statement contained in the notice of termination is not admissible as evidence in any action or proceeding against the insurer or any representative of the insurer by or on behalf of any person affected by the termination.

*(5) (a) An insurer that sells a qualified health plan in an exchange operating in this state shall appoint any producer who is certified by the commissioner pursuant to [section 4] and follows the appointment application process required by that insurer.*

*(b) To maintain the appointment, the producer shall maintain the producer's certification and license in good standing.*"

**Section 9. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

**Section 10. Codification instruction.** [Sections 2 through 5] are intended to be codified as an integral part of Title 33, chapter 17, and the provisions of Title 33, chapter 17, apply to [sections 2 through 5].

**Section 11. Effective date.** [This act] is effective July 1, 2013.

Approved April 22, 2013

## CHAPTER NO. 246

[HB 299]

AN ACT ESTABLISHING THE PATRICK A. PYETTE MEMORIAL HIGHWAY BETWEEN CHINOOK AND ZURICH ALONG U.S. HIGHWAY 2; ESTABLISHING THE JOSHUA THOMAS "JOSH" RUTHERFORD MEMORIAL HIGHWAY BETWEEN ZURICH AND THE BOUNDARY OF THE FORT BELKNAP RESERVATION ALONG U.S. HIGHWAY 2; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Patrick A. Pyette, working as the Undersheriff for the Blaine County Sheriff's Office in Chinook, died in the line of duty Wednesday, December 14, 2011, while directing traffic around the scene of a disabled truck on U.S. Highway 2, between Harlem and Chinook; and

WHEREAS, Patrick A. Pyette was dedicated to his community and the people of northcentral Montana and served the people of Montana with integrity and compassion during his 10 years in the Blaine County Sheriff's Office and as a lifelong Montanan; and

WHEREAS, Joshua Thomas "Josh" Rutherford, working as a Deputy for the Blaine County Sheriff's Office in Chinook, died in the line of duty Wednesday, May 29, 2003, while responding to a domestic disturbance not far from Harlem, where he lived; and

WHEREAS, Josh Rutherford was committed to his family and community and proud to serve in a career in law enforcement, as were his father, his brother, his sister, and others in his family; and

WHEREAS, U.S. Highway 2 is a crucial and essential transportation artery along Montana's storied "Hi-Line".

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Patrick A. Pyette memorial highway.** (1) There is established the Patrick A. Pyette memorial highway on the existing U.S. highway 2 from the eastern boundary of the city of Chinook to the community of Zurich.

(2) When existing road signs on the designated highway need replacement, the department shall provide appropriate markers to recognize the memorial designation of the highway.

(3) Maps that identify roadways in Montana must be updated to reflect the memorial designation in subsection (1) when the maps are updated.

**Section 2. Joshua Thomas "Josh" Rutherford memorial highway.** (1) There is established the Joshua Thomas "Josh" Rutherford memorial highway on the existing U.S. highway 2 from the community of Zurich to the boundary of the Fort Belknap Reservation.

(2) When existing road signs on the designated highway need replacement, the department shall provide appropriate markers to recognize the memorial designation of the highway.

(3) Maps that identify roadways in Montana must be updated to reflect the memorial designation in subsection (1) when the maps are updated.

**Section 3. Codification instruction.** [Sections 1 and 2] are intended to be codified as integral parts of Title 60, chapter 1, part 2, and the provisions of Title 60, chapter 1, part 2, apply to [sections 1 and 2].

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 22, 2013

# CHAPTER NO. 247

[HB 344]

AN ACT REVISING LAWS RELATING TO AGRICULTURAL COMMODITY DEALERS; AND PROVIDING PRODUCER PROTECTIONS IN CASE OF BANKRUPTCY.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Bankruptcy as grounds for cancellation.** (1) If a commodity dealer files for bankruptcy, a contract or any part of a contract for delivery of a commodity may be canceled without penalty to the producer if the cancellation involves only the remaining unperformed portions of the contract. A cancellation under this section:

(a) is not a breach of contract;

(b) is allowed even if not explicitly provided for in the contract.

(2) In the event of a cancellation, a commodity dealer remains responsible for payment that is due to the producer for delivered portions of the contract.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 80, chapter 4, and the provisions of Title 80, chapter 4, apply to [section 1].

Approved April 22, 2013

# CHAPTER NO. 248

[HB 352]

AN ACT CLARIFYING PROVISIONS RELATED TO THE APPOINTMENT OF ACTING JUSTICES OF THE PEACE; AMENDING SECTION 3-10-231, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 3-10-231, MCA, is amended to read:

**"3-10-231. Circumstances in which acting justice called in — by whom.** (1) Whenever a justice of the peace is disqualified from acting in any action because of the application of the supreme court's rules on disqualification ~~and substitution of judges, 3-1-803 and 3-1-805, the justice of the peace shall either transfer the action to another justice's court in the same county or call a justice from a neighboring county to preside.~~ *and substitution of judges, provided for in 3-1-803 and 3-1-805, the justice of the peace shall:*

*(a) transfer the action to another justice's court in the same county; or*

*(b) request a district court judge presiding in the county to appoint a qualified substitute from the list provided in subsection (2) or call a justice from a neighboring county to preside.*

(2) (a) The following requirements must be met to qualify a substitute for a justice of the peace:

(i) Within 30 days of taking office, a justice of the peace shall provide a list of persons who are qualified to hold court in the justice's place during a temporary absence ~~when another justice or city judge is not available~~. *Each person listed must be a current or former judge, a current or former attorney, current court personnel, or a former law enforcement officer.* The persons listed must *also* be of good moral character and have community support, a sense of community standards, and a basic knowledge of court procedure.

(ii) The sitting justice of the peace shall request and obtain from the commission on courts of limited jurisdiction established by the supreme court a waiver of training for the substitutes.

(iii) Each person on the list~~,~~ provided for in subsection (2)(a)(i)~~,~~ shall subscribe to the written oath of office as soon as possible after the person has received a waiver of training from the supreme court. The oath may be subscribed before any member of the board of county commissioners or before any other officer authorized to administer oaths.

(b) The list of qualified substitutes, the written oath, and the commission's written approval and waiver of training for those substitutes~~,~~ pursuant to subsection (2)(a)(ii)~~,~~ must be filed with the county clerk as provided in 3-10-202.

(c) A county clerk may provide a current list of qualified and sworn substitutes to local law enforcement officers.

(3) Whenever a justice is sick, disabled, ~~or~~ absent, *or otherwise unable to act,* the justice may call in another justice~~, if there is one readily available,~~ or a city judge or a person from the list provided for in subsection (2) to hold court for the ~~absent~~ justice until the ~~absent justice's return~~ *justice is able to act*. If the justice

is unable to call in a substitute, the county commissioners shall call in another justice, a city judge, or a person from the list provided for in subsection (2).

(4) During the time when a justice of the peace is on vacation or attending a training session, another justice of the peace of the same county is authorized to handle matters that otherwise would be handled by the absent justice. When there is no other justice of the peace in the county, the justice of the peace may designate another person in the same manner as ~~if the justice were sick or absent~~ *provided in subsection (3)*.

(5) A justice of the peace of any county may hold the court of any other justice of the peace at that justice's request."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 22, 2013

# CHAPTER NO. 249

[HB 410]

AN ACT CREATING THE MONTANA THIRD-PARTY VOTER REGISTRATION INTEGRITY ACT; AND ESTABLISHING REQUIREMENTS FOR THIRD-PARTY REGISTRARS CONCERNING MAILING OUT AND RETURNING VOTER REGISTRATION AND ABSENTEE BALLOT APPLICATIONS.

WHEREAS, the purpose of third-party voter registration organizations and individuals is to deliver voter registration and absentee ballot documentation, and the integrity of these organizations and individuals is critical.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 4] may be cited as the "Montana Third-Party Voter Registration Integrity Act".

**Section 2. Definitions.** As used in [sections 1 through 4], the following definitions apply:

(1) "Campaign literature" means material that advocates the success or defeat of a candidate, political party, or ballot issue.

(2) "Third-party registrar" means a person, other than an election official, who is supporting an organized effort to register voters or to assist voters in applying for absentee ballots.

**Section 3. Prohibitions concerning mailings.** A third-party registrar may not mail a voter registration or absentee ballot application in the same envelope as campaign literature if the envelope is marked to resemble a mailing from an election office.

**Section 4. Return of voter registration and absentee ballot applications.** A third-party registrar may not mail or advise an applicant to mail a voter registration or absentee ballot application to any address other than the county election administrator's address in the applicant's county of residence.

**Section 5. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 13, chapter 35, and the provisions of Title 13, chapter 35, apply to [sections 1 through 4].

Approved April 22, 2013

# CHAPTER NO. 250

[HB 446]

AN ACT REVISING THE OFFENSE OF DISORDERLY CONDUCT; PROVIDING THAT DISCHARGING FIREARMS IS NOT DISORDERLY CONDUCT; AND AMENDING SECTION 45-8-101, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 45-8-101, MCA, is amended to read:

**"45-8-101. Disorderly conduct.** (1) A person commits the offense of disorderly conduct if the person knowingly disturbs the peace by:

(a) quarreling, challenging to fight, or fighting;

(b) making loud or unusual noises;

(c) using threatening, profane, or abusive language;

~~(d) discharging firearms, except at a shooting range during established hours of operation;~~

~~(e)~~*(d)* rendering vehicular or pedestrian traffic impassable;

~~(f)~~*(e)* rendering the free ingress or egress to public or private places impassable;

~~(g)~~*(f)* disturbing or disrupting any lawful assembly or public meeting;

~~(h)~~*(g)* transmitting a false report or warning of a fire or other catastrophe in a place where its occurrence would endanger human life;

~~(i)~~*(h)* creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; or

~~(j)~~*(i)* transmitting a false report or warning of an impending explosion in a place where its occurrence would endanger human life.

(2) Except as provided in subsection (3), a person convicted of the offense of disorderly conduct shall be fined *an amount* not to exceed $100 or be imprisoned in the county jail for a term not to exceed 10 days, or both.

(3) A person convicted of a violation of subsection ~~(1)(j)~~ *(1)(i)* shall be fined *an amount* not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both."

Approved April 22, 2013

# CHAPTER NO. 251

[HB 448]

AN ACT REVISING DEADLINES FOR COMMUNITY COLLEGE TRUSTEE CANDIDACY FILINGS; AND AMENDING SECTIONS 20-15-219 AND 20-15-221, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-15-219, MCA, is amended to read:

**"20-15-219. Qualifications for office of trustee — nominating petitions.** (1) Any person who is qualified to vote in a community college district under the provisions of 20-20-301 is eligible for the office of community college trustee.

(2) Any five electors of a community college district qualified under the provisions of 20-20-301 may nominate as many trustee candidates as there are trustee positions subject to election at the ensuing election. A nominating

petition containing the signatures of the five electors and the name of each person nominated for candidacy must be submitted to the election clerk designated by the board of trustees no less than ~~30~~ *40* days before the regular school election day at which the person is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated must also be indicated."

**Section 2.** Section 20-15-221, MCA, is amended to read:

**"20-15-221. Election of trustees after organization of community college district.** (1) After organization, the registered electors of the community college district qualified to vote under the provisions of 20-20-301 shall annually vote for trustees on the regular school election day provided for in 20-3-304. The election must be conducted in accordance with the election provisions of this title whenever the provisions are made applicable to community college districts. Elections must be conducted by the component elementary school districts within the community college district upon the order of the board of trustees of the community college district. The order must be transmitted to the appropriate trustees not less than 40 days prior to the regular school election day.

(2) Notice of the community college district trustee election must be given by the board of trustees of the community college district by publication in one or more newspapers of general circulation within each county, not less than once a week for 2 consecutive weeks, with the last insertion to be no more than 1 week prior to the date of the election. This notice is in addition to the election notice to be given by the trustees of the component elementary districts under the school election laws.

(3) If trustees are elected other than at large throughout the entire district, then only those qualified voters within the area from which the trustee or trustees are to be elected may cast their ballots for the trustee or trustees from that area. In addition to the nominating petition required by 20-15-219(2), all candidates for the office of trustee shall file their declarations of candidacy with the secretary of the board of trustees of the community college district not less than ~~30~~ *40* days prior to the date of election. If an electronic voting system is not used in the component elementary school district or districts that conduct the election, the board of trustees of the community college district shall cause ballots to be printed and distributed for the polling places in the component districts at the expense of the community college district, but in all other respects the elections must be conducted in accordance with the school election laws. All costs incident to election of the community college trustees must be borne by the community college district, including one-half of the compensation of the judges for the school elections. However, if the election of the community college district trustees is the only election conducted, the community college district shall compensate the district for the total cost of the election."

Approved April 22, 2013

## CHAPTER NO. 252

[HB 461]

AN ACT INCREASING THE PENSION BENEFIT AMOUNT THAT THE BOARD OF TRUSTEES OF A FIRE DEPARTMENT RELIEF ASSOCIATION MAY SET FOR MEMBERS OF THE ASSOCIATION WHO ARE

VOLUNTEERS; AMENDING SECTION 19-18-602, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 19-18-602, MCA, is amended to read:

**"19-18-602. Service pension.** (1) Each association shall pay, out of its disability and pension fund, a service pension to ~~each of its members~~ *a member* who elects to retire from active service after having completed 20 years or more of active duty and *who* has reached ~~the age of~~ 50 years *of age* as a fully paid member of a paid or partly paid and partly volunteer fire department of the city or town in which the association was formed. The pension must be equal to one-half of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for the member's services as an active member of the fire department.

(2) Effective July 1, 1974, a member who completes 20 years of service and elects to serve additional years must receive the pension provided for in subsection (1) increased at the rate of 1% a year for each additional year of service completed, up to a maximum of 60% of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for services as an active member of the fire department. A member is not eligible to receive a service pension prior to attaining ~~the age of~~ 50 years *of age*.

(3) (a) The monthly pension paid to members retiring on or after July 1, 1973, must be at least one-half the regular monthly salary, excluding overtime and payments in lieu of sick leave and annual leave, paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. The monthly pension paid to a member retiring prior to July 1, 1974, must be at least $200.

(b) In the case of volunteer firefighters, the pension may be set by the board of trustees of the association, but may not exceed ~~$225~~ *$225* a month*, except that the pension may be set by the board of trustees of an association and a city at an amount not to exceed $300 a month if the association's fund is soundly funded, as provided in 19-18-503*.

(4) As of July 1, 1977, a member is not eligible to receive a service pension under this section unless the member is making a monthly contribution to the disability and pension fund, as required by 19-18-501, and is on active duty as a fully paid member of a fire department when the member reaches ~~the age of~~ 50 years *of age*.

(5) A member of a pure volunteer fire department who has served 20 years or more as an active member of the fire department is entitled to the benefits provided for in this chapter regardless of age. A member of a pure volunteer fire department who has completed 10 ~~years'~~ *years of* service as an active member of the fire department but who is prevented from completing 20 ~~years'~~ *years of* service by dissolution or discontinuance of the member's volunteer fire department, personal relocation because of transfer or loss of employment, personal disability, or any other factor beyond the member's reasonable control may qualify for a partial or reduced pension in an amount and to the extent determined by the board of trustees of the association, regardless of age."

**Section 2. Effective date.** [This act] is effective July 1, 2013.

Approved April 22, 2013

# CHAPTER NO. 253

[HB 485]

AN ACT REVISING LANDLORD TENANT LAWS TO PROVIDE THAT JUSTICES' COURTS HAVE CONCURRENT JURISDICTION WITH THE DISTRICT COURTS WITHIN THEIR RESPECTIVE COUNTIES IN ACTIONS PERTAINING TO RESIDENTIAL TENANTS' SECURITY AND RENT DEPOSITS AND ACTIONS BASED ON THE MONTANA RESIDENTIAL MOBILE HOME LOT RENTAL ACT; AMENDING SECTION 3-10-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 3-10-302, MCA, is amended to read:

**"3-10-302. Jurisdiction over forcible entry, unlawful detainer, *rent deposit,* and residential *and residential mobile home* landlord-tenant disputes.** The justices' courts have concurrent jurisdiction with the district courts within their respective counties in actions of forcible entry ~~and~~, unlawful detainer*, and rent deposits* and in actions brought under Title 70, chapter 24*, Title 70, chapter 25, and Title 70, chapter 33*."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 22, 2013

# CHAPTER NO. 254

[HB 508]

AN ACT ALLOWING THE DEPARTMENT OF JUSTICE TO WAIVE THE COMMERCIAL DRIVER'S LICENSE SKILLS TEST FOR VETERANS WITH MILITARY COMMERCIAL MOTOR VEHICLE EXPERIENCE; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION 61-5-110, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Waiver of skills test for veterans with military commercial motor vehicles experience — rulemaking.** The department may waive the skills test required for a commercial driver's license if an applicant who is a veteran of the armed forces of the United States:

(1) certifies that, during the 2-year period immediately prior to application, the applicant:

(a) did not have more than one license except for a military license;

(b) did not have a license suspended, revoked, or canceled;

(c) was not convicted of a disqualifying offense as provided in 49 CFR 383.51(b);

(d) did not have more than one conviction for a serious traffic violation as provided in 49 CFR 383.51(c); and

(e) did not have any conviction for a violation of military, state, or local law relating to motor vehicle traffic control other than a parking violation arising in connection with any traffic accident and has no record of an accident in which the applicant was at fault.

(2) provides evidence and certifies that:

(a) the applicant is regularly employed, or within the last 90 days was regularly employed, in a military position requiring operation of a commercial motor vehicle;

(b) the applicant was exempted under 49 CFR 383.3(c) from the requirements of this part when operating a commercial motor vehicle in the military; and

(c) for at least 2 years immediately preceding the applicant's honorable separation from military service as evidenced by the applicant's certificate of release or discharge from active duty, the applicant was operating a motor vehicle representative of the class of motor vehicle for which the applicant is seeking a commercial driver's license.

(3) The department shall adopt rules necessary for the administration of this section.

**Section 2.** Section 61-5-110, MCA, is amended to read:

**"61-5-110. Records check of applicants — examination of applicants — *test waiver* — cooperative driver testing programs.** (1) Prior to examining an applicant for a driver's license, the department shall conduct a check of the applicant's driving record by querying the national driver register, established under 49 U.S.C. 30302, and the commercial driver's license information system, established under 49 U.S.C. 31309.

(2) (a) The department shall examine each applicant for a driver's license or motorcycle endorsement, except as otherwise provided in this section. The examination must include a test of the applicant's eyesight, a knowledge test examining the applicant's ability to read and understand highway signs and the applicant's knowledge of the traffic laws of this state, and, except as provided in 61-5-118, a road test or a skills test demonstrating the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle or motorcycle. The road test or skills test must be performed by the applicant in a motor vehicle that the applicant certifies is representative of the class and type of motor vehicle for which the applicant is seeking a license or endorsement.

(b) The knowledge test, road test, or skills test may be waived by the department upon certification of the applicant's successful completion of the test by a certified cooperative driver testing program, as provided in subsection (3) or by a certified third-party commercial driver testing program as provided in 61-5-118.

*(c) The skills test may be waived by the department upon the applicant's completion of the requirements of [section 1].*

(3) The department is authorized to certify as a cooperative driver testing program any state-approved high school traffic education course offered by or in cooperation with a school district that employs an approved instructor who has current endorsement from the superintendent of public instruction as a teacher of traffic education or any motorcycle safety training course approved by the board of regents and that employs an approved instructor of motorcycle safety training and who agrees to:

(a) administer standardized knowledge and road tests or skills tests required by the department to students participating in the district's high school traffic education courses or motorcycle safety training courses approved by the board of regents;

(b) certify the test results to the department; and

(c) comply with regulations of the department, the superintendent of public instruction, and the board of regents.

(4) (a) Except as otherwise provided by law, a resident who has a valid driver's license issued by another jurisdiction may surrender that license for a Montana license of the same class, type, and endorsement upon payment of the

required fees and successful completion of a vision examination. In addition, a resident surrendering a commercial driver's license issued by another jurisdiction shall successfully complete any examination required by federal regulations before being issued a commercial driver's license by the department.

(b) The department may require an applicant who surrenders a valid driver's license issued by another jurisdiction to submit to a knowledge and road or skills test if:

(i) the applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the surrendered license does not include readily discernible adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify a restriction imposed on the surrendered license.

(c) When a license from another jurisdiction is surrendered, the department shall notify the issuing agency from the other jurisdiction that the applicant has surrendered the license. If the applicant wants to retain the license from another jurisdiction for identification or other nondriving purposes, the department shall place a distinctive mark on the license, indicating that the license may be used for nondriving purposes only, and return the marked license to the applicant."

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 61, chapter 5, part 1, and the provisions of Title 61, chapter 5, part 1, apply to [section 1].

Approved April 22, 2013

# CHAPTER NO. 255

[HB 510]

AN ACT REPLACING MANDATORY ANNUAL ABSENTEE BALLOT LIST ADDRESS CONFIRMATION PROCEDURES FOR ELECTION ADMINISTRATORS WITH BIENNIAL PROCEDURES; AMENDING THE STANDARD VOTER REGISTRATION AND ABSENTEE BALLOT REQUEST APPLICATION; ALLOWING ELECTORS TO REQUEST REMOVAL FROM THE ABSENTEE BALLOT LIST; AND AMENDING SECTIONS 13-1-210, 13-13-212, AND 13-21-210, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 13-1-210, MCA, is amended to read:

**"13-1-210. Standard application form for voter registration and absentee ballot requests.** (1) The secretary of state shall establish by rule a standard application form, to be used by each election administrator, that allows an individual to apply for voter registration and to request to be added to the absentee ballot list in order to receive ballots for subsequent elections.

(2) Pursuant to 13-13-212(4), the absentee ballot application portion of the standard form must include substantially the following language and options:

Optional: I request an absentee ballot to be mailed to me for as long as I reside at the address listed:

[] for each subsequent election in which I am eligible to vote; or

[] for each subsequent federal election in which I am eligible to vote.

I understand that in order to continue to receive an absentee ballot, I must complete, sign, and return a confirmation form that will be mailed to me in January of ~~each~~ *every even-numbered* year."

**Section 2.** Section 13-13-212, MCA, is amended to read:

**"13-13-212. Application for absentee ballot — special provisions — ~~annual~~ *biennial* absentee ballot list.** (1) (a) Except as provided in subsection (1)(b), an elector may apply for an absentee ballot by using a standard application form provided by rule by the secretary of state pursuant to 13-1-210 or by making a written request, which must include the applicant's birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in 13-13-211.

(b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the special absentee election board provided for in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the special absentee election board at the elector's place of confinement, hospitalization, or residence within the county.

(c) A request under this subsection (2) must be received by the election administrator within the time period specified in 13-13-211(2).

(3) An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator.

(4) (a) An elector may at any time request to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains qualified to vote and resides at the address provided in the initial application. The request may be made when the individual applies for voter registration using the standard application form provided for in 13-1-210.

(b) The election administrator ~~shall~~ ~~annually~~ *shall biennially* mail a forwardable address confirmation form to each elector who has requested an absentee ballot for subsequent elections. ~~The~~ *The* address confirmation form must be mailed in January *of every even-numbered year*. The address confirmation form is for elections to be held between February 1 following the mailing through January of the ~~succeeding~~ *next even-numbered* year. The elector shall sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the election administrator shall remove the elector from the ~~annual~~ *biennial* absentee ballot list.

*(c) An elector may request to be removed from the biennial absentee ballot list for subsequent elections by notifying the election administrator in writing.*

~~(e)~~*(d)* An elector who has been *or who requests to be* removed from the ~~annual~~ *biennial* absentee ballot list may subsequently request to be mailed an absentee ballot for each subsequent election.

(5) In a mail ballot election, ballots must be sent under mail ballot procedures rather than under the absentee ballot procedures set forth in subsection (4)."

**Section 3.** Section 13-21-210, MCA, is amended to read:

**"13-21-210. Application for absentee ballots.** (1) (a) A United States elector may apply for a regular absentee ballot as follows:

(i) by making a written request, which must include the elector's birth date and signature;

(ii) by properly completing, signing, and returning to the election administrator the federal post card application;

(iii) by making an electronic request that includes the elector's birth date and affirmation of the voter's eligibility to vote under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff, et seq.; or

(iv) by submitting to the election administrator the standard application form provided for in 13-1-210 when registering to vote.

(b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) An application for a regular absentee ballot must be received by the appropriate county election administrator by the time specified in 13-2-304 for late registration.

(3) An application under this section is valid for all federal, state, and local elections in the calendar year in which the application is made unless an elector requests to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains eligible to vote and resides at the address provided in the initial application.

(4) If an ~~elector fails to provide the~~ *elector fails to provide the* address confirmation ~~required by~~ *required by* 13-13-212, the elector must be removed from the ~~annual~~ *biennial* absentee ballot list. An elector who is removed from the ~~annual~~ *biennial* absentee ballot list will continue to receive absentee ballots during the period covered in the elector's initial application under this section.

(5) The elector's county election administrator shall provide the elector with a regular absentee ballot for the elections described in subsection (3) as soon as the ballots are printed, but not later than 45 days before either a federal primary election, federal general election, or federal special election."

Approved April 22, 2013

# CHAPTER NO. 256

[HB 546]

AN ACT SETTING AERONAUTIC SAFETY STANDARDS FOR METEOROLOGICAL EVALUATION TOWERS; REQUIRING REPORTS AND PUBLIC NOTIFICATION; PROVIDING THAT A VIOLATION OF THE STANDARDS FOR METEOROLOGICAL EVALUATION TOWERS IS A

MISDEMEANOR; PROVIDING A TRANSITION PERIOD FOR COMPLIANCE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Standards for meteorological evaluation towers — report — notification — penalty.** (1) The requirements of subsection (2) apply to a meteorological evaluation tower:

(a) that is 50 feet or more in height;

(b) that is located outside the boundaries of an incorporated city or town;

(c) that is on land that is primarily rural or undeveloped or used for agricultural purposes; and

(d) the appearance of which is not otherwise governed by state or federal law, rule, or regulation.

(2) A meteorological evaluation tower that meets the description provided in subsection (1) must:

(a) be painted in seven equal-width and alternating bands of aviation orange and white beginning with orange at the top of the tower and ending with orange at the base;

(b) have two marker balls attached to and evenly spaced on each of the tower's outside guy wires; and

(c) have a yellow safety sleeve on each guy wire that extends 7 feet up from the anchor point of the guy wire.

(3) Not less than 10 working days prior to erecting a meteorological evaluation tower subject to this section, the owner of the tower shall provide a report to the department that identifies the owner and specifies the tower's location, height, and other information that the department finds necessary for aviation safety.

(4) The owner of a meteorological evaluation tower subject to this section who is removing the tower shall report its removal to the department within 10 working days of its removal.

(5) A person who violates subsection (3) or (4) is guilty of a misdemeanor.

(6) Within 5 working days of receiving information pursuant to subsection (3) or (4), the department shall make the information, excluding the ownership of the tower, available to the public.

(7) For the purposes of this section, the following definitions apply:

(a) "Height" means the distance from the original grade at the base of the tower to the highest point of the tower.

(b) "Meteorological evaluation tower" means a structure erected and standing for any period of time whatsoever, whether self-standing or supported by guy wires and ground anchors and including all guy wires and accessory facilities, on which a meteorological instrument is mounted for the purpose of documenting whether a site has sufficient wind resources for the operation of a wind turbine generator.

**Section 2. Transition.** The owner of a tower meeting the description provided in [section 1] that was erected prior to [the effective date of this act] shall bring the tower into compliance with the standards provided in [section 1] within 1 year of [the effective date of this act].

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 67, chapter 1, and the provisions of Title 67, chapter 1, apply to [section 1].

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 22, 2013

# CHAPTER NO. 257

[HB 552]

AN ACT REVISING THE LAWS REGARDING LEGISLATIVE BROADCASTING AND TELEVISION MONTANA; AND AMENDING SECTIONS 5-11-1101, 5-11-1102, AND 5-11-1111, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 5-11-1101, MCA, is amended to read:

**"5-11-1101. Legislative findings and purpose.** The legislature finds and declares that:

(1) the purpose of a state-funded public affairs broadcasting program is to provide Montana citizens with increased access to unbiased information about state government deliberations and public policy events through unedited television coverage and other communications technologies; and

(2) the most efficient and effective means of establishing *and maintaining* a state-funded public affairs broadcasting program is to assign the enabling responsibilities to the legislative council and require the division to contract with a qualified operator through a competitive bidding process."

**Section 2.** Section 5-11-1102, MCA, is amended to read:

**"5-11-1102. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Broadcasting" means any application of communication technologies to deliver live or delayed programming to a viewing audience, including but not limited to over-the-air television broadcasts, cable television, and the streaming of ~~compressed~~ audio or video signals over the internet.

(2) "Division" means the legislative services division provided for in 5-11-111.

(3) "Gavel-to-gavel coverage" means that any ~~camera that is used to capture and transmit~~ *broadcast of* legislative or administrative proceedings is activated when the presiding officer of a floor session or *a* committee *meeting* calls the ~~meeting~~ *body* to order and is deactivated on adjournment.

(4) "Operator" means a private, nonprofit organization exempt from taxation under section 501(c) of the Internal Revenue Code."

**Section 3.** Section 5-11-1111, MCA, is amended to read:

**"5-11-1111. State government broadcasting — structure and governance.** (1) There is a state government broadcasting service administered by the division. The division shall:

(a) develop and issue a request for proposals for the ~~provision~~ *production* of gavel-to-gavel coverage of legislative and administrative proceedings as well as other public affairs programming that is approved by the legislative council;

(b) evaluate proposals and, on the basis of selection criteria established by the division, execute a contract for services with the most qualified operator; and

(c) cooperate with executive branch and judicial branch officials to facilitate broadcast coverage of state government activities and events that are pertinent to the purpose set forth in 5-11-1101.

(2) The legislative council shall assist the division in exercising oversight of the contract with the operator to ensure that broadcasts conform with the following principles of good conduct:

(a) Programming must be fair, accurate, and balanced without regard to partisanship or ideology.

(b) Programming must be scheduled in a manner that acknowledges the importance of timeliness in the delivery of information.

(c) Issue coverage and the scheduling of broadcasts must reflect a thoughtful balance of subject areas, geographic sensitivities, and attention to the various committees and other deliberative bodies engaged in the legislative process.

(d) Programming must always be intended to increase public understanding of both the substantive issues and the processes by which the legislature and other bodies seek to resolve problems, address challenges, and seize opportunities for the public good.

(e) Programming must ~~reflect the importance of~~ *include* each branch of government *to the extent possible*.

(f) Production values must be of the highest attainable quality to accurately convey the genuine pace and tenor of governmental activity.

(g) Camera angles, shot selection, graphic subtitling, and other aspects of broadcast style and audiovisual content ~~must be~~ *are* subject to guidance and monitoring by the division to ensure impartiality and respect for the decorum of the legislature and other governmental institutions.

(3) The division is responsible for ensuring that the audio *and video* components of the broadcasting service are maintained in good working order.

(4) Operations and maintenance of the cameras, cabling, wiring, electronics, recording equipment, and associated ~~computer~~ *information* technology in the capitol and the ~~adjacent~~ broadcast production facility are the responsibility of the operator *or contractor* that the division selects, as provided in subsection (1)(b) *under the direction of the division*. ~~However, the~~ *The operator, the contractor, if any, the* division, and the department of administration shall cooperate with ~~the operator~~ *each other* to ensure broadcast system reliability.

(5) The ~~operator and the~~ division shall develop and implement a plan to provide the maximum attainable *transmission or* distribution of broadcasts~~, and the contract between the operator and the division may require the operator to~~. *The division may* enter into agreements with one or more Montana public television organizations, telecommunications firms, nonprofit organizations, or state telecommunications networks *for transmission or distribution of broadcasts*."

Approved April 22, 2013

# CHAPTER NO. 258

[SB 43]

AN ACT REVISING LAWS GOVERNING THE INVESTIGATION OF ALLEGED MISTREATMENT, NEGLECT, OR ABUSE OF RESIDENTS AT A RESIDENTIAL FACILITY; REQUIRING THAT REPORTS BE SUBMITTED TO THE STATE PROTECTION AND ADVOCACY PROGRAM; PROVIDING THAT INVESTIGATIONS BE CONDUCTED BY THE DEPARTMENT OF JUSTICE; AND AMENDING SECTION 53-20-163, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 53-20-163, MCA, is amended to read:

**"53-20-163. Abuse of residents prohibited.** (1) ~~Every residential facility shall prohibit mistreatment, neglect, or abuse in any form of any resident~~ *Any form of mistreatment, neglect, or abuse of a resident is prohibited*.

*(2) A residential facility shall publish in each cottage and building and circulate to staff a written policy statement that defines the facility's requirements for reporting and investigating allegations of mistreatment, neglect, or abuse and injuries from an unknown source.*

*(3)* ~~Alleged violations~~ *Each allegation of mistreatment, neglect, or abuse and each injury from an unknown source* must be reported immediately to the superintendent of the facility *and to the department of justice*, and ~~there must be~~ *the residential facility shall maintain* a written record that:

*(a) each allegation and each injury from an unknown source has been reported to the department of justice;*

~~(a)~~*(b)* each ~~alleged violation~~ *allegation and each injury from an unknown source* has been thoroughly investigated and findings stated; ~~and~~

~~(b)~~*(c)* the investigation into the ~~alleged violation~~ *allegation or injury from an unknown source* was initiated within 24 hours of the report of the incident*;* and

*(d)* the results were reported to the director of the department of public health and human services.

~~(2)~~*(4)* ~~The reports~~ *The residential facility shall report the details of each reported allegation, including providing the written record created pursuant to this section,* ~~must also be made~~ to the mental disabilities board of visitors ~~monthly~~ *and the state protection and advocacy program for individuals with developmental disabilities, as authorized by 42 U.S.C. 15043(a)(2), within 5 business days of the incident. The residential facility may not redact any information that is provided pursuant to this subsection. The mental disabilities board of visitors and the state protection and advocacy program shall maintain the confidentiality of any report received under this section to the same extent that the reports are confidential under state and federal laws applicable to the residential facility.* ~~Each facility shall cause a written statement of this policy to be posted in each cottage and building and circulated to all staff members.~~

*(5) Upon receiving a report of an allegation of mistreatment, neglect, or abuse or of an injury from an unknown source, the department of justice shall conduct a thorough investigation of each allegation or each injury from an unknown source and provide a written report of its investigation and findings to the superintendent of the residential facility within 5 business days of the incident.*

*(6) The residential facility shall provide the department of justice with access to records and other information necessary to conduct investigations under this section. The department of justice shall maintain the confidentiality of any information received in the course of conducting investigations under this section to the same extent that the information is confidential under state and federal laws applicable to the residential facility.*

*(7) If a state licensing authority or federal medicaid certification authority issues a statement of deficiency indicating that the residential facility has failed to meet licensing or certification standards due to the thoroughness or timeliness of an investigation conducted under this section, the department of justice shall participate in preparing a plan of correction to restore the residential facility's compliance with licensing or certification standards.*

*(8) If in the course of conducting an investigation under this section the department of justice develops reasonable cause to believe that a criminal offense has occurred, the department of justice shall refer the matter to the appropriate local law enforcement agency.*"

Approved April 21, 2013

# CHAPTER NO. 259

[SB 106]

AN ACT REVISING THE DEFINITION OF "ELIGIBLE RENEWABLE RESOURCE" FOR THE PURPOSES OF ADMINISTERING THE RENEWABLE PORTFOLIO STANDARD; AMENDING SECTION 69-3-2003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 69-3-2003, MCA, is amended to read:

**"69-3-2003. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Ancillary services" means services or tariff provisions related to generation and delivery of electric power other than simple generation, transmission, or distribution. Ancillary services related to transmission services include energy losses, energy imbalances, scheduling and dispatching, load following, system protection, spinning reserves and nonspinning reserves, and reactive power.

(2) "Balancing authority" means a transmission system control operator who balances electricity supply and load at all times to meet transmission system operating criteria and to provide reliable electric service to customers.

(3) "Common ownership" means the same or substantially similar persons or entities that maintain a controlling interest in more than one community renewable energy project even if the ownership shares differ between two community renewable energy projects. Two community renewable energy projects may not be considered to be under common ownership simply because the same entity provided debt or equity or both debt and equity to both projects.

(4) "Community renewable energy project" means an eligible renewable resource that:

(a) is interconnected on the utility side of the meter in which local owners have a controlling interest and that is less than or equal to 25 megawatts in total calculated nameplate capacity; or

(b) is owned by a public utility and has less than or equal to 25 megawatts in total nameplate capacity.

(5) (a) "Competitive electricity supplier" means any person, corporation, or governmental entity that is selling electricity to small customers at retail rates in the state of Montana and that is not a public utility or cooperative.

(b) The term does not include governmental entities selling electricity produced only by facilities generating less than 250 kilowatts that were in operation prior to 1990.

(6) "Compliance year" means each calendar year beginning January 1 and ending December 31, starting in 2008, for which compliance with this part must be demonstrated.

(7) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(8) "Dispatch ability" means the ability of either a balancing authority or the owner of an electric generating resource to rapidly start, stop, increase, or decrease electricity production from that generating resource in order to respond to the balancing authority's need to match supply resources to loads on the transmission system.

(9) "Electric generating resource" means any plant or equipment used to generate electricity by any means.

(10) "Eligible renewable resource" means a facility either located within Montana or delivering electricity from another state into Montana that commences commercial operation after January 1, 2005, and that produces electricity from one or more of the following sources:

(a) wind;

(b) solar;

(c) geothermal;

(d) water power, in the case of a hydroelectric project that:

(i) does not require a new appropriation, diversion, or impoundment of water and that has a nameplate rating of 10 megawatts or less; or

(ii) is installed at an existing reservoir or on an existing irrigation system that does not have hydroelectric generation as of April 16, 2009, and has a nameplate capacity of 15 megawatts or less;

(e) landfill or farm-based methane gas;

(f) gas produced during the treatment of wastewater;

(g) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic fuels from wood, forest, or field residues, except that the term does not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic;

(h) hydrogen derived from any of the sources in this subsection (10) for use in fuel cells; *and*

~~(i)~~*(i)* the renewable energy fraction from ~~the sources identified in subsections (10)(a) through (10)(j) of electricity production from a multiple-fuel process with fossil fuels; and~~

~~(j) compressed air derived from any of the sources in this subsection (10) that is forced into an underground storage reservoir and later released, heated, and passed through a turbine generator~~*:*

*(i) the sources identified in this subsection (10) of electricity production from a multiple-fuel process with fossil fuels;*

*(ii) flywheel storage as defined in 15-6-157(4)(d);*

*(iii) hydroelectric pumped storage as defined in 15-6-157(4)(e);*

*(iv) batteries; and*

*(v) compressed air derived from any of the sources in this subsection (10) that is forced into an underground storage reservoir and later released, heated, and passed through a turbine generator*.

(11) "Local owners" means:

(a) Montana residents;

(b) general partnerships of which all partners are Montana residents;

(c) business entities organized under the laws of Montana that:

(i) have less than $50 million of gross revenue;

(ii) have less than $100 million of assets; and

(iii) have at least 50% of the equity interests, income interests, and voting interests owned by Montana residents;

(d) Montana nonprofit organizations;

(e) Montana-based tribal councils;

(f) Montana political subdivisions or local governments;

(g) Montana-based cooperatives other than cooperative utilities; or

(h) any combination of the individuals or entities listed in subsections (11)(a) through (11)(g).

(12) "Nonspinning reserve" means offline generation that can be ramped up to capacity and synchronized to the grid within 10 minutes and that is needed to maintain system frequency stability during emergency conditions, unforeseen load swings, and generation disruptions.

(13) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on January 1, 2005, including the public utility's successors or assignees.

(14) "Renewable energy credit" means a tradable certificate of proof of 1 megawatt hour of electricity generated by an eligible renewable resource that is tracked and verified by the commission and includes all of the environmental attributes associated with that 1 megawatt-hour unit of electricity production.

*(15) "Renewable energy fraction" means the proportion of electricity output directly attributable to electricity and associated renewable energy credits produced by one of the sources identified in subsection (10).*

~~(15)~~*(16)* "Seasonality" means the degree to which an electric generating resource is capable of producing electricity in each of the seasons of the year.

~~(16)~~*(17)* "Small customer" means a retail customer that has an individual load with an average monthly demand of less than 5,000 kilowatts.

~~(17)~~*(18)* "Spinning reserve" means the online reserve capacity that is synchronized to the grid system and immediately responsive to frequency control and that is needed to maintain system frequency stability during emergency conditions, unforeseen load swings, and generation disruptions.

~~(18)~~*(19)* "Total calculated nameplate capacity" means the calculation of total nameplate capacity of the community renewable energy project and other eligible renewable resources that are:

(a) located within 5 miles of the project;

(b) constructed within the same 12-month period; and

(c) under common ownership."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 22, 2013

# CHAPTER NO. 260

[SB 112]

AN ACT CREATING THE DYLAN STEIGERS PROTECTION OF YOUTH ATHLETES ACT; PROMOTING SAFETY FOR YOUTH ATHLETES; PROVIDING DEFINITIONS; REQUIRING EACH SCHOOL DISTRICT TO ADOPT A POLICY ADDRESSING THE DANGERS OF CONCUSSIONS; PROVIDING MINIMUM REQUIREMENTS FOR THE CONTENTS OF A

SCHOOL DISTRICT POLICY; REQUIRING THAT A YOUTH ATHLETE WHO EXHIBITS SIGNS, SYMPTOMS, OR BEHAVIORS CONSISTENT WITH A CONCUSSION BE REMOVED FROM PARTICIPATION AND THAT MEDICAL CLEARANCE BE OBTAINED PRIOR TO RETURNING TO PARTICIPATION; CLARIFYING THAT THE ACT DOES NOT CREATE A NEW CAUSE OF ACTION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Centers for Disease Control and Prevention estimates that as many as 3.9 million sports-related and recreation-related concussions occur in the United States each year; and

WHEREAS, youth athletics are commonplace throughout the state and it is in the best interest of participating youth that uniform concussion policies and procedures apply across the state; and

WHEREAS, the Centers for Disease Control and Prevention has created uniform policies and procedures regarding the nature and risk of concussions, including the effects of continuing to play after sustaining a concussion, that are consistent with current medical knowledge.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 5] may be cited as the "Dylan Steigers Protection of Youth Athletes Act".

**Section 2. Purpose — intent.** (1) The legislature finds that protecting youth athletes from serious injury is a compelling state interest. The purpose of [sections 2 through 5] is to prevent permanent injury and death to youth athletes in the state of Montana. To further this interest, the legislature finds:

(a) concussions are one of the most commonly reported injuries in children and adolescents who participate in sports and recreational activities;

(b) a concussion is caused by a blow or motion to the head or body that causes the brain to move rapidly inside the skull;

(c) the risks of catastrophic injuries or death are significant when a concussion or brain injury is not properly evaluated and managed;

(d) concussions are a type of brain injury that can range from mild to severe and can disrupt the way the brain normally works;

(e) concussions can occur in any organized or unorganized sport or recreational activity and can result from a fall or from players colliding with each other, with the ground, or with obstacles;

(f) concussions occur with or without loss of consciousness; and

(g) continuing to play with a concussion or symptoms of brain injury leaves the youth athlete especially vulnerable to greater injury and even death.

(2) [Sections 2 through 5] do not create a new cause of action.

**Section 3. Definitions.** As used in [sections 2 through 5], the following definitions apply:

(1) "Concussion" means an injury to the brain arising from blunt trauma, an acceleration force, or a deceleration force, which may include one of the following observed or self-reported conditions attributable to the injury:

(a) transient confusion, disorientation, or impaired consciousness;

(b) dysfunction of memory;

(c) loss of consciousness; or

(d) signs of other neurological or neuropsychological dysfunction, including:

(i) increased irritability;

(ii) lethargy;

(iii) vomiting;

(iv) headache;

(v) dizziness;

(vi) fatigue;

(vii) decreased balance; and

(viii) seizures.

(2) "Licensed health care professional" means a registered, licensed, certified, or otherwise statutorily recognized health care professional whose training includes the evaluation and management of concussions.

(3) "Organized youth athletic activity" means an athletic activity sponsored by a school or school district in which the participants are engaged in an athletic game or competition against another team, club, or entity, in practice, tryouts, training exercises, or sports camps, or in preparation for an athletic game or competition against another team, club, or entity.

(4) "Youth athlete" means an individual who is an active participant in an organized youth athletic activity.

**Section 4. Youth athletes — concussion education requirements.** (1) Each school district in this state offering organized youth athletic activities shall adopt policies and procedures to inform athletic trainers, coaches, officials, youth athletes, and parents or guardians of the nature and risk of brain injuries, including the effects of continuing to play after a concussion. The policies, content, and protocols must be consistent with current medical knowledge and guidelines provided by the U.S. department of health and human services, centers for disease control and prevention, as to:

(a) the nature and risk of brain injuries associated with athletic activity;

(b) the signs, symptoms, and behaviors consistent with a brain injury;

(c) the need to alert a licensed health care professional for urgent recognition and treatment when a youth athlete exhibits signs, symptoms, or behaviors consistent with a concussion; and

(d) the need to follow proper medical direction and protocols for treatment and returning to play after a youth athlete sustains a concussion.

(2) A form documenting that educational materials referred to in subsection (1) have been provided to and viewed by each youth athlete and the youth athlete's parent or guardian must be signed by each youth athlete and the youth athlete's parent or guardian and returned to an official designated by the school or school district prior to the youth athlete's participation in organized youth athletic activities for the subsequent school year.

(3) School districts shall ensure access to a training program consistent with subsection (1). Each coach, athletic trainer, and official participating in organized youth athletic activities shall complete the training program at least once each school year.

(4) School districts may invite the participation of appropriate advocacy groups and appropriate sports governing bodies to facilitate the requirements of subsections (1) through (3).

**Section 5. Youth athletes — removal from participation following concussion — medical clearance required before return to participation.** (1) An athletic trainer, coach, or official shall remove a youth athlete from participation in any organized youth athletic activity at the time

the youth athlete exhibits signs, symptoms, or behaviors consistent with a concussion.

(2) A youth athlete who has been removed from participation in an organized youth athletic activity after exhibiting signs, symptoms, or behaviors consistent with a concussion may not return to organized youth athletic activities until the youth athlete:

(a) no longer exhibits signs, symptoms, or behaviors consistent with a concussion; and

(b) receives an evaluation by a licensed health care professional and receives written clearance to return to play from the licensed health care professional. The written clearance must state:

(i) that the licensed health care professional has evaluated the youth athlete; and

(ii) that in the licensed health care professional's opinion, the youth athlete is capable of safely resuming participation in organized youth athletic activities.

**Section 6. Codification instruction.** [Sections 2 through 5] are intended to be codified as an integral part of Title 20, and the provisions of Title 20 apply to [sections 2 through 5].

**Section 7. Effective date.** [This act] is effective on passage and approval.

Approved April 22, 2013

# CHAPTER NO. 261

[SB 161]

AN ACT CHANGING THE REQUIREMENTS FOR ESTABLISHING A SPECIAL SPEED ZONE; AND AMENDING SECTION 61-8-309, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-8-309, MCA, is amended to read:

**"61-8-309. Establishment of special speed zones — *engineering and traffic investigation.*** (1) (a) If the commission determines upon the basis of an engineering and traffic investigation that a speed limit set by 61-8-303 is greater or less than is reasonable or safe under the conditions found to exist at an intersection, curve, or dangerous location or on a segment of a highway less than 50 miles in length under its jurisdiction, the commission may set a reasonable and safe special speed limit at that location. *In the case of a school zone adjacent to a state highway, the commission is not required to base its speed limit determination solely upon the results of the engineering and traffic investigation.*

(b) If a local authority requests the department of transportation or an engineer, as provided in subsection (1)(c)(i), to conduct an engineering and traffic investigation based on the belief that a speed limit on a highway under the jurisdiction of the department of transportation is greater than is reasonable or safe, the commission may not increase the speed limit under consideration as a result of the investigation.

(c) (i) A local authority may request at its own expense that an engineering and traffic investigation be completed by a licensed professional engineer selected from a list compiled and approved by a committee as provided in subsection (1)(c)(ii).

(ii) A committee containing two department of transportation staff appointed by the director and two representatives of associations whose membership comprises cities, towns, and counties, as authorized by 7-5-2141 and 7-5-4141, shall review credentials submitted by licensed professional engineers and shall determine who appears on the list of individuals authorized to conduct engineering and traffic investigations for local governments. The list must be updated every 2 years.

(iii) Upon completion of an engineering and traffic investigation conducted for a local government, the department of transportation shall submit a report to the commission with findings and recommendations. The commission shall decide on an appropriate speed limit based on the traffic investigation within 120 days from the date the investigation is submitted to the department of transportation.

(d) A local authority may request a temporary special reduced or increased speed zone for a route or route segment that is under consideration for a reduced or increased speed limit under subsection (1)(a), (1)(b), or (1)(c). If a local authority makes multiple requests for temporary special reduced or increased speed zones, the local authority shall prioritize the requests. The department of transportation shall conduct a preliminary visual and engineering review of a route or a route segment for which a temporary special speed zone is requested. The reviewing party must include a representative of the local authority. Upon completion of the preliminary review, if the department of transportation concurs with the local authority that a temporary special reduced or increased speed limit is warranted, a temporary special reduced or increased speed zone may be established upon formal approval by the commission. The temporary special reduced or increased speed limit remains in effect until a complete traffic and engineering study has been done on the route or route segment and the commission has made a determination on changing the speed limit.

(2) The department of transportation shall erect and maintain appropriate signs giving notice of special limits. *If the special limits apply to a school zone, the department shall consider the use of electronic signs in lieu of or in addition to other appropriate signs.* When the signs are erected, the limits are effective for those zones at all times or at other times that the commission sets.

(3) The authority of the commission under this section includes the authority to set reduced nighttime speed limits on curves and other dangerous locations.

(4) This section does not authorize the commission to set a statewide speed limit."

Approved April 22, 2013

## CHAPTER NO. 262

[SB 199]

AN ACT PROVIDING THAT CLOUD COMPUTING SERVICES FOR TECHNOLOGY INFRASTRUCTURE, PLATFORM, SOFTWARE, NETWORK, STORAGE, SECURITY, DATA, DATABASE, TEST ENVIRONMENT, CURRICULUM, OR DESKTOP VIRTUALIZATION PURPOSES AND RELATED TECHNOLOGIES ARE SUBJECT TO THE PROVISIONS OF THE TECHNOLOGY ACQUISITION AND DEPRECIATION FUND OF A SCHOOL DISTRICT; LIMITING THE DURATION OF ANY TECHNOLOGY LEVY TO 10 YEARS; AMENDING

SECTION 20-9-533, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-9-533, MCA, is amended to read:

**"20-9-533. Technology acquisition and depreciation fund — limitations.** (1) The trustees of a district may establish a technology acquisition and depreciation fund for school district expenditures incurred ~~and depreciation accrued~~ for:

(a) the purchase, rental, repair, *and* maintenance~~, and depreciation~~ of technological equipment, including computers and computer network access; ~~and~~

*(b) cloud computing services for technology infrastructure, platform, software, network, storage, security, data, database, test environment, curriculum, or desktop virtualization purposes, including any subscription or any license-based or pay-per-use service that is accessed over the internet or other remote network to meet the district's information technology and other needs; and*

~~(b)~~*(c)* associated technical training for school district personnel.

(2) Any expenditures from the technology acquisition and depreciation fund must be made in accordance with the financial administration requirements for a budgeted fund pursuant to this title. The trustees of a district shall fund the technology acquisition and depreciation fund with:

(a) the state money received under 20-9-534; and

(b) other local, state, private, and federal funds received for the purpose of funding technology or technology-associated training.

(3) In depreciating the technological equipment of a school district *for levies approved prior to [the effective date of this act]*, the trustees may include in the district's budget, contingent upon voter approval of a levy under subsection (6) and pursuant to the school budgeting requirements of this title, an amount each fiscal year that does not exceed 20% of the original cost of any technological equipment, including computers and computer network access, that is owned by the district. The amount budgeted *pursuant to levies approved prior to [the effective date of this act]* may not, over time, exceed 150% of the original cost of the equipment.

(4) The annual revenue requirement for each district's technology acquisition and depreciation fund determined within the limitations of this section must be reported by the county superintendent of schools to the board of county commissioners on or before the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values as the technology acquisition and depreciation fund levy requirement for that district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(5) Any expenditure of technology acquisition and depreciation fund money must be within the limitations of the district's final technology acquisition and depreciation fund budget and the school financial administration provisions of this title.

(6) In addition to the funds received pursuant to subsection (2), the trustees of a school district may submit a proposition to the qualified electors of the district to approve an additional levy to fund *costs of providing the technologies included in subsection (1)* ~~the depreciation of technological equipment authorized under this section~~. The election must be called and conducted in the

manner prescribed by this title for school elections and in the manner prescribed by 15-10-425. *A technology levy authorization approved after [the effective date of this act] may not exceed 10 years.*

(7) The technology proposition is approved if a majority of those electors voting at the election approve the levy. Notwithstanding any other provision of law, the levy under subsection (6) is subject to 15-10-420.

*(8) A district whose qualified electors have previously approved a technology levy of perpetual duration prior to [the effective date of this act] may submit a proposition to the qualified electors on or after [the effective date of this act] for an increase in the amount of the levy to cover the costs of providing technologies under subsections (1)(b) and (1)(c) or to seek relief from the obligation of tracking depreciation of equipment under a levy approved prior to [the effective date of this act]. In seeking approval of the proposition, the district shall specify a proposed revised duration of the underlying perpetual levy previously approved and a proposed duration for the proposed increase in the amount of the levy, neither of which may exceed 10 years. If the proposition is approved by the qualified electors, both the underlying levy previously approved for a perpetual duration and the increase in the amount of the levy are subject to the revised durational limit specified on the ballot.*

~~(8)~~*(9)* The trustees of a district may not use revenue in the technology acquisition and depreciation fund to finance contributions to the teachers' retirement system, the public employees' retirement system, or the federal social security system or for unemployment compensation insurance."

**Section 2. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 3. Effective date.** [This act] is effective July 1, 2013.

**Section 4. Applicability.** [This act] applies to a school district technology levy authorized after [the effective date of this act].

Approved April 22, 2013

## CHAPTER NO. 263

[SB 207]

AN ACT GENERALLY REVISING PROPERTY PARTITION LAWS; ADOPTING THE UNIFORM PARTITION OF HEIRS PROPERTY ACT; REQUIRING A COURT TO DETERMINE WHETHER PROPERTY TO BE PARTITIONED IS HEIRS PROPERTY; REQUIRING HEIRS PROPERTY TO BE PARTITIONED UNDER THE UNIFORM PARTITION OF HEIRS PROPERTY ACT; PROVIDING FOR INCONSISTENCIES IN EXISTING PARTITION LAWS TO BE RESOLVED IN FAVOR OF THE UNIFORM LAW; PROVIDING FOR NOTICE BY PUBLICATION AND POSTING; IMPOSING CERTAIN CONDITIONS ON REFEREES APPOINTED BY THE COURT; PROVIDING PROCEDURES FOR DETERMINING THE VALUE OF HEIRS PROPERTY; PROVIDING A PROCEDURE FOR COTENANT BUYOUTS; PROVIDING PARTITION ALTERNATIVES; PROVIDING CONSIDERATIONS FOR PARTITIONS IN KIND; PROVIDING PROCEDURES FOR OPEN-MARKET SALE, SEALED BIDS, OR AUCTIONS; PROVIDING FOR UNIFORMITY OF APPLICATION AND CONSTRUCTION; ADDRESSING CERTAIN FEDERAL ACTS; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 13] may be cited as the "Uniform Partition of Heirs Property Act".

**Section 2. Definitions.** As used in [sections 1 through 13], the following definitions apply:

(1) "Ascendant" means an individual who precedes another individual in lineage, in the direct line of ascent from the other individual.

(2) "Collateral" means an individual who is related to another individual under the law of intestate succession of this state but who is not the other individual's ascendant or descendant.

(3) "Descendant" means an individual who follows another individual in lineage, in the direct line of descent from the other individual.

(4) "Determination of value" means a court order determining the fair market value of heirs property under [section 6 or 10] or adopting the valuation of the property agreed to by all cotenants.

(5) "Heirs property" means real property held in tenancy in common that satisfies all of the following requirements as of the filing of a partition action:

(a) there is no agreement in a record binding all the cotenants that governs the partition of the property;

(b) one or more of the cotenants acquired title from a relative, whether living or deceased; and

(c) any of the following applies:

(i) 20% or more of the interests are held by cotenants who are relatives;

(ii) 20% or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or

(iii) 20% or more of the cotenants are relatives.

(6) "Partition by sale" means a court-ordered sale of the entire heirs property, whether by auction, sealed bids, or open-market sale conducted under [section 10].

(7) "Partition in kind" means the division of heirs property into physically distinct and separately titled parcels.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "Relative" means an ascendant, descendant, or collateral or an individual otherwise related to another individual by blood, marriage, adoption, or law of this state other than [sections 1 through 13].

**Section 3. Applicability — relation to other laws.** (1) [Sections 1 through 13] apply to partition actions filed on or after [the effective date of this act].

(2) In an action to partition real property under Title 70, chapter 29, parts 1 through 3, the court shall determine whether the property is heirs property. If the court determines that the property is heirs property, the property must be partitioned under [sections 1 through 13] unless all of the cotenants otherwise agree in a record.

(3) [Sections 1 through 13] supplement Title 70, chapter 29, parts 1 through 3, and, if an action is governed by [sections 1 through 13], replace provisions of Title 70, chapter 29, parts 1 through 3, that are inconsistent with [sections 1 through 13].

**Section 4. Service — notice by posting.** (1) [Sections 1 through 13] do not limit or affect the method by which service of a complaint in a partition action may be made.

(2) If the plaintiff in a partition action seeks notice by publication and the court determines that the property may be heirs property, the plaintiff, not later than 10 days after the court's determination, shall post and maintain while the action is pending a conspicuous sign on the property that is the subject of the action. The sign must state that the action has commenced and identify the name and address of the court and the common designation by which the property is known. The court may require the plaintiff to publish on the sign the name of the plaintiff and the known defendants.

**Section 5. Referees.** If the court appoints referees pursuant to 70-29-202, each referee, in addition to the requirements and disqualifications applicable to referees in Title 70, chapter 29, part 2, must be disinterested and impartial and not a party to or a participant in the action.

**Section 6. Determination of value.** (1) Except as otherwise provided in subsections (2) and (3), if the court determines that the property that is the subject of a partition action is heirs property, the court shall determine the fair market value of the property by ordering an appraisal pursuant to subsection (4).

(2) If all cotenants have agreed to the value of the property or to another method of valuation, the court shall adopt that value or the value produced by the agreed method of valuation.

(3) If the court determines that the evidentiary value of an appraisal is outweighed by the cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair market value of the property and send notice to the parties of the value.

(4) If the court orders an appraisal, the court shall appoint a disinterested real estate appraiser licensed in this state to determine the fair market value of the property assuming sole ownership of the fee simple estate. On completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court.

(5) If an appraisal is conducted pursuant to subsection (4), not later than 10 days after the appraisal is filed, the court shall send notice to each party with a known address stating:

(a) the appraised fair market value of the property;

(b) that the appraisal is available at the clerk's office; and

(c) that a party may file with the court an objection to the appraisal, not later than 30 days after the notice is sent, stating the grounds for the objection.

(6) If an appraisal is filed with the court pursuant to subsection (4), the court shall conduct a hearing to determine the fair market value of the property not sooner than 30 days after a copy of the notice of the appraisal is sent to each party under subsection (5), whether or not an objection to the appraisal is filed under subsection (5)(c). In addition to the court-ordered appraisal, the court may consider any other evidence of value offered by a party.

(7) After a hearing under subsection (6), but before considering the merits of the partition action, the court shall determine the fair market value of the property and send notice to the parties of the value.

**Section 7. Buyout by cotenant.** (1) If any cotenant requested partition by sale, after the determination of value under [section 6], the court shall send notice to the parties that any cotenant except a cotenant that requested

partition by sale may buy all the interests of the cotenants that requested partition by sale.

(2) Not later than 45 days after the notice is sent under subsection (1), any cotenant except a cotenant that requested partition by sale may give notice to the court that it elects to buy all the interests of the cotenants that requested partition by sale.

(3) The purchase price for each of the interests of a cotenant that requested partition by sale is the value of the entire parcel determined under [section 6] multiplied by the cotenant's fractional ownership of the entire parcel.

(4) After expiration of the period in subsection (2), the following rules apply:

(a) If only one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall notify all the parties of that fact.

(b) If more than one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall allocate the right to buy those interests among the electing cotenants based on each electing cotenant's existing fractional ownership of the entire parcel divided by the total existing fractional ownership of all cotenants electing to buy and send notice to all the parties of that fact and of the price to be paid by each electing cotenant.

(c) If no cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall send notice to all the parties of that fact and resolve the partition action under [sections 8(1) and (2)].

(5) If the court sends notice to the parties under subsection (4)(a) or (b), the court shall set a date, not sooner than 60 days after the date the notice was sent, by which electing cotenants shall pay their apportioned price into the court. After this date, the following rules apply:

(a) If all electing cotenants timely pay their apportioned price into court, the court shall issue an order reallocating all the interests of the cotenants and disburse the amounts held by the court to the persons entitled to them.

(b) If no electing cotenant timely pays its apportioned price, the court shall resolve the partition action under [sections 8(1) and (2)] as if the interests of the cotenants that requested partition by sale were not purchased.

(c) If one or more but not all of the electing cotenants fail to pay their apportioned price on time, the court shall give notice to the electing cotenants that paid their apportioned price of the interest remaining and the price for all that interest.

(6) Not later than 20 days after the court gives notice pursuant to subsection (5)(c), any cotenant that paid may elect to purchase all of the remaining interest by paying the entire price into the court. After the 20-day period, the following rules apply:

(a) If only one cotenant pays the entire price for the remaining interest, the court shall issue an order reallocating the remaining interest to that cotenant. The court shall issue promptly an order reallocating the interests of all of the cotenants and disburse the amounts held by it to the persons entitled to them.

(b) If no cotenant pays the entire price for the remaining interest, the court shall resolve the partition action under [sections 8(1) and (2)] as if the interests of the cotenants that requested partition by sale were not purchased.

(c) If more than one cotenant pays the entire price for the remaining interest, the court shall reapportion the remaining interest among those paying cotenants, based on each paying cotenant's original fractional ownership of the entire parcel divided by the total original fractional ownership of all cotenants

that paid the entire price for the remaining interest. The court shall issue promptly an order reallocating all of the cotenants' interests, disburse the amounts held by it to the persons entitled to them, and promptly refund any excess payment held by the court.

(7) Not later than 45 days after the court sends notice to the parties pursuant to subsection (1), any cotenant entitled to buy an interest under this section may request the court to authorize the sale as part of the pending action of the interests of cotenants named as defendants and served with the complaint but that did not appear in the action.

(8) If the court receives a timely request under subsection (7), the court, after hearing, may deny the request or authorize the requested additional sale on such terms as the court determines are fair and reasonable, subject to the following limitations:

(a) a sale authorized under this subsection may occur only after the purchase prices for all interests subject to sale under subsections (1) through (6) have been paid into court and those interests have been reallocated among the cotenants as provided in those subsections; and

(b) the purchase price for the interest of a nonappearing cotenant is based on the court's determination of value under [section 6].

**Section 8. Partition alternatives.** (1) If all the interests of all cotenants that requested partition by sale are not purchased by other cotenants pursuant to [section 7], or if after conclusion of the buyout under [section 7], a cotenant remains that has requested partition in kind, the court shall order partition in kind unless the court, after consideration of the factors listed in [section 9], finds that partition in kind will result in great prejudice to the cotenants as a group. In considering whether to order partition in kind, the court shall approve a request by two or more parties to have their individual interests aggregated.

(2) If the court does not order partition in kind under subsection (1), the court shall order partition by sale pursuant to [section 10] or, if no cotenant requested partition by sale, the court shall dismiss the action.

(3) If the court orders partition in kind pursuant to subsection (1), the court may require that one or more cotenants pay one or more other cotenants amounts so that the payments, taken together with the value of the in-kind distributions to the cotenants, will make the partition in kind just and proportionate in value to the fractional interests held.

(4) If the court orders partition in kind, the court shall allocate to the cotenants that are unknown, unlocatable, or the subject of a default judgment, if their interests were not bought out pursuant to [section 7], a part of the property representing the combined interests of these cotenants as determined by the court and this part of the property must remain undivided.

**Section 9. Partition in kind — considerations**. (1) In determining under [section 8(1)] whether partition in kind would result in great prejudice to the cotenants as a group, the court shall consider the following:

(a) whether the heirs property practicably can be divided among the cotenants;

(b) whether partition in kind would apportion the property in such a way that the aggregate fair market value of the parcels resulting from the division would be materially less than the value of the property if it were sold as a whole, taking into account the condition under which a court-ordered sale likely would occur;

(c) evidence of the collective duration of ownership or possession of the property by a cotenant and one or more predecessors in title or predecessors in possession to the cotenant who are or were relatives of the cotenant or each other;

(d) a cotenant's sentimental attachment to the property, including any attachment arising because the property has ancestral or other unique or special value to the cotenant;

(e) the lawful use being made of the property by a cotenant and the degree to which the cotenant would be harmed if the cotenant could not continue the same use of the property;

(f) the degree to which the cotenants have contributed their pro rata share of the property taxes, insurance, and other expenses associated with maintaining ownership of the property or have contributed to the physical improvement, maintenance, or upkeep of the property; and

(g) any other relevant factor.

(2) The court may not consider any one factor in subsection (1) to be dispositive without weighing the totality of all relevant factors and circumstances.

**Section 10. Open market sale — sealed bids — auction**. (1) If the court orders a sale of heirs property, the sale must be an open-market sale unless the court finds that a sale by sealed bids or an auction would be more economically advantageous and in the best interest of the cotenants as a group.

(2) If the court orders an open-market sale and the parties, not later than 10 days after the entry of the order, agree on a real estate broker licensed in this state to offer the property for sale, the court shall appoint the broker and establish a reasonable commission. If the parties do not agree on a broker, the court shall appoint a disinterested real estate broker licensed in this state to offer the property for sale and shall establish a reasonable commission. The broker shall offer the property for sale in a commercially reasonable manner at a price no lower than the determination of value and on the terms and conditions established by the court.

(3) If the broker appointed under subsection (2) obtains within a reasonable time an offer to purchase the property for at least the determination of value:

(a) the broker shall comply with the reporting requirements in [section 11]; and

(b) the sale may be completed in accordance with state law other than [sections 1 through 13].

(4) If the broker appointed under subsection (2) does not obtain within a reasonable time an offer to purchase the property for at least the determination of value, the court, after hearing, may:

(a) approve the highest outstanding offer, if any;

(b) redetermine the value of the property and order that the property continue to be offered for an additional time; or

(c) order that the property be sold by sealed bids or at an auction.

(5) If the court orders a sale by sealed bids or an auction, the court shall set terms and conditions of the sale. If the court orders an auction, the auction must be conducted under 70-29-301.

(6) If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is entitled to a credit against the price in an amount equal to the purchaser's share of the proceeds.

**Section 11. Report of open-market sale.** (1) Unless required to do so within a shorter time by any other law of this state, a broker appointed under [section 10(2)] to offer heirs property for open-market sale shall file a report with the court not later than 7 days after receiving an offer to purchase the property for at least the value determined under [section 6 or 10].

(2) The report required by subsection (1) must contain the following information:

(a) a description of the property to be sold to each buyer;

(b) the name of each buyer;

(c) the proposed purchase price;

(d) the terms and conditions of the proposed sale, including the terms of any owner financing;

(e) the amounts to be paid to lienholders;

(f) a statement of contractual or other arrangements or conditions of the broker's commission; and

(g) other material facts relevant to the sale.

**Section 12. Uniformity of application and construction**. In applying and construing [sections 1 through 13], consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**Section 13. Relation to Electronic Signatures in Global and National Commerce Act**. [Sections 1 through 13] modify, limit, and supersede the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but do not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

**Section 14. Codification instruction.** [Sections 1 through 13] are intended to be codified as an integral part of Title 70, chapter 29, and the provisions of Title 70, chapter 29, apply to [sections 1 through 13].

**Section 15. Applicability.** [This act] applies to proceedings begun on or after [the effective date of this act].

Approved April 22, 2013

# CHAPTER NO. 264

[SB 251]

AN ACT GENERALLY REVISING LAWS RELATED TO TRUSTS; REPLACING THE TRUST CODE WITH THE MONTANA UNIFORM TRUST CODE; INCLUDING SUBSTITUTED JUDGMENT PROVISIONS WITHIN THE UNIFORM PROBATE CODE; PROVIDING APPLICATION INSTRUCTIONS; AMENDING SECTIONS 31-2-209, 32-1-102, 32-3-506, 35-2-118, 72-1-103, 72-1-310, 72-1-311, 72-1-312, 72-6-206, 72-6-214, 72-16-1001, 72-34-424, 72-34-446, 72-36-206, 77-1-219, 77-1-229, 77-2-364, AND 82-1-304, MCA; REPEALING SECTIONS 72-6-122, 72-6-215, 72-33-101, 72-33-102, 72-33-103, 72-33-104, 72-33-105, 72-33-106, 72-33-107, 72-33-108, 72-33-201, 72-33-202, 72-33-203, 72-33-204, 72-33-205, 72-33-206, 72-33-207, 72-33-208, 72-33-209, 72-33-210, 72-33-211, 72-33-216, 72-33-217, 72-33-218, 72-33-219, 72-33-220, 72-33-301, 72-33-302, 72-33-303, 72-33-304, 72-33-305, 72-33-306, 72-33-401, 72-33-402, 72-33-403, 72-33-406, 72-33-407, 72-33-408, 72-33-409, 72-33-411, 72-33-412, 72-33-413, 72-33-414, 72-33-415, 72-33-416,

72-33-501, 72-33-502, 72-33-503, 72-33-504, 72-33-601, 72-33-602, 72-33-603, 72-33-604, 72-33-611, 72-33-612, 72-33-613, 72-33-616, 72-33-617, 72-33-618, 72-33-619, 72-33-620, 72-33-621, 72-33-622, 72-33-626, 72-33-627, 72-33-628, 72-33-629, 72-33-630, 72-33-631, 72-33-632, 72-33-701, 72-33-702, 72-33-703, 72-33-704, 72-33-705, 72-34-101, 72-34-102, 72-34-103, 72-34-105, 72-34-106, 72-34-107, 72-34-108, 72-34-109, 72-34-110, 72-34-111, 72-34-112, 72-34-113, 72-34-114, 72-34-115, 72-34-116, 72-34-117, 72-34-118, 72-34-124, 72-34-125, 72-34-126, 72-34-127, 72-34-128, 72-34-129, 72-34-130, 72-34-201, 72-34-202, 72-34-203, 72-34-204, 72-34-205, 72-34-206, 72-34-207, 72-34-301, 72-34-302, 72-34-303, 72-34-304, 72-34-306, 72-34-307, 72-34-308, 72-34-309, 72-34-310, 72-34-311, 72-34-316, 72-34-317, 72-34-318, 72-34-319, 72-34-320, 72-34-321, 72-34-322, 72-34-323, 72-34-326, 72-34-327, 72-34-328, 72-34-329, 72-34-330, 72-34-331, 72-34-332, 72-34-336, 72-34-337, 72-34-338, 72-34-339, 72-34-340, 72-34-341, 72-34-342, 72-34-343, 72-34-501, 72-34-502, 72-34-503, 72-34-504, 72-34-506, 72-34-507, 72-34-508, 72-34-509, 72-34-511, 72-34-512, 72-34-513, 72-34-514, 72-34-515, 72-34-516, 72-34-517, 72-34-601, 72-34-602, 72-34-603, 72-34-604, 72-34-605, 72-34-606, 72-34-607, 72-34-608, 72-34-609, 72-34-610, 72-35-101, 72-35-102, 72-35-103, 72-35-104, 72-35-105, 72-35-106, 72-35-107, 72-35-201, 72-35-202, 72-35-203, 72-35-206, 72-35-207, 72-35-208, 72-35-209, 72-35-301, 72-35-302, 72-35-303, 72-35-306, 72-35-307, 72-35-308, 72-35-311, 72-35-312, 72-35-313, 72-35-314, 72-35-315, 72-35-401, 72-35-402, 72-35-403, 72-35-404, 72-35-405, 72-35-406, 72-35-501, 72-35-502, 72-35-503, 72-35-504, 72-35-505, 72-35-506, 72-35-507, 72-35-508, 72-36-101, 72-36-102, 72-36-103, 72-36-104, 72-36-105, 72-36-106, 72-36-201, 72-36-202, 72-36-203, 72-36-301, AND 72-36-302, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 132] may be cited as the Montana Uniform Trust Code.

**Section 2. Scope.** [Sections 1 through 132] apply to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust. Other than [sections 14 through 17], nothing in [sections 1 through 132] affects the law relating to constructive or resulting trusts.

**Section 3. Definitions.** As used in [sections 1 through 132], unless the context clearly requires otherwise, the following definitions apply:

(1) "Action", with respect to an act of a trustee, includes a failure to act.

(2) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on the effective date of [sections 1 through 132], or as later amended.

(3) "Beneficiary" means a person who:

(a) has a present or future beneficial interest in a trust, vested or contingent; or

(b) in a capacity other than that of trustee, holds a power of appointment over trust property.

(4) "Charitable trust" means a trust or portion of a trust created for a charitable purpose described in [section 54(1)].

(5) "Conservator" means a person appointed by the court to administer the estate of a minor or adult individual.

(6) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(7) "Guardian" means a person appointed by the court, by a parent, or by a spouse to make decisions regarding the support, care, education, health, and welfare of a minor or adult individual. The term does not include a guardian ad litem.

(8) "Interested person" means:

(a) the trustee;

(b) the qualified beneficiaries who are entitled to notice; and

(c) the attorney general if the petition is related to a charitable trust subject to the jurisdiction of the attorney general.

(9) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

(10) "Jurisdiction", with respect to a geographic area, includes a state or country.

(11) "Permissible distributee" means a beneficiary who is currently eligible to receive distributions of trust income or principal, whether mandatory or discretionary, or who holds a presently exercisable power of appointment over trust property. The term includes a charitable organization only if it is expressly designated to receive distributions under the terms of the charitable trust.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(13) "Power of withdrawal" means a presently exercisable general power of appointment other than a power:

(a) exercisable by a trustee and limited by an ascertainable standard; or

(b) exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(14) (a) "Principal place of administration" means the usual place where the day-to-day activity of the trust is carried on by the trustee or its representative who is primarily responsible for the administration of the trust unless otherwise designated by the terms of the trust as provided in [section 8].

(b) If the principal place of administration of the trust cannot be determined under subsection (14)(a), then it must be determined as follows:

(i) if the trust has a single trustee, the principal place of administration of the trust is the trustee's residence or usual place of business; or

(ii) if the trust has more than one trustee, the principal place of administration of the trust is the residence or usual place of business of any of the cotrustees as agreed upon by them. If not agreed upon by the cotrustees, the principal place of administration of the trust is the residence or usual place of business of any of the cotrustees.

(15) "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

(16) "Qualified beneficiary" means a beneficiary who on the date the beneficiary's qualification is determined:

(a) is a distributee or permissible distributee of trust income or principal;

(b) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subsection (16)(a) terminated on that date without causing the trust to terminate; or

(c) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(17) "Revocable", as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

(18) "Settlor" means a person, including a testator, who creates or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

(19) "Spendthrift provision" means a term of a trust that restrains both voluntary and involuntary transfer of a beneficiary's interest.

(20) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

(21) "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

(22) "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

(23) "Trustee" includes an original, additional, and successor trustee and a cotrustee.

**Section 4. Knowledge.** (1) Subject to subsection (2), a person has knowledge of or knows a fact if the person:

(a) has actual knowledge of it;

(b) has received a notice or notification of it; or

(c) from all the facts and circumstances known to the person at the time in question, has reason to know it.

(2) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

**Section 5. Default and mandatory rules.** (1) Except as otherwise provided in the terms of the trust, [sections 1 through 132] govern the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(2) The terms of a trust prevail over any provision of [sections 1 through 132] except:

(a) the requirements for creating a trust;

(b) the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;

(c) the requirement that a trust and its terms be for the benefit of its beneficiaries and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

(d) the power of the court to modify or terminate a trust under [sections 59 through 65];

(e) the effect of a spendthrift provision;

(f) the power of the court under [section 80] to require, dispense with, or modify or terminate a bond;

(g) the power of the court under [section 86(2)] to adjust a trustee's compensation specified in the terms of the trust that is unreasonably low or high;

(h) the effect of an exculpatory term under [section 125];

(i) the rights under [sections 127 through 130] of a person other than a trustee or beneficiary;

(j) the periods of limitation for commencing a judicial proceeding;

(k) the power of the court to take the action and exercise the jurisdiction that may be necessary in the interests of justice; and

(l) the subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in [sections 24 and 28].

**Section 6. Common law of trusts — principles of equity.** The common law of trusts and principles of equity supplement [sections 1 through 132] except to the extent modified by [sections 1 through 132] or another statute of this state.

**Section 7. Governing law.** The meaning and effect of the terms of a trust are determined by:

(1) the law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue; or

(2) in the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

**Section 8. Principal place of administration.** (1) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:

(a) a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or

(b) all or part of the administration occurs in the designated jurisdiction.

(2) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.

(3) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (2), may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.

(4) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than 60 days before initiating the transfer. The notice of proposed transfer must include:

(a) the name of the jurisdiction to which the principal place of administration is to be transferred;

(b) the address and telephone number at the new location at which the trustee can be contacted;

(c) an explanation of the reasons for the proposed transfer;

(d) the date on which the proposed transfer is anticipated to occur; and

(e) the date, not less than 60 days after the giving of the notice, by which the qualified beneficiary shall notify the trustee of an objection to the proposed transfer.

(5) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(6) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to [section 82].

**Section 9. Methods and waiver of notice.** (1) (a) Notice to a person under [sections 1 through 132] or the sending of a document to a person under [sections 1 through 132] must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document.

(b) Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last-known place of residence or place of business, or a properly directed electronic message.

(c) Notice of at least 30 days prior to the event for which notice is given must be reasonable unless otherwise specifically provided in [sections 1 through 132].

(2) Notice otherwise required under [sections 1 through 132] or a document otherwise required to be sent under [sections 1 through 132] need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

(3) Notice under [sections 1 through 132] or the sending of a document under [sections 1 through 132] may be waived by the person to be notified or sent the document.

(4) Notice of a judicial proceeding must be given as provided in [sections 31 through 35].

**Section 10. Others treated as qualified beneficiaries.** (1) Except for [section 100], whenever notice to qualified beneficiaries of a trust is required under [sections 1 through 132], the trustee shall also give notice to any other beneficiary who has sent the trustee a request for notice.

(2) A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a beneficiary and a qualified beneficiary under [sections 1 through 132] if the charitable organization, on the date the charitable organization's qualification is being determined:

(a) is a distributee or permissible distributee of trust income or principal;

(b) would be a distributee or permissible distributee of trust income or principal upon the termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions; or

(c) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(3) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in [section 57 or 58] has the rights of a qualified beneficiary under [sections 1 through 132].

(4) With respect to a charitable trust having its principal place of administration in this state:

(a) The attorney general of this state has the rights of a beneficiary.

(b) The attorney general of this state has the following two rights of a qualified beneficiary:

(i) the right to request information pursuant to [subsection 100(1)]; and

(ii) the right to request a copy of the annual report pursuant to [section 100(3)].

(c) The attorney general of this state has all of the rights of a qualified beneficiary if, on the date that a determination is being made as to the rights of the attorney general under this subsection:

(i) any charitable organization:

(A) is a distributee or permissible distributee of trust income or principal; or

(B) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date; and

(ii) no charitable organization expressly designated to receive distributions under the terms of the charitable trust:

(A) is a distributee or permissible distributee of trust income or principal; or

(B) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

**Section 11. Nonjudicial settlement agreements.** (1) For purposes of this section, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

(2) Except as otherwise provided in subsection (4)(c), interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

(3) Except as provided in [section 60(1)], a nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under [sections 1 through 132].

(4) Matters that may be resolved by a nonjudicial settlement agreement include but are not limited to:

(a) the interpretation or construction of the terms of the trust;

(b) the approval of a trustee's report or accounting;

(c) direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;

(d) the resignation or appointment of a trustee and the determination of a trustee's compensation;

(e) transfer of a trust's principal place of administration; and

(f) liability of a trustee for an action relating to the trust.

(5) Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in [sections 45 through 49] was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

**Section 12. Rules of construction.** The rules of construction that apply in this state to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

**Section 13. Insurable interest of trustee.** (1) In this section, "settlor" means a person who executes a trust instrument. The term includes a person for which a fiduciary or agent is acting.

(2) A trustee of a trust has an insurable interest in the life of an individual insured under a life insurance policy that is owned by the trustee of the trust acting in a fiduciary capacity or that designates the trust itself as the owner if, on the date the policy is issued:

(a) the insured is:

(i) a settlor of the trust; or

(ii) an individual in whom a settlor of the trust has, or would have had if living at the time the policy was issued, an insurable interest; and

(b) the life insurance proceeds are primarily for the benefit of one or more trust beneficiaries who have an insurable interest in the life of the insured as provided in 33-15-201.

**Section 14. Resulting trust upon failure of trust.** When the owner of property gratuitously transfers it and manifests in the trust instrument an intention that the transferee should hold the property in trust but the trust fails, the transferee holds the trust estate as a resulting trust for the transferor or the transferor's estate unless:

(1) the transferor manifested in the trust instrument an intention that no resulting trust should arise; or

(2) the intended trust fails for illegality and the policy against unjust enrichment of the transferee is outweighed by the policy against giving relief to a person who has entered into an illegal transaction.

**Section 15. Resulting trust upon full performance of trust.** When the owner of property gratuitously transfers it subject to a trust that is properly declared and that is fully performed without exhausting the trust estate, the trustee holds the surplus as a resulting trust for the transferor or the transferor's estate unless the transferor manifested in the trust instrument an intention that no resulting trust of the surplus should arise.

**Section 16. Purchase money resulting trust.** (1) When a transfer of property is made to one person and the purchase price is paid by another, a resulting trust arises in favor of the person who paid the purchase price.

(2) Subsection (1) does not apply in any of the following circumstances:

(a) whenever the party paying the purchase price manifests an intention that no resulting trust should arise;

(b) whenever the transferee is a spouse, child, or other natural object of the bounty of the person who paid the purchase price; or

(c) whenever the transfer is made in order to accomplish an illegal purpose and the policy against unjust enrichment of the transferee is outweighed by the policy against giving relief to a person who has entered into an illegal transaction.

(3) Subsection (2)(b) does not apply if the party paying the purchase price manifested an intention that the transferee should not have the beneficial interest in the property.

**Section 17. Constructive trust.** A constructive trust arises when a person holding title to property is subject to an equitable duty to convey it to another on the ground that the person holding title would be unjustly enriched if the holder were permitted to retain it.

**Section 18. Resulting trusts — constructive trusts — statute of frauds.** Resulting trusts and constructive trusts are considered to arise by operation of law and are valid under [section 56(3)].

**Section 19. Scope and effect of part — proposed action or inaction described.** (1) Subject to [section 20(2)], a trustee may give a notice of proposed action or notice of proposed inaction regarding a matter governed by [sections 88 through 104], [sections 112 through 117], the provisions of Title 72, chapter 3, part 4, or any other provision of law or [sections 1 through 132] under which a trustee has discretion to act as provided in [sections 19 through 23].

(2) For the purpose of [sections 19 through 23], a proposed action includes a course of action or a decision not to take action. [Sections 19 through 23] do not preclude an application or assertion of any other rights or remedies available to an interested party as otherwise provided in [sections 1 through 132] regarding an action to be taken or not to be taken by the trustee.

**Section 20. When use of notice authorized.** (1) The trustee who elects to provide notice pursuant to this part shall provide notice of the proposed action or notice of proposed inaction to each qualified beneficiary as provided in [sections 19 through 23].

(2) Notwithstanding any other provisions of [sections 19 through 23], the trustee may not use a notice of proposed action or notice of proposed inaction in any of the following circumstances:

(a) allowance of the trustee's compensation;

(b) allowance of compensation of the attorney for the trustee;

(c) settlement of accounts or reports;

(d) preliminary and final distributions and discharge;

(e) sale of property of the trust to the trustee or to the attorney for the trustee;

(f) exchange of property of the trust for property of the trustee or for property of the attorney for the trustee;

(g) grant of an option to purchase property of the trust to the trustee or to the attorney for the trustee;

(h) allowance, payment, or compromise of a claim of the trustee, or the attorney for the trustee, against the trust;

(i) compromise of settlement of a claim, action, or proceeding by the trust against the trustee or against the attorney for the trust; and

(j) extension, renewal, or modification of the terms of a debt or other obligation of the trustee, or the attorney for the trustee, owing to or in favor of the trust.

(3) Notice of proposed action or notice of proposed inaction is not required to be given to a qualified beneficiary who consents in writing to the proposed action or inaction. The consent may be executed at any time before or after the effective date of the proposed action or inaction.

(4) A trustee is not required to provide a copy of the notice of the proposed action or notice of proposed inaction to a qualified beneficiary who is known to the trustee but who cannot be located by the trustee after reasonable diligence or who is unknown to the trustee.

**Section 21. Content of notice.** The notice of proposed action or notice of proposed inaction must state that it is given pursuant to this part and must include all of the following:

(1) the name and mailing address of the trustee;

(2) the name and telephone number of a person who may be contacted for additional information;

(3) a description of the action or inaction proposed, the material facts upon which the trustee has relied in making its decision regarding the proposed action or inaction, and an explanation of the reasons for the action or inaction;

(4) a statement that failure of a qualified beneficiary to object within the allowed time bars the qualified beneficiary from taking any legal action against the trustee for liability within the scope of [section 22] except as provided in [section 22(3)] and that a qualified beneficiary may want to seek independent legal advice regarding the matter at the qualified beneficiary's expense;

(5) the time within which objections to the proposed action or inaction can be made, which must be at least 30 days from providing the notice of proposed action or notice of proposed inaction;

(6) the time within which objections to the proposed action or inaction can be made, which must be at least 30 days from providing the notice of proposed action or notice of proposed inaction; and

(7) the date on or after which the proposed action or inaction is effective.

**Section 22. Objection to proposed action or inaction — petition — liability of trustee.** (1) A qualified beneficiary may object to the proposed action or inaction by providing a written objection to the trustee at the address stated in the notice of proposed action or notice of proposed inaction within the time period specified in the notice of proposed action or notice of proposed inaction. The written objection may take any form reasonably calculated to communicate the objection but need not give any reason for the objection.

(2) Except as provided in subsection (3), a trustee is not liable to a qualified beneficiary for an action or inaction regarding a matter governed by this part if the trustee does not receive a written objection to the proposed action or inaction from the qualified beneficiary within the applicable period and the other requirements of this part are satisfied. Except as provided in subsection (3), if no qualified beneficiary objects under this section, the trustee is not liable to any qualified beneficiary with respect to the proposed action or inaction. This section does not apply to an unborn or minor child or an incapacitated adult unless notice of the proposed action is provided to an appropriate representative pursuant to [section 47].

(3) The failure of a qualified beneficiary to object does not preclude the qualified beneficiary from holding the trustee liable for a breach of trust in any of the following circumstances:

(a) if the qualified beneficiary at the time of the qualified beneficiary's failure to object did not have notice of the proposed action as prescribed in [sections 19 through 23]; or

(b) if the qualified beneficiary's failure to object was induced by improper conduct of the trustee.

(4) If the trustee receives a written objection to a notice of proposed action within the applicable period, either the trustee or a qualified beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, the trustee has the burden of proving that the trustee's proposed action should be taken. A qualified

beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding.

(5) If the trustee decides not to implement the proposed action, the trustee shall notify the qualified beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any beneficiary. A qualified beneficiary may petition the court to have the action taken, and the qualified beneficiary has the burden of proving that it should be taken.

(6) If the trustee receives a written objection to a notice of proposed inaction within the applicable period, either the trustee or a qualified beneficiary may petition the court to approve the proposed inaction. In the proceeding, the trustee has the burden of proving that the trustee should not act. A qualified beneficiary who has not objected is not estopped from opposing the proposed inaction in the proceeding.

(7) If after providing a notice of proposed inaction, the trustee decides to act, the trustee shall notify the qualified beneficiaries of the decision to act and the reasons for the decision, and the trustee's decision does not itself give rise to liability to any beneficiary. A qualified beneficiary may petition the court to direct the trustee not to act, and the qualified beneficiary has the burden of proof.

**Section 23. Procedures not required.** [Sections 19 through 23] does not require a trustee to use these procedures prior to taking any action or deciding not to act.

**Section 24. Subject matter jurisdiction.** (1) The district court having jurisdiction over the trust pursuant to [sections 1 through 132] has exclusive jurisdiction of proceedings concerning the internal affairs of trusts.

(2) The district court having jurisdiction over the trust pursuant to [sections 1 through 132] has concurrent jurisdiction of the following:

(a) actions and proceedings to determine the existence of trusts;

(b) actions and proceedings by or against creditors or debtors of trusts; and

(c) other actions and proceedings involving trustees and third persons.

**Section 25. Powers of court.** In proceedings concerning the internal affairs of trusts commenced pursuant to [sections 1 through 132], the court has all the powers of a district court exercising its general jurisdiction.

**Section 26. Jurisdiction over trustees and beneficiaries.** Subject to [section 27]:

(1) by accepting the trusteeship of a trust having its principal place of administration in this state, the trustee submits personally to the jurisdiction of the court under [sections 1 through 132];

(2) to the extent of their interests in the trust, all beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the court under [sections 1 through 132]; and

(3) by accepting a distribution from a trust having its principal place of administration in this state, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

**Section 27. Basis of jurisdiction over trust, trust property, and trust parties.** The court may exercise jurisdiction in proceedings under [sections 24 through 44] on any basis permitted by [sections 24 through 44] or by Rule 4, Montana Rules of Civil Procedure.

**Section 28. Venue.** (1) Except as otherwise provided in subsection (2), venue for a judicial proceeding involving a trust is in the county of this state in which the trust's principal place of administration is or will be located and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.

(2) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in a county of this state in which a beneficiary resides, in a county in which any trust property is located, and if the trust is created by will, in the county in which the decedent's estate was or is being administered.

(3) Except as otherwise provided in subsections (1) and (2), the proper county for commencement of a proceeding pursuant to [sections 1 through 132] is determined by the rules applicable to civil actions generally.

**Section 29. Rules of procedure in trust proceedings.** (1) The pleadings described in [section 37] are permitted pleadings in judicial proceedings under [sections 1 through 132].

(2) Unless specifically provided to the contrary in [sections 1 through 132] or unless inconsistent with [sections 1 through 132], the rules of civil procedure, including the rules concerning vacation of orders and appellate review, govern proceedings under [sections 1 through 132].

**Section 30. Jury trial.** There is no right to a jury trial in proceedings under [sections 1 through 132] concerning the internal affairs of trusts.

**Section 31. Application.** [Sections 32 through 35] apply to notice in proceedings commenced pursuant to [sections 24 through 44].

**Section 32. Notice — method and time of giving.** (1) If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided in [sections 1 through 132], the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or the person's attorney if the person has appeared by attorney or requested that notice be sent to the person's attorney.

(2) Notice must be given:

(a) by mailing a copy of the notice at least 14 days before the time set for the hearing by certified mail or ordinary first-class mail addressed to the person being notified at the post-office address given in the person's demand for notice, if any, or at the person's office or place of residence, if known;

(b) by delivering a copy of the notice to the person being notified personally at least 14 days before the time set for the hearing; or

(c) if the address or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing the notice in a weekly paper once a week for 3 consecutive weeks and, if in a newspaper published more often than once a week, by publishing on at least 3 different days of publication. There must be at least 10 days from the first to the last day of publication, both the first and last day being included.

(3) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(4) Proof of the giving of notice must be made on or before the hearing and filed in the proceeding. If it appears to the satisfaction of the court that notice has been regularly given or that the party entitled to notice has waived, the court shall so find in its order. When the order becomes final, it is conclusive on all persons, whether or not in being.

**Section 33. Waiver of notice.** A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding.

**Section 34. Pleadings — when orders or notice binding one binds another — representation.** In proceedings involving trusts, the following apply:

(1) Interests to be affected must be described in pleadings that give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in other appropriate manner.

(2) Persons are bound by orders binding others in the following cases:

(a) Orders binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests, as objects, takers in default, or otherwise, are subject to the power.

(b) (i) To the extent there is no conflict of interest between them or among persons represented, orders binding a:

(A) conservator bind the person whose estate the conservator controls;

(B) guardian bind the ward if a conservator of the ward's estate has not been appointed;

(C) trustee bind beneficiaries of the trust in proceedings establishing or adding to a trust, to review the acts or accounts of a prior fiduciary, and in proceedings involving creditors or other third parties; and

(D) personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate.

(ii) If there is no conflict of interest and a conservator or guardian has not been appointed, a parent may represent the parent's minor child.

(c) An unborn or unascertained person who is not otherwise represented is bound by an order to the extent the person's interest is adequately represented by another party having a substantially identical interest in the proceeding.

(3) Notice is required as follows:

(a) Notice as prescribed by [section 32] must be given to every interested person or to one who can bind an interested person as described in subsection (2)(a) or (2)(b). Notice may be given both to a person and to another who may bind the person.

(b) Notice is given to unborn or unascertained persons who are not represented under subsection (2)(a) or (2)(b) by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

(4) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding. The guardian ad litem is entitled to reasonable compensation and to costs and expenses, including attorney fees.

(5) The notice for a petition and hearing requesting the court to settle reports or pass upon the acts of the trustee or that otherwise may affect substantive property rights of a beneficiary or other interested party must state

that fact in the notice and must further state that failure to appear and object bars any further claims against the trustee relating to the subject matter of the petition.

**Section 35. Additional notice.** (1) The court may, on its own motion or on motion of a trustee or other person interested in the trust, require that further or additional notice be given at any stage of the proceeding. The court may prescribe the form and method of the notice to be given.

(2) A petitioner or other person required to give notice may cause notice to be given to any person interested in the trust without the need for a court order.

**Section 36. Petitioners — grounds for petition.** (1) Except as provided in [section 75], a trustee or beneficiary of a trust may petition the court under [sections 1 through 132] concerning the internal affairs of the trust or to determine the existence of the trust.

(2) Proceedings concerning the internal affairs of a trust include but are not limited to proceedings for any of the following purposes:

(a) determining questions of construction of a trust instrument;

(b) determining the existence or nonexistence of any immunity, power, privilege, duty, or right;

(c) determining the validity of a trust provision;

(d) ascertaining beneficiaries and determining to whom property must pass or be delivered upon final or partial termination of the trust, to the extent the determination is not made by the trust instrument;

(e) settling the accounts and passing upon the acts of the trustee, including the exercise of discretionary powers;

(f) instructing the trustee;

(g) compelling the trustee to provide information about the trust or submit a report to a qualified beneficiary if:

(i) the trustee has failed to provide information or submit a requested report within 60 days after written request of the qualified beneficiary; and

(ii) in the case of a report, no report has been made within 6 months preceding the request;

(h) granting powers to the trustee;

(i) fixing or allowing payment of the trustee's compensation;

(j) appointing or removing a trustee;

(k) accepting the resignation of a trustee;

(l) compelling redress of a breach of the trust by any available remedy;

(m) approving or directing the modification or termination of the trust;

(n) approving or directing the combination or division of trusts;

(o) amending or conforming the trust instrument in the manner required to qualify a decedent's estate for the charitable estate tax deduction under federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States Internal Revenue Service, in any case in which all parties interested in the trust have submitted written agreement to the proposed changes or written disclaimer of interest;

(p) authorizing or directing transfer of a trust or trust property to or from another jurisdiction;

(q) directing transfer of a testamentary trust subject to continuing court jurisdiction from one county to another;

(r) approving removal of a testamentary trust from continuing court jurisdiction; or

(s) reforming or excusing compliance with the governing instrument of an organization pursuant to [section 110].

**Section 37. Commencement of proceedings.** (1) A proceeding under [sections 1 through 132] is commenced by filing a verified petition stating facts showing that the petition is authorized under [sections 1 through 132] and the grounds of the petition.

(2) The following pleadings are specifically permitted:

(a) a petition filed pursuant to [sections 1 through 132];

(b) a report or account filed in regard to a petition filed pursuant to [sections 1 through 132]; and

(c) an objection or response filed in regard to a petition, report, or account filed pursuant to [sections 1 through 132].

(3) When a petition that requires a hearing is filed with the court clerk, the clerk shall set the matter for hearing.

(4) Except as provided in 25-4-203 regarding verification by an agent or attorney, all pleadings described in subsection (2) must be verified as follows:

(a) A petition must be verified by the petitioner or, if there are two or more parties joining in the petition, by any one of the petitioners.

(b) A report or account must be verified by the person who has the duty to make the report or, if there are two or more persons having a duty to report, by any one of the persons having the duty.

(c) An objection or response must be verified by the objector or respondent or, if there are two or more parties joining in the objection or response, by any one of the objectors or respondents.

(5) In any trust proceeding, an affidavit or verified petition must be received as evidence when offered in an uncontested proceeding under [sections 1 through 132].

(6) In addition to the verification required by 25-4-203 and subsection (5), every pleading filed in connection with any trust proceeding must be signed by the attorney of the person filing the pleading if the person is represented by an attorney.

(7) Nothing in [sections 1 through 132] precludes the commencement, within a decedent's probate, of a trust proceeding for the construction of a testamentary trust, provided the probate has not previously been closed pursuant to Title 72, chapter 3, part 10.

**Section 38. Dismissal of petition.** The court may dismiss a petition if it appears that the proceeding is not reasonably necessary for the protection of the interests of the trustee or beneficiary.

**Section 39. Request for special notice.** (1) If proceedings involving a trust are pending, a beneficiary of the trust may, in person or by attorney, serve on the trustee or the trustee's attorney and file with the court clerk where the proceedings are pending a written request stating that the beneficiary desires special notice of the filing of all pleadings in the proceeding relating to any or all of the purposes described in [section 36] and giving an address for receiving notice by mail. Proof of service of the request on the trustee must be filed with the court clerk when the request is filed.

(2) Except as provided in subsection (3), after serving and filing a request and proof of service pursuant to subsection (1), the beneficiary is entitled to notice pursuant to [section 32].

(3) A request for special notice made by a beneficiary whose right to notice is restricted by [section 75] is not effective.

**Section 40. Request for copy of petition.** If a trustee or beneficiary has served and filed either a notice of appearance, in person or by counsel, directed to the petitioner or the petitioner's counsel in connection with a particular petition and proceeding or a written request for a copy of the petition and has given an address to which notice or a copy of the petition may be mailed or delivered, the petitioner shall mail a copy of the petition to the trustee or beneficiary within 5 days after service of the notice of appearance or receipt of the request.

**Section 41. Authority to make necessary orders — temporary trustee.** The court in its discretion may make any orders and take any other action necessary or proper to dispose of the matters presented by the petition, including appointment of a temporary trustee to administer the trust in whole or in part.

**Section 42. Appeal.** An appeal may be taken from the grant or denial of any final order made under [sections 1 through 132] except the following:

(1) compelling the trustee to provide information or submit a report to a qualified beneficiary pursuant to [section 36(2)(g)];

(2) accepting the resignation of a trustee pursuant to [section 36(2)(k)]; or

(3) approving removal of a testamentary trust from continuing court jurisdiction pursuant to [section 36(2)(r)].

**Section 43. Intermittent judicial intervention in trust administration.** The administration of trusts is intended to proceed expeditiously and free of judicial intervention, subject to the jurisdiction of the court.

**Section 44. Enforcement of beneficiary's rights under charitable trust by attorney general.** In a case involving a charitable trust subject to the jurisdiction of the attorney general, the attorney general may petition under [sections 1 through 132].

**Section 45. Representation — basic effect.** (1) Notice to a person who may represent and bind another person under [sections 45 through 49] has the same effect as if notice were given directly to the other person.

(2) The consent of a person who may represent and bind another person under [sections 45 through 49] is binding on the person represented unless the person represented objects to the representation by notifying the trustee or representative before the consent would otherwise have become effective.

(3) Except as otherwise provided in [sections 59 and 74], a person who under [sections 45 through 49] may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

(4) A settlor may not represent and bind a beneficiary under [sections 45 through 49] with respect to the termination or modification of a trust under [section 59(1)].

**Section 46. Representation by holder of general testamentary power of appointment.** To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may

represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

**Section 47. Representation by fiduciaries and parents.** To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

(1) a conservator may represent and bind the estate that the conservator controls;

(2) a guardian may represent and bind the ward if a conservator of the ward's estate has not been appointed;

(3) an agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

(4) a trustee may represent and bind the beneficiaries of the trust;

(5) a personal representative of a decedent's estate may represent and bind persons interested in the estate; and

(6) a parent may represent and bind the parent's minor or unborn child if a conservator or guardian for the child has not been appointed. The parent entitled to represent and bind the child is determined in the following order of priority:

(a) the parent who is a lineal descendant of a settlor;

(b) the parent who is a beneficiary of the trust that is the subject of the representation;

(c) the parent with legal custody of the child; and

(d) if one parent cannot be determined pursuant to the preceding criteria and if a disagreement arises between the parents seeking to represent the same child, a guardian ad litem must be appointed to represent the minor child.

**Section 48. Representation by person having substantially identical interest.** Unless otherwise represented, a minor, incapacitated, or unborn individual or a person whose identity or location is unknown and not reasonably ascertainable may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented.

**Section 49. Appointment of representative.** (1) If the court determines that an interest is not represented under [sections 45 through 49] or that the otherwise available representation might be inadequate, the court may appoint a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated, or unborn individual or a person whose identity or location is unknown. A representative may be appointed to represent several persons or interests.

(2) A representative may act on behalf of the individual represented with respect to any matter arising under [sections 1 through 132], whether or not a judicial proceeding concerning the trust is pending.

(3) In making decisions, a representative may consider general benefit accruing to the living members of the individual's family.

**Section 50. Methods of creating trust.** A trust may be created by:

(1) transfer of property to a person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;

(2) declaration by the owner of property that the owner holds identifiable property as trustee; or

(3) exercise of a power of appointment in favor of a trustee.

**Section 51. Requirements for creation.** (1) A trust is created only if:

(a) the settlor has capacity to create a trust;

(b) the settlor indicates an intention to create the trust;

(c) the trust has a definite beneficiary or is:

(i) a charitable trust;

(ii) a trust for the care of an animal, as provided in [section 57]; or

(iii) a trust for a noncharitable purpose, as provided in [section 58];

(d) the trustee has duties to perform; and

(e) the same person is not the sole trustee and sole beneficiary.

(2) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(3) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

(4) A conservation easement created or conveyed under Title 76, chapter 6, does not create a charitable trust unless the settlor expresses a clear intention in the conservation easement instrument to create or convey the conservation easement as a charitable trust.

**Section 52. Trusts created in other jurisdictions.** A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed or the law of the jurisdiction in which, at the time of creation:

(1) the settlor was domiciled, had a place of abode, or was a national;

(2) a trustee was domiciled or had a place of business; or

(3) any trust property was located.

**Section 53. Trust purposes.** A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries.

**Section 54. Charitable purposes — enforcement.** (1) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.

(2) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.

(3) A proceeding to enforce a charitable trust may be brought by the settlor, the attorney general, a charitable organization expressly named in the trust to receive distributions, or any other person with standing.

**Section 55. Creation of trust induced by fraud, duress, or undue influence.** A trust is void to the extent its creation was induced by fraud, duress, or undue influence.

**Section 56. Statute of frauds.** A trust is not valid unless evidenced by one of the following methods:

(1) by a written instrument signed by the trustee or by the trustee's agent if authorized in writing to do so;

(2) by a written instrument signed by the settlor or by the settlor's agent if authorized in writing to do so; or

(3) by operation of law.

**Section 57. Trust for care of animal.** (1) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, and otherwise to the settlor's successors in interest.

**Section 58. Noncharitable trust without ascertainable beneficiary.** Except as otherwise provided in [section 57] or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than 21 years.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, and otherwise to the settlor's successors in interest.

**Section 59. Modification or termination of trust — proceedings for approval or disapproval.** (1) In addition to the methods of termination prescribed by [sections 60 through 63], a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

(2) A proceeding to approve or disapprove a proposed modification or termination under [sections 60 through 65] or a trust combination or division under [section 66] may be commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed modification or termination under [section 60] may be commenced by the settlor. The settlor of a charitable trust may maintain a proceeding to modify the trust under [section 62].

**Section 60. Modification or termination of irrevocable trust by consent.** (1) An irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material noncharitable purpose of the trust. Modification or

termination of a charitable trust requires the consent of the attorney general. A settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney and the terms of the trust; by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed. This subsection does not apply to irrevocable trusts created before or to revocable trusts that became irrevocable before October 1, 1989.

(2) An irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. An irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust. Modification or termination of a charitable trust requires the consent of the attorney general.

(3) A spendthrift provision in the terms of the trust is presumed to constitute a material purpose of the trust.

(4) Upon termination of a trust under subsection (1) or (2), the trustee shall distribute the trust property as agreed by the beneficiaries. In the case of a charitable trust, the trust property must be distributed in accord with the terms of the trust, and in the absence of applicable terms, consistent with the charitable purposes of the trust as agreed by the attorney general and the beneficiaries or, if there are no charitable organizations with the rights of a beneficiary and the termination is pursuant to subsection (1), then as agreed by the settlor and the attorney general, but if the termination is pursuant to subsection (2), then as decided by the court.

(5) If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection (1) or (2), the modification or termination may be approved by the court if the court is satisfied that:

(a) if all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

(b) the interests of a beneficiary who does not consent will be adequately protected.

**Section 61. Modification or termination because of unanticipated circumstances or inability to administer trust effectively.** (1) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

(2) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

(3) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

**Section 62. Cy pres.** (1) Except as otherwise provided in subsection (2), if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:

(a) the trust does not fail, in whole or in part;

(b) the trust property does not revert to the settlor or the settlor's successors in interest; and

(c) the court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

(2) A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection (1) to apply cy pres to modify or terminate the trust only if, when the provision takes effect:

(a) the trust property is to revert to the settlor and the settlor is still living; or

(b) fewer than 21 years have elapsed since the date of the trust's creation.

**Section 63. Modification or termination of uneconomic trust.** (1) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than $100,000 may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

(2) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

(3) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

**Section 64. Reformation to correct mistakes.** The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence what the settlor's intention was and that the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

**Section 65. Modification to achieve settlor's tax objectives.** To achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect.

**Section 66. Combination and division of trusts.** After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.

**Section 67. Rights of beneficiary's creditor or assignee.** To the extent a beneficiary's interest is not subject to a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to the relief that is appropriate under the circumstances.

**Section 68. Spendthrift provision.** (1) A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest.

(2) A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust", or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

(3) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision, and except as otherwise provided in [sections 67 through

72], a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

**Section 69. Discretionary trusts — effect of standard.** (1) Whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion even if:

(a) the discretion is expressed in the form of a standard of distribution; or

(b) the trustee has abused the discretion.

(2) This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

(3) If the trustee's or cotrustee's discretion to make distributions for the trustee's or cotrustee's own benefit is limited by an ascertainable standard, a creditor may not reach or compel distribution of the beneficial interest except to the extent the interest would be subject to the creditor's claim were the beneficiary not acting as trustee or cotrustee.

**Section 70. Creditor's claim against settlor.** (1) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(a) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(b) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. A trustee's discretionary authority to pay directly or to reimburse the settlor for any tax that is payable by the settlor on trust income or principal may not be considered to be an amount that can be distributed to or for the settlor's benefit, and a creditor or assignee of the settlor is not entitled to reach any amount solely by reason of this discretionary authority.

(c) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

(2) For purposes of this section:

(a) during the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and

(b) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, or section 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on the effective date of [sections 1 through 132] or as later amended.

**Section 71. Overdue distribution.** (1) (a) In this section, "mandatory distribution" means a distribution of income or principal that the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust.

(b) The term does not include a distribution subject to the exercise of the trustee's discretion even if:

(i) the discretion is expressed in the form of a standard of distribution; or

(ii) the terms of the trust authorizing a distribution couple language of discretion with language of direction.

(2) Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

**Section 72. Personal obligations of trustee.** Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

**Section 73. Capacity of settlor of revocable trust.** The capacity required to create, amend, revoke, or add property to a revocable trust or to direct the actions of the trustee of a revocable trust is the same as that required to make a will.

**Section 74. Revocation or amendment of revocable trust.** (1) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before October 1, 1989.

(2) If a revocable trust is created or funded by more than one settlor:

(a) to the extent the trust consists of community property, the trust may be revoked by either party acting alone but may be amended only by joint action of both parties;

(b) to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard the portion of the trust property attributable to that settlor's contribution; and

(c) upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly provide notice to the other settlors of the revocation or amendment.

(3) The settlor may revoke or amend a revocable trust:

(a) by substantial compliance with a method provided in the terms of the trust; or

(b) if the terms of the trust do not provide a method, by a writing delivered to the trustee manifesting clear and convincing evidence of the settlor's intent.

(4) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs. However, with respect to community property under subsection (2)(a), the trustee shall deliver the property to the respective spouses, proportionate to their respective shares of the community property as prescribed by the laws of the state out of which the community property interest arose, and the nonrevoking spouse may elect to have the trust continue with respect to that spouse's share of the community property.

(5) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust and the power of attorney.

(6) A conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor may exercise a settlor's powers with respect to

revocation, amendment, or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.

(7) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

**Section 75. Settlor's powers — powers of withdrawal.** (1) Notwithstanding any other provision in [sections 1 through 132], while a trust is revocable, all rights of the beneficiaries, including the right to consent to any action, are exercisable solely by the settlor, and all duties of the trustee, including the duty to provide notice, are owed exclusively to the settlor.

(2) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

**Section 76. Limitation on action contesting validity of revocable trust — distribution of trust property.** (1) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of:

(a) 3 years after the settlor's death; or

(b) 120 days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.

(2) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:

(a) the trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(b) a potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within 60 days after the contestant sent the notification.

(3) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

**Section 77. Fees and expenses — by whom paid.** When the validity of a trust that was revocable at the settlor's death is contested through a judicial proceeding, the attorney fees and costs, as provided in 25-10-201, incurred in defending the validity of the trust must be paid by the party contesting the validity of the trust if the trust is found valid. If the trust is found invalid, costs as provided in 25-10-201, but not attorney fees of the objecting party, must be paid by the party who defended the validity of the trust or out of the trust property, as the court directs.

**Section 78. Separate writing identifying disposition of tangible personal property.** (1) A revocable trust instrument may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the trust, other than money.

(2) To be admissible under this section as evidence of the intended disposition, the writing must be signed by the settlor and must describe the items and the devisees with reasonable certainty.

(3) The writing may be:

(a) referred to as one to be in existence at the time of the settlor's death;

(b) prepared before or after the execution of the trust;

(c) altered by the settlor after its preparation; and

(d) a writing that has no significance apart from its effect upon the dispositions made by the trust.

**Section 79. Accepting or declining trusteeship.** (1) Except as otherwise provided in subsection (3), a person designated as trustee accepts the trusteeship:

(a) by substantially complying with a method of acceptance provided in the terms of the trust; or

(b) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

(2) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is considered to have rejected the trusteeship.

(3) A person designated as trustee, without accepting the trusteeship, may:

(a) act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary; and

(b) inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

**Section 80. Trustee's bond.** (1) A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.

(2) The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.

(3) A regulated financial-service institution qualified to do trust business in this state need not give bond, even if required by the terms of the trust.

**Section 81. Cotrustees.** (1) Cotrustees who are unable to reach a unanimous decision may act by majority decision.

(2) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

(3) A cotrustee shall participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

(4) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(5) A trustee may not delegate to a cotrustee the performance of a function the settlor reasonably expected the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

(6) Except as otherwise provided in subsection (7), a trustee who does not join in an action of another trustee is not liable for the action.

(7) Each trustee shall exercise reasonable care to:

(a) prevent a cotrustee from committing a serious breach of trust; and

(b) compel a cotrustee to redress a serious breach of trust.

(8) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notifies any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

**Section 82. Vacancy in trusteeship — appointment of successor.** (1) A vacancy in a trusteeship occurs if:

(a) a person designated as trustee rejects the trusteeship;

(b) a person designated as trustee cannot be identified or does not exist;

(c) a trustee resigns;

(d) a trustee is disqualified or removed;

(e) a trustee dies;

(f) a guardian or conservator is appointed for an individual serving as trustee; or

(g) a trustee has been ordered committed as provided in 53-21-102.

(2) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

(3) A vacancy in a trusteeship of a trust that is required to be filled must be filled in the following order of priority:

(a) by a person designated in the terms of the trust to act as successor trustee;

(b) by a person appointed by unanimous agreement of the qualified beneficiaries; or

(c) by a person appointed by the court.

(4) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

**Section 83. Resignation of trustee.** (1) A trustee may resign:

(a) upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees; or

(b) with the approval of the court.

(2) In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

(3) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

**Section 84. Removal of trustee.** (1) The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

(2) The court may remove a trustee if:

(a) the trustee has committed a serious breach of trust;

(b) lack of cooperation among cotrustees substantially impairs the administration of the trust;

(c) because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively and impartially, the court determines that removal of the trustee best serves the interests of the beneficiaries; or

(d) there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

(3) Pending a final decision on a request to remove a trustee or in lieu of or in addition to removing a trustee, the court may order appropriate relief under [section 118(2)] as may be necessary to protect the trust property or the interests of the beneficiaries.

**Section 85. Delivery of property by former trustee.** (1) Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

(2) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it. If a trustee fails to deliver trust property as required in this subsection:

(a) the resigned or removed trustee is personally liable for the actual damages incurred as a result of the failure to deliver trust property; and

(b) the court, in its discretion, may order the resigned or removed trustee personally to pay the reasonable attorney fees incurred in enforcing the resigned or removed trustee's duty to deliver trust property.

**Section 86. Compensation of trustee.** (1) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

(2) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if:

(a) the duties of the trustee are substantially different from those contemplated when the trust was created; or

(b) the compensation specified by the terms of the trust would be unreasonably low or high.

**Section 87. Reimbursement of expenses.** (1) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

(a) expenses that were properly incurred in the administration of the trust; and

(b) to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(2) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

**Section 88. Duty to administer trust.** Upon acceptance of a trusteeship, the trustee shall administer the trust expeditiously and in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with [sections 1 through 132].

**Section 89. Duty of loyalty.** (1) A trustee shall administer the trust solely in the interests of the beneficiaries.

(2) Subject to the rights of persons dealing with or assisting the trustee as provided in [section 130], a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or that is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

(a) the transaction was authorized by the terms of the trust;

(b) the transaction was approved by the court;

(c) the beneficiary did not commence a judicial proceeding within the time allowed by [section 122];

(d) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with [section 126]; or

(e) the transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(3) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

(a) the trustee's spouse;

(b) the trustee's descendants, siblings, parents, or their spouses;

(c) an agent or attorney of the trustee; or

(d) a corporation or other person or enterprise in which the trustee, or a person who owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(4) A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary. However, a beneficiary's gift to charity or to a trust for a charity's benefit is not voidable by this subsection even though the charity may be, or may have been, serving as trustee of a trust created for the benefit of the beneficiary.

(5) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(6) An investment by a trustee in securities of an investment company or investment trust to which the trustee or its affiliate provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the prudent investor rule of [sections 112 through 117]. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee must at least annually notify the persons entitled under [section 100] to receive a copy of the trustee's annual report of the rate and method by which that compensation was determined.

(7) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(8) This section does not preclude the following transactions, if fair to the beneficiaries:

(a) an agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(b) payment of reasonable compensation to the trustee;

(c) a transaction between a trust and another trust, decedent's estate, or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(d) a deposit of trust money in a regulated financial-service institution operated by the trustee; or

(e) an advance by the trustee of money for the protection of the trust.

(9) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

**Section 90. Impartiality.** If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests.

**Section 91. Prudent administration.** A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

**Section 92. Costs of administration.** In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee.

**Section 93. Trustee's skills.** A trustee who has special skills or expertise or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise shall use those special skills or expertise.

**Section 94. Delegation by trustee.** (1) A trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(a) selecting an agent;

(b) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(c) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(2) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(3) A trustee who complies with subsection (1) is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.

(4) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

**Section 95. Powers to direct.** (1) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

(2) If the terms of a trust confer upon a person other than the settlor of a revocable trust the power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(3) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(4) A person other than a beneficiary who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

**Section 96. Control and protection of trust property.** A trustee shall take reasonable steps to take control of and protect the trust property.

**Section 97. Recordkeeping and identification of trust property.** (1) A trustee shall keep adequate records of the administration of the trust.

(2) A trustee shall keep trust property separate from the trustee's own property.

(3) Except as otherwise provided in subsection (4), a trustee shall designate the trust property so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(4) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

**Section 98. Enforcement and defense claims.** A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

**Section 99. Collecting trust property.** A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee and to redress a breach of trust known to the trustee to have been committed by a former trustee.

**Section 100. Duty to inform and report.** A trustee shall comply with the following provisions unless the trust instrument specifically limits or waives any of these requirements:

(1) A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. A trustee shall promptly respond to a qualified beneficiary's request for information that is reasonably necessary to enable the qualified beneficiary to enforce the rights of the qualified beneficiary under the trust or to prevent or redress a breach of trust.

(2) A trustee:

(a) upon request of any beneficiary, shall promptly furnish to the beneficiary a copy of the portions of the trust instrument that describe or affect the beneficiary's interest;

(b) within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number;

(c) within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of portions of the trust instrument as provided in subsection (2)(a), and of the right to a trustee's report as provided in subsection (3); and

(d) shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.

(3) A trustee shall send to the distributees or permissible distributees of trust income or principal and to other qualified beneficiaries who request it, at least annually, on a calendar year or fiscal year basis consistent with tax reporting requirements and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values including any cash, cash equivalents, stocks, bonds, mutual funds, or other securities, investments, or investment property held by the trustee as of the last business day of the calendar year or fiscal period, if the fair market value is readily ascertainable or the property is traded on an established public market. An appraisal or statement of fair market value may not be required for any real estate, closely held business, or other property held by the trustee as of that date if the fair market value is not readily ascertainable or traded on an established public market. A qualified beneficiary must also receive, upon request, copies of any applicable income, estate, or transfer tax returns relevant to the administration of the trust. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee. A personal representative, conservator, or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.

(4) A qualified beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A qualified beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

(5) Subsections (2)(b) and (2)(c) do not apply to a trustee who accepts a trusteeship before October 1, 2013, to an irrevocable trust created before October 1, 2013, or to a revocable trust that becomes irrevocable before October 1, 2013.

**Section 101. Discretionary powers — tax savings.** (1) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute", "sole", or "uncontrolled", the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(2) Subject to subsection (4) and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

(a) a person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard; and

(b) a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(3) A power whose exercise is limited or prohibited by subsection (2) may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

(4) Subsection (2) does not apply to:

(a) a power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in section 2056(b)(5) or 2523(e) of the Internal Revenue Code of 1986, as in effect on the effective date of [sections 1 through 132] or as later amended, was previously allowed;

(b) any trust during any period that the trust may be revoked or amended by its settlor; or

(c) a trust if contributions to the trust qualify for the annual exclusion under section 2503(c) of the Internal Revenue Code of 1986, as in effect on the effective date of [sections 1 through 132] or as later amended.

**Section 102. General powers of trustee.** (1) A trustee, without authorization by the court, may exercise:

(a) powers conferred by the terms of the trust; and

(b) except as limited by the terms of the trust:

(i) all powers over the trust property that an unmarried competent owner has over individually owned property;

(ii) any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; and

(iii) any other powers conferred by [sections 1 through 132].

(2) The exercise of a power is subject to the fiduciary duties prescribed by [sections 88 through 104].

**Section 103. Specific powers of trustee.** Without limiting the authority conferred by [section 102], a trustee may:

(1) collect trust property and accept or reject additions to the trust property from a settlor or any other person;

(2) acquire or sell property, for cash or on credit, at public or private sale;

(3) exchange, partition, or otherwise change the character of trust property;

(4) deposit trust money in an account in a regulated financial-service institution;

(5) borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(6) with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;

(7) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

(a) vote or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

(b) hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

(c) pay calls, assessments, and other sums chargeable or accruing against the securities and sell or exercise stock subscription or conversion rights; and

(d) deposit the securities with a depositary or other regulated financial-service institution;

(8) with respect to an interest in real property, construct or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

(9) enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

(10) grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

(11) insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;

(12) abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

(13) with respect to possible liability for violation of environmental law:

(a) inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

(b) take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

(c) decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

(d) compromise claims against the trust that may be asserted for an alleged violation of environmental law; and

(e) pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

(14) pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(15) pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

(16) exercise elections with respect to federal, state, and local taxes;

(17) select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

(18) make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the

circumstances, and assert a lien on future distributions for repayment of those loans;

(19) pledge trust property to guarantee loans made by others to the beneficiary;

(20) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

(21) pay an amount distributable to a beneficiary who is under a legal disability, or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit or by:

(a) paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;

(b) paying it to the beneficiary's custodian named under the Uniform Transfers to Minors Act or to a custodial trustee pursuant to the laws of any state and, for that purpose, creating a custodianship or custodial trust;

(c) if the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

(d) managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

(22) on distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;

(23) resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(24) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(25) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and

(26) on termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

**Section 104. Distribution upon termination.** (1) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within 30 days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

(2) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

(3) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

(a) it was induced by improper conduct of the trustee; or

(b) the beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

**Section 105. Definitions.** As used in [sections 105 through 111], the following definitions apply:

(1) "Charitable trust" means a charitable trust as described in section 4947(a)(1) of the Internal Revenue Code.

(2) "Private foundation" means a private foundation as defined in section 509 of the Internal Revenue Code.

(3) "Split-interest trust" means a split-interest trust as described in section 4947(a)(2) of the Internal Revenue Code.

**Section 106. Distribution under charitable trust or private foundation.** During any period when a trust is considered to be a charitable trust or a private foundation, the trustee shall distribute its income for each taxable year (and principal if necessary) at a time and in a manner that will not subject the property of the trust to tax under section 4942 of the Internal Revenue Code.

**Section 107. Restrictions on trustees under charitable trust, private foundations, or split-interest trust.** During any period when a trust is considered to be a charitable trust, a private foundation, or a split-interest trust, the trustee may not do any of the following:

(1) engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code;

(2) retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code;

(3) make any investments in a manner that subjects the property of the trust to tax under section 4944 of the Internal Revenue Code; or

(4) make any taxable expenditure as defined in section 4945(d) of the Internal Revenue Code.

**Section 108. Exceptions applicable to split-interest trusts.** (1) [Section 107(2) and (3)] do not apply to any trust described in section 4947(b)(3) of the Internal Revenue Code.

(2) [Section 107] does not apply with respect to any of the following:

(a) any amounts payable under the terms of a trust to income beneficiaries unless a deduction was allowed under section 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B) of the Internal Revenue Code;

(b) any amounts in trust other than amounts for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 of the Internal Revenue Code if the amounts are segregated, as that term is defined in section 4947(a)(3) of the Internal Revenue Code, from amounts for which no deduction was allowable; or

(c) any amounts irrevocably transferred in trust before May 27, 1969.

**Section 109. Incorporation in trust instruments.** The provisions of [sections 106 through 108 and 111] must be considered to be contained in the terms of the trust to which [sections 105 through 111] applies. Any term of the trust inconsistent with or contrary to [sections 105 through 111] is without effect unless that term is more restrictive.

**Section 110. Proceedings.** (1) A proceeding contemplated by section 101(l)(3) of the federal Tax Reform Act of 1969 (Public Law 91-172) may be commenced pursuant to [section 36] by the organization involved. All

specifically named beneficiaries of the organization and the attorney general must be parties to the proceedings. Notwithstanding [section 24], this provision is not exclusive and does not limit any jurisdiction that otherwise exists.

(2) If an instrument creating a trust affected by this section has been recorded, a notice of pendency of judicial proceedings under this section must be recorded in a similar manner within 10 days from the commencement of the proceedings. A duly certified copy of any final judgment or decree in the proceedings must be similarly recorded.

**Section 111. Disposition of property upon termination of a charitable trust, private foundation, or split-interest trust.** At the termination of a charitable trust, private foundation organized as a trust, or any other trust described in section 501(c)(3) of the Internal Revenue Code, the trust property must be distributed for one or more exempt purposes or to organizations that are organized and operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code or must be distributed to the federal government or to a state or local government for a public purpose. At the termination of a split-interest trust, the charitable portion of the trust property must be distributed to one or more organizations described in sections 170(c), 2055(a), and 2522(a) of the Internal Revenue Code.

**Section 112. Prudent investor rule.** (1) Except as provided in subsection (2), a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule.

(2) The settlor may expand or restrict the prudent investor rule by express provisions in the trust instrument. A trustee is not liable to a beneficiary for the trustee's good faith reliance on these express provisions.

**Section 113. Standard of care — investments and management — considerations.** (1) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(2) A trustee's investment and management decisions respecting individual assets and courses of action must be evaluated not in isolation, but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(3) Among circumstances that are appropriate to consider in investing and managing trust assets are the following, to the extent relevant to the trust or its beneficiaries:

(a) general economic conditions;

(b) the possible effect of inflation or deflation;

(c) the expected tax consequences of investment decisions or strategies;

(d) the role that each investment or course of action plays within the overall trust portfolio;

(e) the expected total return from income and the appreciation of capital;

(f) other resources of the beneficiaries known to the trustee as determined from information provided by the beneficiaries;

(g) needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(h) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(4) A trustee shall make a reasonable effort to ascertain facts relevant to the investment and management of trust assets.

(5) A trustee may invest in any kind of property or type of investment or engage in any course of action or investment strategy consistent with the standards of this Act.

**Section 114. Diversification — duty of trustee — exception.** (1) Subject to subsection (2), in making and implementing investment decisions, the trustee has a duty to diversify the investments of the trust unless, under the circumstances, it is not prudent to do so.

(2) If trust assets include farm or ranch property, a closely held family business, timber interests, or interests in oil, gas, or minerals, the trustee may elect to retain those assets. A trustee's exercise of discretion to retain assets of the character described in this subsection is not a breach of the trustee's duty to diversify investments.

**Section 115. Review of assets — time for compliance.** Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust and with the requirements of [sections 112 through 117].

**Section 116. Compliance determinations — standards.** Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

**Section 117. Interpretation of trust terms construing legal investments.** The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, must be construed as authorizing any investment or strategy permitted under [sections 112 through 117]: "investments permissible by law for investment of trust funds", "legal investments", "authorized investments", "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital", "prudent man rule", "prudent trustee rule", "prudent person rule", and "prudent investor rule".

**Section 118. Remedies for breach of trust.** (1) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

(2) To remedy a breach of trust that has occurred or may occur, the court may:

(a) compel the trustee to perform the trustee's duties;

(b) enjoin the trustee from committing a breach of trust;

(c) compel the trustee to redress a breach of trust by paying money, restoring property, or other means;

(d) order a trustee to account;

(e) appoint a special fiduciary to take possession of the trust property and administer the trust;

(f) suspend the trustee;

(g) remove the trustee as provided in [section 84];

(h) reduce or deny compensation to the trustee;

(i) subject to [section 129], void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or

(j) order any other appropriate relief.

**Section 119. Damages for breach of trust.** (1) A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of:

(a) any loss or depreciation in value of the trust estate resulting from the breach of trust, with interest;

(b) the profit the trustee made by reason of the breach of trust, with interest; or

(c) any profit that would have accrued to the trust estate if the loss of profit is the result of the breach of trust.

(2) Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the fiduciary duties of the trustee, the terms or purposes of the trust, or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

(3) If the trustee is liable for interest pursuant to this section, interest must be determined as the greater of the following amounts:

(a) the amount of interest that accrues at the legal rate on judgments; or

(b) the amount of interest the trustee actually received as a result of the breach of trust.

**Section 120. Damages in absence of breach.** (1) A trustee is accountable to an affected beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust.

(2) Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

**Section 121. Attorney's fees and costs.** In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

**Section 122. Limitation of action against trustee.** (1) A beneficiary may not commence a proceeding against a trustee for breach of trust more than 3 years after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

(2) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence.

(3) If subsection (1) does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within 5 years after the first to occur of:

(a) the removal, resignation, or death of the trustee;

(b) the termination of the beneficiary's interest in the trust; or

(c) the termination of the trust.

**Section 123. Reliance on trust instrument.** A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

**Section 124. Event affecting administration or distribution.** If the happening of an event, including marriage, divorce, performance of educational requirements, or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

**Section 125. Exculpation of trustee.** (1) A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

(a) relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the fiduciary duties of the trustee, the terms or purposes of the trust, or the interests of the beneficiaries;

(b) was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor; or

(c) relieves the trustee of accountability for profits derived from a breach of trust.

(2) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances, that its existence and contents were adequately communicated to the settlor, and that the settlor was represented by independent legal counsel before adopting the exculpatory term.

**Section 126. Beneficiary's consent, release, or ratification.** A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach unless:

(1) the consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

(2) at the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

**Section 127. Limitation on personal liability of trustee.** (1) Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity.

(2) A trustee is personally liable for torts committed in the course of administering a trust or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.

(3) A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

**Section 128. Interest as general partner.** (1) Unless personal liability is imposed in the contract, a trustee who in the trustee's fiduciary capacity holds

an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to the Montana Uniform Partnership Act or the Montana Uniform Limited Partnership Act. The addition of the phrase "trustee" or "as trustee" or a similar designation to the signature of a trustee on a written contract is satisfactory disclosure of the fiduciary capacity.

(2) A trustee who, in the trustee's fiduciary capacity, holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest, but this does not affect the liability of the trustee for the trustee's own negligence, wrongful act, or misconduct.

(3) If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.

**Section 129. Protection of person dealing with trustee.** (1) A person other than a beneficiary who in good faith assists a trustee or who in good faith and for value deals with a trustee without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

(2) A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

(3) A person who in good faith delivers assets to a trustee need not ensure their proper application.

(4) A person other than a beneficiary who in good faith assists a former trustee or who in good faith and for value deals with a former trustee without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

(5) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

**Section 130. Certification of trust.** (1) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing the following information:

(a) that the trust exists and the date the trust instrument was executed;

(b) the identity of the settlor;

(c) the identity and address of the currently acting trustee;

(d) the relevant powers of the trustee;

(e) the revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust; and

(f) the authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee.

(2) A certification of trust may be signed or otherwise authenticated by any trustee. Upon request, the trustee shall acknowledge the certification in order that the certification may be recorded.

(3) A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

(4) A certification of trust need not contain the dispositive terms of a trust.

(5) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments that designate the trustee and confer upon the trustee the power to act in the pending transaction.

(6) A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.

(7) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(8) A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages if the court determines that the person did not act in good faith in demanding the trust instrument.

(9) This section does not limit the right of a person to obtain a copy of the trust instrument when required to be furnished by law or in a judicial proceeding concerning the trust.

**Section 131. Uniformity of application and construction.** In applying and construing [sections 1 through 132], consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**Section 132. Electronic records and signatures.** The provisions of [sections 1 through 132] governing the legal effect, validity, or enforceability of electronic records or electronic signatures and of contracts formed or performed with the use of such records or signatures conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7002) and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

**Section 133. Petition to authorize proposed action — substituted judgment.** (1) The conservator or other interested person may file a petition under [sections 133 through 139] for an order of the court authorizing or requiring the conservator to take a proposed action for any one or more of the following purposes:

(a) benefiting the protected person or the estate;

(b) minimizing current or prospective taxes or expenses of administration of the conservatorship estate or of the estate upon the death of the protected person; or

(c) providing gifts for any purposes and to any charities, relatives (including the protected person's spouse, descendants, or ancestors), friends, or other objects of bounty as would be likely beneficiaries of gifts from the protected person.

(2) The action proposed in the petition may include but is not limited to the following:

(a) making gifts of principal or income, or both, of the estate, outright or in trust;

(b) conveying or releasing the protected person's contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety;

(c) exercising or releasing the protected person's powers as donee of a power of appointment;

(d) entering into contracts;

(e) creating for the benefit of the protected person or others revocable or irrevocable trusts of the property of the estate that may extend beyond the protected person's disability or life;

(f) transferring to a trust created by the conservator or protected person any property unintentionally omitted from the trust;

(g) exercising options of the protected person to purchase or exchange securities or other property;

(h) exercising the rights of the protected person to elect benefit or payment options, to terminate or to change beneficiaries or ownership, to assign rights, to borrow, or to receive cash value in return for a surrender of rights under any of the following:

(i) life insurance policies, plans, or benefits;

(ii) annuity policies, plans, or benefits;

(iii) mutual fund and other dividend investment plans; or

(iv) retirement, profit sharing, and employee welfare plans and benefits;

(i) exercising the right of the protected person to disclaim any interest that may be disclaimed;

(j) exercising the right of the protected person to revoke or modify a revocable trust or to surrender the right to revoke or modify a revocable trust. The court may not authorize or require the conservator to exercise the right to revoke or modify a revocable trust if the instrument governing the trust:

(i) evidences an intent to reserve the right of revocation or modification exclusively to the protected person;

(ii) provides expressly that a conservator may not revoke or modify the trust; or

(iii) otherwise evidences an intent that would be inconsistent with authorizing or requiring the conservator to exercise the right to revoke or modify the trust.

(3) If an existing trust has been or is being amended, the order of the court may authorize the conservator to execute, after the trust amendment, a new "pour over" will or codicil that devises to the trustee of the amended trust other property of the protected person that had not previously been transferred to the trust.

**Section 134. Notice of hearing.** Notice of the hearing of the petition must be given, regardless of age, for the period and in the manner provided by 72-1-301 to all of the following:

(1) the persons required to be named in a petition for the appointment of a conservator;

(2) so far as is known to the petitioner, beneficiaries under any document executed by the protected person that may have testamentary effect unless the court for good cause dispenses with such notice;

(3) if the proposed action involves a trust, to all persons entitled to receive notice with respect to such an action under [sections 1 through 132];

(4) so far as is known to the petitioner, the persons who, if the protected person were to die immediately, would be the protected person's heirs under the laws of intestate succession unless the court for good cause dispenses with the notice; and

(5) other persons as the court may order.

**Section 135. Consent or lack of capacity of protected person — adequate provision for protected person and dependents.** The court may make an order authorizing or requiring the proposed action under [sections 133 through 139] only if the court determines all of the following:

(1) the protected person either:

(a) is not opposed to the proposed action; or

(b) if opposed to the proposed action, lacks legal capacity for the proposed action; and

(2) either the proposed action will have no adverse effect on the estate or the estate remaining after the proposed action is taken will be adequate to provide for the needs of the protected person and for the support of those legally entitled to support, maintenance, and education from the protected person, taking into account the age, physical condition, standards of living, and all other relevant circumstances of the protected person and of those legally entitled to support, maintenance, and education from the protected person.

**Section 136. Circumstances to be considered in determining whether to authorize or require proposed action.** In determining whether to authorize or require a proposed action under [sections 133 through 139], the court shall take into consideration all of the relevant circumstances, which may include but are not limited to the following:

(1) whether the protected person has legal capacity for the proposed transaction and, if not, the probability of the protected person's recovery of legal capacity;

(2) the past donative declarations, practices, and conduct of the protected person;

(3) the traits of the protected person;

(4) the relationship and intimacy of the prospective donees with the protected person, their standards of living, and the extent to which they would be natural objects of the protected person's bounty by any objective test based on the relationship, intimacy, and standards of living;

(5) the wishes of the protected person;

(6) any known estate plan of the protected person, including but not limited to:

(a) the protected person's will;

(b) any trust of which the protected person is the settlor or beneficiary;

(c) any power of appointment created by or exercisable by the protected person; and

(d) any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at the protected person's death to another or others that the protected person may have originated;

(7) the manner in which the estate would devolve upon the protected person's death, giving consideration to the age and the mental and physical condition of the protected person, the prospective devisees or heirs of the protected person, and the prospective donees;

(8) the value, liquidity, and productiveness of the estate;

(9) the minimization of current or prospective income, estate, inheritance, or other taxes or expenses of administration;

(10) changes of tax laws and other laws that would likely have motivated the protected person to alter the protected person's estate plan;

(11) the likelihood from all the circumstances that the protected person as a reasonably prudent person would take the proposed action if the protected person had the capacity to do so;

(12) whether any beneficiary is the spouse of the protected person;

(13) whether a beneficiary has committed physical abuse, neglect, false imprisonment, or financial abuse against the protected person after the protected person was substantially unable to manage his or her financial resources or resist fraud or undue influence and whether the protected person's disability persisted throughout the time of the hearing on the proposed action; or

(14) the mandate of [section 135] that if the proposed action is taken, the remaining assets of the estate will be adequate to provide for the needs of the protected person and for the support, maintenance and education of those legally entitled to receive such from the protected person.

**Section 137. Order.** After hearing, the court in its discretion may approve, modify and approve, or disapprove the proposed action and may authorize or direct the conservator to transfer or dispose of assets or take other action as provided in the court's order.

**Section 138. No duty to propose action.** Nothing in [sections 133 through 139] imposes any duty on the conservator to propose any action under [sections 133 through 139], and the conservator is not liable for failure to propose any action under [sections 133 through 139].

**Section 139. Production of protected person's other relevant estate plan documents.** (1) As used in this section, "estate plan of the protected person" includes but is not limited to:

(a) the protected person's will;

(b) any trust of which the protected person is the settlor or beneficiary;

(c) any power of appointment created by or exercisable by the protected person; and

(d) any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at the protected person's death to another or others that the protected person may have originated.

(2) Notwithstanding 26-1-803 or any case law relating to the attorney-client privilege, the court in its discretion may order that any person having possession of any document constituting all or part of the estate plan of the protected person shall deliver the document to the court for examination by the court and, in the discretion of the court, by the attorneys for the persons who have appeared in the proceedings under [sections 133 through 139] in connection with the petition filed under [sections 133 through 139].

(3) Unless the court otherwise orders, a person who examines any document produced pursuant to an order under this section may not disclose the contents of the document to any other person. If that disclosure is made, the court may adjudge the person making the disclosure to be in contempt of court.

(4) For good cause, the court may order that a document constituting all or part of the estate plan of the protected person, whether or not produced

pursuant to an order under this section, must be delivered for safekeeping to the custodian designated by the court. The court may impose conditions that it determines are appropriate for holding and safeguarding the document. The court may authorize the conservator to take any action a depositor may take under Montana law.

**Section 140. Liability for creditor claims and statutory allowances.** A grantee beneficiary of a beneficiary deed is liable for an allowed claim against the transferor's probate estate and statutory allowances to a surviving spouse and children to the extent provided in [section 141].

**Section 141. Liability of nonprobate transferees for creditor claims and statutory allowances.** (1) As used in this section, "nonprobate transfer" means a valid transfer effective at death, other than a transfer of a survivorship interest in a joint tenancy of real estate, by a transferor whose last domicile was in this state to the extent that the transferor immediately before death had power, acting alone, to prevent the transfer by revocation or withdrawal and instead to use the property for the benefit of the transferor or apply it to discharge claims against the transferor's probate estate.

(2) Except as otherwise provided by statute, a transferee of a nonprobate transfer is subject to liability to any probate estate of the decedent for allowed claims against the decedent's probate estate and statutory allowances to the decedent's spouse and children to the extent the estate is insufficient to satisfy those claims and allowances. The liability of a nonprobate transferee may not exceed the value of nonprobate transfers received or controlled by that transferee.

(3) Nonprobate transferees are liable for the insufficiency described in subsection (2) in the following order of priority:

(a) a transferee designated in the decedent's will or any other governing instrument, as provided in the instrument;

(b) the trustee of a trust serving as the principal nonprobate instrument in the decedent's estate plan as shown by its designation as devisee of the decedent's residuary estate or by other facts or circumstances, to the extent of the value of the nonprobate transfer received or controlled;

(c) other nonprobate transferees in proportion to the values received.

(4) Unless otherwise provided by the trust instrument, interests of beneficiaries in all trusts incurring liabilities under this section abate as necessary to satisfy the liability, as if all of the trust instruments were a single will and the interests were devises under it.

(5) A provision made in one instrument may direct the apportionment of the liability among the nonprobate transferees taking under that or any other governing instrument. If a provision in one instrument conflicts with a provision in another, the later one prevails.

(6) Upon due notice to a nonprobate transferee, the liability imposed by this section is enforceable in proceedings in this state, whether or not the transferee is located in this state.

(7) A proceeding under this section may not be commenced unless the personal representative of the decedent's estate has received a written demand for the proceeding from the surviving spouse or a child, to the extent that statutory allowances are affected, or a creditor. If the personal representative declines or fails to commence a proceeding after demand, a person making demand may commence the proceeding in the name of the decedent's estate, at the expense of the person making the demand and not of the estate. A personal

representative who declines in good faith to commence a requested proceeding incurs no personal liability for declining.

(8) A proceeding under this section must be commenced within 1 year after the decedent's death, but a proceeding on behalf of a creditor whose claim was allowed after proceedings challenging disallowance of the claim may be commenced within 60 days after final allowance of the claim.

(9) Unless a written notice asserting that a decedent's probate estate is nonexistent or insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative, the following provisions apply:

(a) Payment or delivery of assets by a financial institution, registrar, or other obligor to a nonprobate transferee in accordance with the terms of the governing instrument controlling the transfer releases the obligor from all claims for amounts paid or assets delivered.

(b) A trustee receiving or controlling a nonprobate transfer is released from liability under this section with respect to any assets distributed to the trust's beneficiaries. Each beneficiary, to the extent of the distribution received, becomes liable for the amount of the trustee's liability attributable to assets received by the beneficiary.

**Section 142.** Section 31-2-209, MCA, is amended to read:

**"31-2-209. Assignment — when void.** An assignment for the benefit of creditors is void against any creditor of the assignor not assenting to the assignment in the following cases:

(1) if the assignment gives a preference dependent upon any condition or contingency or with any power of revocation reserved;

(2) if the assignment tends to coerce any creditor to release or compromise the creditor's demand;

(3) if the assignment provides for the payment of any claim known by the assignor to be false or fraudulent or for the payment of more upon any claim than is known to be justly due from the assignor;

(4) if the assignment reserves any interest in the assigned property or in any part of the property to the assignor or for the assignor's benefit before all existing debts are paid;

(5) if the assignment confers upon the assignee any power that, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust;

(6) if the assignment exempts the assignor from liability for neglect of duty or misconduct~~;~~

~~(7) if the assignment violates 72-34-105~~."

**Section 143.** Section 32-1-102, MCA, is amended to read:

**"32-1-102. Institutions to which chapter is applicable.** (1) The word "bank" as used in this chapter means any corporation that has been incorporated to conduct the business of receiving money on deposit or transacting a trust or investment business, as defined in this chapter.

(2) The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business is doing a commercial or savings bank business, whether the deposit is made subject to check or is evidenced by a certificate of deposit, a passbook, a note, or other receipt. This section does not apply to or include money or its equivalent left in escrow or left with an agent pending investment in real estate or securities for or on account of the agent's principal.

(3) It is unlawful for any corporation, partnership, firm, or individual to engage in or transact a banking business within this state except by means of a corporation duly organized for that purpose.

(4) Banks are divided into the following classes:

(a) commercial banks;

(b) savings banks;

(c) trust companies;

(d) investment companies.

(5) This chapter does not apply to*:*

*(a)* any investment company or corporation established prior to March 8, 1927, under authority of the law of Montana not accepting, receiving, or holding money on deposit~~.~~*;*

~~(6) This chapter does not apply to a~~

*(b) a* student financial institution, as defined in 32-1-115*; or*

*(c) a nonprofit corporation that serves as trustee of one or more trusts in which it is expressly designated under the terms of the trust as having a present or future beneficial interest, vested or contingent*."

**Section 144.** Section 32-3-506, MCA, is amended to read:

**"32-3-506. Shares in trust.** (1) Shares may be issued in the name of a revocable trust if the ~~trustor~~ *settlor* is a member, or shares may be issued in the name of an irrevocable trust if either the ~~trustor~~ *settlor* or the beneficiary is a member. A beneficiary, unless a member in the beneficiary's own right, may not be permitted to vote, obtain loans, or hold office or be required to pay an entrance or membership fee.

(2) Payment of part or all of the shares described in subsection (1) to a trustee, to the extent of the payment, discharges the liability of the credit union to the trustee and the beneficiary, and the credit union is not obligated to see to the application of the payment."

**Section 145.** Section 35-2-118, MCA, is amended to read:

**"35-2-118. General powers.** (1) Unless its articles of incorporation provide otherwise, a corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs including, without limitation, power:

(a) to sue and be sued, complain, and defend in its corporate name;

(b) to have a corporate seal, which may be altered at will, and to use it or a facsimile of the seal by impressing, affixing, or in any other manner reproducing it;

(c) to make and amend bylaws, consistent with its articles of incorporation or with the laws of this state, for regulating and managing the affairs of the corporation;

(d) to purchase, receive, lease, or otherwise acquire and to own, hold, improve, use, and otherwise deal with real or personal property or any legal or equitable interest in property, wherever located;

(e) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(f) to purchase, receive, subscribe for, or otherwise acquire any other entity; to own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of any other entity; and to deal in and with shares or other interests in or obligations of any other entity;

(g) to make contracts and guaranties; to incur liabilities; to borrow money; to issue notes, bonds, and other obligations; and to secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(h) to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by 35-2-435;

(i) to be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(j) to conduct its activities, locate offices, and exercise the powers granted by this chapter in the state or out of the state;

(k) to elect or appoint directors, officers, employees, and agents of the corporation; to define their duties; and to fix their compensation;

(l) to pay pensions and establish pension plans, pension trusts, and other benefit and incentive plans for any or all of its current or former directors, officers, employees, and agents;

(m) to make donations consistent with law for the public welfare or for charitable, religious, scientific, or educational purposes and for other purposes that further the corporate interest;

(n) to impose dues, assessments, admission, and transfer fees upon its members;

(o) to establish conditions for admission of members, admit members, and issue memberships;

(p) to carry on a business; ~~or~~

*(q) to serve as trustee of any trust in which it is expressly designated under the terms of the trust as having a present or future beneficial interest, vested or contingent; or*

~~(q)~~*(r)* to do all things necessary or convenient consistent with law to further the activities and affairs of the corporation.

(2) A corporation may not have or issue shares of stock."

**Section 146.** Section 72-1-103, MCA, is amended to read:

**"72-1-103. General definitions.** Subject to additional definitions contained in the subsequent chapters that are applicable to specific chapters, parts, or sections and unless the context otherwise requires, in chapters 1 through ~~5~~ *6*, the following definitions apply:

(1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.

(2) "Application" means a written request to the clerk for an order of informal probate or appointment under chapter 3, part 2.

(3) "Beneficiary", as it relates to:

(a) a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer;

(b) a charitable trust, includes any person entitled to enforce the trust;

(c) a beneficiary of a beneficiary designation, refers to a beneficiary of:

(i) an account with POD designation or a security registered in beneficiary form (TOD); or

(ii) any other nonprobate transfer at death; and

(d) a beneficiary designated in a governing instrument, includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

(4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of:

(a) an account with POD designation or a security registered in beneficiary form (TOD); or

(b) any other nonprobate transfer at death.

(5) "Child" includes an individual entitled to take as a child under chapters 1 through 5 by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

(6) (a) "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate that arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration.

(b) The term does not include estate taxes or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(7) "Clerk" or "clerk of court" means the clerk of the district court.

(8) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(9) "Court" means the district court in this state having jurisdiction in matters relating to the affairs of decedents.

(10) "Descendant" of an individual means all of the individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this section.

(11) "Devise" when used as a noun means a testamentary disposition of real or personal property and when used as a verb means to dispose of real or personal property by will.

(12) "Devisee" means a person designated in a will to receive a devise. For purposes of chapter 3, in the case of a devise to an existing trust or trustee or to a trustee or trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(13) "Disability" means cause for a protective order as described by 72-5-409.

(14) "Distributee" means any person who has received property of a decedent from the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment to distributed assets remaining in the trustee's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(15) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to chapters 1 through 5 as originally constituted and as it exists from time to time during administration.

(16) "Exempt property" means that property of a decedent's estate that is described in 72-2-413.

(17) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

(18) "Foreign personal representative" means a personal representative appointed by another jurisdiction.

(19) "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.

(20) "Governing instrument" means a deed; will; trust; insurance or annuity policy; account with POD designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit plan; instrument creating or exercising a power of appointment or a power of attorney; or dispositive, appointive, or nominative instrument of any similar type.

(21) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment but excludes one who is merely a guardian ad litem.

(22) "Heirs", except as controlled by 72-2-721, means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.

(23) "Incapacitated person" has the meaning provided in 72-5-101.

(24) "Informal proceedings" means proceedings conducted without notice to interested persons by the clerk of court for probate of a will or appointment of a personal representative.

(25) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. The term also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding.

(26) "Issue" of a person means a descendant.

(27) "Joint tenants with the right of survivorship" includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

(28) "Lease" includes an oil, gas, coal, or other mineral lease.

(29) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(30) "Minor" means a person who is under 18 years of age.

(31) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as security.

(32) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of death.

(33) "Organization" means a corporation, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.

(34) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under chapters 1 through 5 by

intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(35) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

(36) "Person" means an individual, a corporation, an organization, or other legal entity.

(37) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(38) "Petition" means a written request to the court for an order after notice.

(39) "Proceeding" includes action at law and suit in equity.

(40) "Property" includes both real and personal property or any interest in that property and means anything that may be the subject of ownership.

(41) "Protected person" has the meaning provided in 72-5-101.

(42) "Protective proceeding" has the meaning provided in 72-5-101.

(43) "Security" includes any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; transferable share; voting trust certificate; in general, any interest or instrument commonly known as a security; any certificate of interest or participation; or any temporary or interim certificate, receipt, or certificate of deposit for or any warrant or right to subscribe to or purchase any of the foregoing.

(44) "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

(45) "Special administrator" means a personal representative as described by chapter 3, part 7.

(46) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(47) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(48) "Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or chapters 1 through 5.

(49) "Supervised administration" refers to the proceedings described in chapter 3, part 4.

(50) "Survive" means that an individual has neither predeceased an event, including the death of another individual, nor is considered to have predeceased an event under 72-2-114 or 72-2-712. The term includes its derivatives, such as "survives", "survived", "survivor", and "surviving".

(51) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(52) "Testator" includes an individual of either sex.

(53) "Trust" includes an express trust, private or charitable, with additions to the trust, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be

administered in the manner of an express trust. The term excludes other constructive trusts and excludes resulting trusts; conservatorships; personal representatives; trust accounts as defined in 72-6-111 and Title 72, chapter 6, parts 2 and 3; custodial arrangements pursuant to chapter 26; business trusts providing for certificates to be issued to beneficiaries; common trust funds; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

(54) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(55) "Ward" means an individual described in 72-5-101.

(56) "Will" includes codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession."

**Section 147.** Section 72-1-310, MCA, is amended to read:

**"72-1-310. Permitted pleadings — verification required.** (1) The following pleadings are permitted in probate ~~and trust~~ proceedings:

(a) an application, petition, report, or account filed pursuant to this title; and

(b) an objection or response filed pursuant to this title to an application, petition, report, or account.

(2) Except as provided in 25-4-203 regarding verification by an agent or attorney, the verification must be made as follows:

(a) An application must be verified by the applicant or, if there are two or more parties joining the application, by any one of the applicants.

(b) A petition must be verified by the petitioner or, if there are two or more parties joining the petition, by any one of the petitioners.

(c) A report or account must be verified by the person who has the duty to make the report or account or, if there are two or more persons having a duty to make the report or account, by any one of the persons having the duty.

(d) An objection or response must be verified by the objector or respondent or, if there are two or more parties joining in the objection or response, by any one of the objectors or respondents."

**Section 148.** Section 72-1-311, MCA, is amended to read:

**"72-1-311. Affidavit or verified petition as evidence in uncontested proceedings.** In any probate ~~or trust~~ matter, an affidavit or verified petition must be received as evidence when offered in an uncontested proceeding under this title."

**Section 149.** Section 72-1-312, MCA, is amended to read:

**"72-1-312. Attorney signature — pleadings.** In addition to the verification required by 25-4-203 and 72-1-310, every application and other pleading filed in connection with any probate ~~or trust~~ proceeding must be signed by the attorney of the person filing the pleading if the person is represented by an attorney. The verification must be made by the person executing or filing the document with the court as provided in 72-1-310."

**Section 150.** Section 72-6-206, MCA, is amended to read:

**"72-6-206. Applicability of beneficial ownership provisions.** The provisions of 72-6-211 through *72-6-214 and* 72-6-216 concerning beneficial ownership as between parties or as between parties and beneficiaries apply only

to controversies between those persons and their creditors and other successors and do not apply to the right of those persons to payment as determined by the terms of the account. Sections 72-6-221 through 72-6-227 govern the liability and setoff rights of financial institutions that make payments pursuant to it."

**Section 151.** Section 72-6-214, MCA, is amended to read:

**"72-6-214. Accounts and transfers nontestamentary.** Except as provided in Title 72, chapter 2, part 2, or as a consequence of and to the extent directed by ~~72-6-215~~ *[section 141]*, a transfer resulting from the application of 72-6-212 is effective by reason of the terms of the account involved and this part and is not testamentary or subject to Title 72, chapters 1 through 5."

**Section 152.** Section 72-16-1001, MCA, is amended to read:

**"72-16-1001. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of revenue provided for in 2-15-1301.

(2) "Direct skip" has the meaning given in section 2612(c), Internal Revenue Code.

(3) "Federal generation-skipping transfer tax" means the tax imposed by section 2601, Internal Revenue Code.

(4) "Generation-skipping transfer" means the generation-skipping transfer defined in section 2611, Internal Revenue Code, when the original transferor is a resident of Montana on the date of the original transfer or when the property is real or personal property located in Montana.

(5) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

(6) "Original transferor" means any grantor, donor, ~~trustor~~ *settlor*, or testator who by grant, gift, trust, or will makes a transfer of real or personal property that results in a federal generation-skipping transfer tax."

**Section 153.** Section 72-34-424, MCA, is amended to read:

**"72-34-424. Adjustments between principal and income.** (1) Subject to subsection (2), a trustee may make an adjustment between principal and income to the extent the trustee considers necessary if all of the following conditions are satisfied:

(a) the trustee invests and manages trust assets under the prudent investor rule under ~~72-34-603~~ *[section 112]*;

(b) the trust describes the amount that must or may be distributed to a beneficiary by referring to the trust's income; and

(c) the trustee determines, after applying the rules in 72-34-423(1) and considering any power the trustee may have under the trust to invade principal or accumulate income, that the trustee is unable to comply with 72-34-423(2).

(2) A trustee may not make an adjustment between principal and income in any of the following circumstances:

(a) when it would diminish the income interest in a trust:

(i) that requires all of the income to be paid at least annually to a spouse; and

(ii) for which, if the trustee did not have the power to make the adjustment, an estate tax or gift tax marital deduction would be allowed, in whole or in part;

(b) when it would reduce the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(c) when it would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(d) when it would be made from any amount that is permanently set aside for charitable purposes under a will or trust, unless both income and principal are set aside;

(e) when possessing or exercising the power to make an adjustment would cause an individual to be treated as the owner of all or part of the trust for income tax purposes and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(f) when possessing or exercising the power to make an adjustment would cause all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment; or

(g) when the trustee is a beneficiary of the trust.

(3) ~~Notwithstanding 72-33-611, if~~ *If* subsection (2)(e), (2)(f), or (2)(g) of this section applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the trust.

(4) A trustee may release the entire power conferred by subsection (1) or may release only the power to adjust from income to principal or the power to adjust from principal to income in either of the following circumstances:

(a) if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subsections (2)(a) through (2)(f); or

(b) if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (2).

(5) A release under subsection (4) may be permanent or for a specified period, including a period measured by the life of an individual.

(6) A trust that limits the power of a trustee to make an adjustment between principal and income does not affect the application of this section unless it is clear from the trust that it is intended to deny the trustee the power of adjustment provided by subsection (1).

(7) In deciding whether and to what extent to exercise the power to make adjustments under this section, the trustee may consider, but is not limited to considering, any of the following:

(a) the nature, purpose, and expected duration of the trust;

(b) the intent of the ~~trustor~~ *settlor*;

(c) the identity and circumstances of the beneficiaries;

(d) the needs for liquidity, regularity of income, and preservation and appreciation of capital;

(e) the assets held in the trust, the extent to which the assets consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property, the extent to which an asset is used by a beneficiary, and whether an asset was purchased by the trustee or received from the ~~trustor~~ *settlor*;

(f) the net amount allocated to income under other statutes and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(g) whether and to what extent the trust gives the trustee the power to invade principal or accumulate income or prohibits the trustee from invading principal or accumulating income and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(h) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; or

(i) the anticipated tax consequences of an adjustment.

(8) Nothing in this part or this section is intended to create or imply a duty to make an adjustment, and a trustee is not liable for not considering whether to make an adjustment or for choosing not to make an adjustment."

**Section 154.** Section 72-34-446, MCA, is amended to read:

**"72-34-446. Transactions in derivatives — allocations of receipts and disbursements — options to buy or sell property — allocation of amounts received or paid.** (1) In this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments that gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(2) To the extent that a trustee does not account under 72-34-435 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(3) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a ~~trustor~~ *settlor* of the trust for services rendered, must be allocated to principal."

**Section 155.** Section 72-36-206, MCA, is amended to read:

**"72-36-206. Effects on real property transactions.** (1) This section relates only to conveyances of real property to or from a trust and supplements but does not modify other substantive provisions of ~~Title 72, chapters 33 through 36,~~ *[sections 1 through 132]* relating to the creation or validity of trusts.

(2) Except as otherwise provided in ~~Title 72, chapters 33 through 36~~ *[sections 1 through 132]*, a conveyance of real property to a trustee designated as such in the conveyance vests the whole estate conveyed in the trustee, subject only to the trustee's duties. The beneficiaries of the trust take no estate or interest in the real property, but may determine or enforce the terms of the trust as provided in ~~chapters 33 through 36~~ *[sections 1 through 132]*.

(3) An instrument creating or amending a trust need not be recorded, but may be recorded if properly acknowledged.

(4) If there is no clear reference to or designation of a grantee as trustee in a conveyance or in a separately recorded instrument recorded in the same county as the conveyance and describing the same property as described in the conveyance, the conveyance must be considered to be absolute to the grantee, in favor of purchasers or encumbrancers from the grantee, who were without

actual knowledge and who acted for a valuable consideration, despite any valid trust that may exist.

(5) Unless limitations upon a trustee's power or authority are set forth in the recorded conveyance of real property to the trustee or in a separate trust instrument, portion of a separate trust instrument, or abstract of a separate trust instrument recorded in the same county, there are no limitations upon the trustee's power or authority to convey or encumber the real property in favor of third persons who were without actual knowledge and who acted for a valuable consideration. A separate trust instrument incorporated by reference in a conveyance to a trustee may not limit the trustee's power or authority to convey or encumber unless the limitations are set forth in the trust instrument, portion of a trust instrument, or abstract of a trust instrument that is also recorded in the county where the real property is located. An amendment to a recorded trust instrument may not affect the power or authority of a trustee to convey or encumber unless it is also recorded in the same place.

(6) A subsequent conveyance from a person designated in the original conveyance as trustee or from the successor trustee conveys the whole estate vested in the trustee, except as limited by the terms of the conveyance. The identity of a successor trustee may be established by a recorded affidavit of the successor trustee specifying the successor trustee's name and address and the date and circumstances of succession and confirming that the successor trustee is currently lawfully serving in that capacity.

(7) In an action or proceeding by a third person involving the real property granted to a trustee, the person designated as trustee in the original conveyance, or the successor trustee as established in subsection (6), or, if none, the person then actually serving as trustee, or, if none, any beneficiary designated by the court to represent the interests of the beneficiaries is considered the only necessary representative of the trust and of all persons with an interest in the trust. A judgment is binding upon and conclusive against the trust and all persons interested in the trust as to all matters finally adjudicated in the judgment.

(8) The designation of the name of a trust in a recorded conveyance vests the estate in the trustee of the trust. A subsequent conveyance may be made by the trustee. The identity of a party serving as trustee may be established by a recorded affidavit of the party or by another recorded instrument specifying the trustee's name and address and confirming that the party is currently serving as the trustee."

**Section 156.** Section 77-1-219, MCA, is amended to read:

**"77-1-219. Public school land purchases — considerations — distributions.** (1) The board may request the board of examiners to issue bonds for the purpose of purchasing interests in and appurtenances to real property selected by the board in accordance with the requirements of this section. Upon issuance of the bonds, the board shall purchase the real property and its appurtenances.

(2) Prior to requesting the issuance of bonds under subsection (1), the board shall consider the following:

(a) the income-generating potential of the real property and appurtenances;

(b) the opportunity for sustainable forest management activities and outcomes as described in 76-13-701 and 76-13-702; and

(c) the opportunity for recreational use of the real property and appurtenances consistent with Title 77, chapter 1, part 8.

(3) Prior to requesting the issuance of bonds, the board or the department, at the board's direction, shall complete a cost-benefit analysis of potential real property and appurtenance purchases. This cost-benefit analysis must be made available to the public upon request.

(4) Prior to purchasing any real property and appurtenances, the board shall determine that the benefits of the purchase are significant and that the financial risks are prudent. In order to reach that determination, the board shall examine the purchase of any real property and appurtenances as if the board had a fiduciary duty as a reasonably prudent trustee of a perpetual trust. For the purposes of this section, that duty requires the board to:

(a) discharge its duties with the care, skill, and diligence that a prudent person acting in a similar capacity with the same resources and familiar with similar matters should exercise in the conduct of an enterprise of similar character and aims;

(b) manage the land holdings purchased pursuant to 77-1-218 and this section in accordance with an asset management plan to minimize the risk of loss and maximize the sustained rate of return;

(c) discharge its duties and powers solely in the interest of and for the benefit of the trust; and

(d) discharge its duties subject to the fiduciary standards set forth in ~~72-34-114~~ *[section 88]*.

(5) All interests in real property and appurtenances acquired under this section must be managed pursuant to this title."

**Section 157.** Section 77-1-229, MCA, is amended to read:

**"77-1-229. Public land trust purchases.** (1) Subject to legislative appropriation, the board is authorized to evaluate potential purchases and purchase interests in and appurtenances to real property from the proceeds of the account established in 77-1-228 pursuant to the limitations of 77-1-220, 77-1-228, and this section. Transactional costs may not exceed 7% of the purchase price of acquired property. Prior to purchasing interests in and appurtenances to real property, the board shall consider the following:

(a) the income-generating potential of the real property and appurtenances;

(b) the opportunity for sustainable forest management activities and outcomes as described in 76-13-701 and 76-13-702;

(c) the opportunity for recreational use of the real property and appurtenances consistent with Title 77, chapter 1, part 8; and

(d) the cost-benefits of potential real property and appurtenance purchases. This cost-benefit analysis must be made available to the public upon request.

(2) Prior to purchasing any real property and appurtenances, the board shall determine that the benefits of the purchase are significant and outweigh the financial risks. In order to reach that determination, the board shall examine the purchase of any real property and appurtenances as if the board had a fiduciary duty as a reasonably prudent trustee of a perpetual trust. For the purposes of this section, that duty requires the board to:

(a) discharge its duties with the care, skill, and diligence that a prudent person acting in a similar capacity with the same resources and familiar with similar matters should exercise in the conduct of an enterprise of similar character and aims;

(b) manage the land holdings purchased pursuant to this section in accordance with an asset management plan to minimize the risk of loss and maximize the sustained rate of return;

(c) discharge its duties and powers solely in the interest of and for the benefit of the public land trust;

(d) discharge its duties subject to the fiduciary standards set forth in ~~72-34-114~~ *[section 88]*; and

(e) determine the potential for job creation.

(3) All interests in real property and appurtenances acquired under this section must be managed pursuant to this title and are subject to the provisions of Article X, section 11, of the Montana constitution.

(4) After deductions for administrative costs pursuant to 77-1-109, the net interest and income earned on real property and appurtenances purchased with funds from the account established in 77-1-228 must be distributed to the guarantee account provided for in 20-9-622 for distribution to public schools."

**Section 158.** Section 77-2-364, MCA, is amended to read:

**"77-2-364. Land banking purchases.** (1) The board may select and purchase, lease, receive by donation, hold in trust, or in any manner acquire for and in the name of the state of Montana, in trust for the beneficiaries specified in sections 10 through 19 of The Enabling Act of Congress (approved February 22, 1889, 25 Stat. 676), as amended, any interest in real property and improvements, tracts, and leaseholds of land that the board considers proper in order to best provide prudent, maximum, long-term revenue for the beneficiaries.

(2) Sales of state land may be initiated only by the board, by the department, or at the request of a lessee, pursuant to 77-1-202, 77-1-301, 77-2-301, or 77-2-308. The board shall ensure that the full market value of the land sold is realized for each trust by using the appraisal, sale, advertising, and competitive bid procedures contained within 77-2-303, 77-2-321, 77-2-322, 77-2-323, and 77-2-324. The estimated fair market value must be determined by a Montana-licensed and Montana-certified appraiser.

(3) When it is not inconsistent with the purpose of the trust, the board shall purchase land possessing legal access for all legal purposes.

(4) When purchasing land, easements, or improvements for the existing trusts, the board shall develop and apply appraisal and revenue projection procedures to ensure that the land or easements proposed for purchase or that the improvements proposed to be acquired are likely to produce more net revenue for the affected trust than the revenue that was produced from the land that was sold. The board may not purchase land, easements, or improvements pursuant to 77-2-361 through 77-2-367 unless it has first prudently determined that the land, easements, or improvements are likely to produce a greater or equal annual rate of return, as may be reasonably expected over a 20-year accounting period for Class 1, 3, and 4 lands and over a 60-year accounting period for Class 2 lands, as described in 77-1-401, with an acceptable level of risk for the affected trust, than the current annual rate of return from the state land that has been sold pursuant to 77-2-363. As guidance, the board shall use generally accepted accounting standards and the Uniform Appraisal Standards for Federal Land Acquisitions published by the U.S. department of justice and the appraisal institute.

(5) Prior to purchasing any land, easements, or improvements, the board shall determine that the financial risks and benefits of the purchase are

prudent, financially productive investments that are consistent with the board's fiduciary duty as a reasonably prudent trustee of a perpetual trust. For the purposes of implementing 77-2-361 through 77-2-367, that duty requires the board to:

(a) discharge its duties with the care, skill, prudence, and diligence that a prudent person acting in a similar capacity with the same resources and familiar with similar matters should exercise in the conduct of an enterprise of similar character and aims;

(b) diversify the land holdings of each trust to minimize the risk of loss and maximize the sustained rate of return;

(c) discharge its duties and powers solely in the interest of and for the benefit of the trust managed;

(d) discharge its duties subject to the fiduciary standards set forth in ~~72-34-114~~ *[section 88]*; and

(e) maintain, as closely as possible, the existing land base of each trust, consistent with the state's fiduciary duty.

(6) Prior to purchasing a parcel of land in excess of 160 acres in any particular county, the board shall consult with the county commissioners of the county in which the parcel is located."

**Section 159.** Section 82-1-304, MCA, is amended to read:

**"82-1-304. Administration of trust.** (1) The administration of the trust must comply with the appropriate provisions regulating trusts contained in Title 72.

(2) Trustee or attorney fees may not be paid from the trust proceeds.

(3) All bonuses, rental payments, royalties, and other income must be paid to the trustee until the trust is terminated and notice of its termination given to all interested parties. The trustee shall distribute all money held in the trust to the person or persons entitled to the money upon the order of the district court.

(4) A trust in favor of unlocatable owners must be kept in force until the unlocatable owners of the mineral interest in question have successfully claimed their share of the funds held in trust and have filed the notice, as provided in 82-1-306.

(5) The trustee shall invest funds in a prudent manner, as provided in ~~72-34-114~~ *[section 113]*. Fifty percent of the interest earned on each trust must be credited to the department of revenue or, if the clerk of the court is the trustee, to the general fund of the county in which the mineral interest is located to defray the costs of administration.

(6) Funds held in the trusts are subject to the provisions governing abandoned property contained in Title 70, chapter 9."

**Section 160. Codification instruction.** (1) [Sections 1 through 132] are intended to be codified as an integral part of Title 72, and the provisions of Title 72 apply to [sections 1 through 132].

(2) [Sections 133 through 139] are intended to be codified as an integral part of Title 72, chapter 5, part 4, and the provisions of Title 72, chapter 5, part 4, apply to [sections 133 through 139].

(3) [Section 140] is intended to be codified as an integral part of Title 72, chapter 6, part 1, and the provisions of Title 72, chapter 6, part 1, apply to [section 140].

(4) [Section 141] is intended to be codified as an integral part of Title 72, chapter 6, part 2, and the provisions of Title 72, chapter 6, part 2, apply to [section 141].

**Section 161. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 162. Repealer.** The following sections of the Montana Code Annotated are repealed:

72-6-122. Rights of creditors and others.
72-6-215. Rights of creditors and others.
72-33-101. Short title.
72-33-102. General rule concerning application of trust code.
72-33-103. Common law as law of state.
72-33-104. Constructive and resulting trusts not affected.
72-33-105. Application of code to charitable trusts.
72-33-106. Laws affecting construction and operation of wills apply to trusts.
72-33-107. Reference to statutes — amendments and additions.
72-33-108. Definitions.
72-33-201. Methods of creating trust.
72-33-202. Intention to create trust.
72-33-203. Trust property.
72-33-204. Trust purpose.
72-33-205. Trust for indefinite or general purposes.
72-33-206. Designation of beneficiary.
72-33-207. Designation of trust or trustee as beneficiary.
72-33-208. Statute of frauds.
72-33-209. Consideration.
72-33-210. Exception to doctrine of merger.
72-33-211. Separate writing identifying disposition of tangible personal property.
72-33-216. Resulting trust upon failure of trust.
72-33-217. Resulting trust upon full performance of trust.
72-33-218. Purchase money resulting trust.
72-33-219. Constructive trust.
72-33-220. Resulting trusts, constructive trusts — statute of frauds.
72-33-301. Restraint on transfer of income.
72-33-302. Restraint on transfer of principal.
72-33-303. Trust for support.
72-33-304. Transferee or creditor cannot compel trustee to exercise discretion — liability of trustee for payment to or for beneficiary.
72-33-305. Where trustor is beneficiary.
72-33-306. Disclaimer not transfer.
72-33-401. Presumption of revocability.
72-33-402. Method of revocation by trustor.

72-33-403. Power to revoke includes power to modify.
72-33-406. Modification or termination of irrevocable trust by all beneficiaries.
72-33-407. Modification or termination by trustor and all beneficiaries.
72-33-408. Guardian ad litem.
72-33-409. No conclusive presumption of fertility.
72-33-411. Termination of trusts — trustee's powers on termination.
72-33-412. Trust with uneconomically low principal.
72-33-413. Modification or termination.
72-33-414. Disposition of property upon termination.
72-33-415. Combination of similar trusts.
72-33-416. Division of trusts.
72-33-501. Charitable trust.
72-33-502. Charitable purposes.
72-33-503. Enforcement of charitable trust.
72-33-504. Cy pres doctrine.
72-33-601. Acceptance of trust by trustee.
72-33-602. Rejection of trust — nonliability of person who rejects trust.
72-33-603. Trustee's bond.
72-33-604. Certificate of trustee.
72-33-611. Cotrustees.
72-33-612. Vacancy in office of cotrustee.
72-33-613. Temporary incapacity of cotrustee.
72-33-616. Resignation of the trustee.
72-33-617. Liability upon resignation.
72-33-618. Removal of a trustee.
72-33-619. Vacancy in office of trustee.
72-33-620. Delivery of property by former trustee upon occurrence of vacancy.
72-33-621. Appointment of trustee to fill vacancy.
72-33-622. Capacity of trustee.
72-33-626. Trustee's compensation as provided in trust instrument — different compensation.
72-33-627. Trustee's compensation where trust silent.
72-33-628. Compensation for services rendered in making temporary investments.
72-33-629. Court determination of prospective compensation.
72-33-630. Compensation of cotrustees.
72-33-631. Repayment of trustee for expenditures.
72-33-632. Trustee's lien.
72-33-701. Limits on rights of beneficiary of revocable trust.
72-33-702. Consent by beneficiary of revocable trust.
72-33-703. Notice to beneficiary of revocable trust.
72-33-704. Rights of holder of power of appointment or withdrawal.
72-33-705. Notice in case involving future interest of beneficiary.

72-34-101. Duty to administer trust.
72-34-102. Duties of trustee of revocable trust.
72-34-103. Duty of loyalty.
72-34-105. Duty to avoid conflict of interest.
72-34-106. Duty not to undertake adverse trust.
72-34-107. Duty to take control of and preserve trust property.
72-34-108. Duty to make trust property productive.
72-34-109. Duty to dispose of improper investments.
72-34-110. Duty to keep trust property separate and identified.
72-34-111. Duty to enforce claims.
72-34-112. Duty to defend actions.
72-34-113. Duty not to delegate entire administration of trust.
72-34-114. Duty to use ordinary skill and prudence.
72-34-115. Duty to use special skills.
72-34-116. Duty with respect to cotrustees.
72-34-117. Certain actions and transactions not violations of duties.
72-34-118. Standard of care not affected by compensation.
72-34-124. Trustee's general duty to report information to beneficiaries.
72-34-125. Duty to report information about trust on request.
72-34-126. Duty to provide annual statement to income beneficiaries.
72-34-127. Exceptions to duty to report information and to provide annual statement.
72-34-128. Permissive accounts.
72-34-129. Discretionary powers to be exercised reasonably.
72-34-130. Standard for exercise of "absolute", "sole", or "uncontrolled" powers.
72-34-201. Definitions.
72-34-202. Distribution under charitable trust or private foundation.
72-34-203. Restrictions on trustees under charitable trust, private foundations, or split-interest trust.
72-34-204. Exceptions applicable to split-interest trusts.
72-34-205. Incorporation in trust instruments.
72-34-206. Proceedings.
72-34-207. Disposition of property upon termination of 501(c)(3) trust.
72-34-301. General powers of trustee.
72-34-302. Power of court to relieve trustee from restrictions on powers.
72-34-303. Exercise of powers subject to trustee's duties.
72-34-304. Application of rules governing trustees' powers.
72-34-306. Collecting and holding property.
72-34-307. Receiving additions to trust.
72-34-308. Participation in business — change in form of business.
72-34-309. Investments.
72-34-310. Investments in obligations of United States government.
72-34-311. Deposits.
72-34-316. Acquisition and disposition of property.

72-34-317. Management of property.
72-34-318. Encumbrances.
72-34-319. Repairs and alterations of property.
72-34-320. Development of land.
72-34-321. Leases.
72-34-322. Mineral leases.
72-34-323. Options.
72-34-326. Voting rights with respect to corporate shares, memberships, or property.
72-34-327. Payment of calls and assessments.
72-34-328. Stock subscriptions and conversions.
72-34-329. Consent to change in form of business — voting trusts.
72-34-330. Holding securities in name of nominee.
72-34-331. Insurance.
72-34-332. Borrowing money.
72-34-336. Payment and settlement of claims.
72-34-337. Payment of taxes, trustee's compensation, and other expenses.
72-34-338. Loans to beneficiary.
72-34-339. Distribution to beneficiaries under legal disability.
72-34-340. Nature and value of distributions.
72-34-341. Hiring persons.
72-34-342. Execution and delivery of instruments.
72-34-343. Actions and proceedings.
72-34-501. Breach of trust.
72-34-502. Trustee's liability to beneficiary for acts of agent.
72-34-503. Trustee's liability to beneficiary for acts of cotrustee.
72-34-504. Trustee's liability to beneficiary for acts of predecessor.
72-34-506. Remedies for breach of trust.
72-34-507. Remedies for breach exclusively in equity.
72-34-508. Measure of liability for breach of trust.
72-34-509. Measure of liability for interest.
72-34-511. Limitations on proceedings against trustee.
72-34-512. Exculpation of trustee.
72-34-513. Nonliability for following instructions under revocable trust.
72-34-514. Consent of beneficiary to relieve trustee of liability for breach of trust.
72-34-515. Discharge of trustee's liability by release or contract.
72-34-516. Discharge of trustee's liability by subsequent affirmance.
72-34-517. Nonliability for refusing to follow directions under revocable trust.
72-34-601. Short title.
72-34-602. Compliance — duty of trustee — exception — liability.
72-34-603. Standard of care — investments and management — considerations.
72-34-604. Duty to deal impartially with beneficiaries.

72-34-605. Diversification — duty of trustee — exception.
72-34-606. Review of assets — time for compliance.
72-34-607. Costs — incurrence.
72-34-608. Compliance determinations — standards.
72-34-609. Delegation of investment and management functions — standards of care — trustees and agents — liability — jurisdiction.
72-34-610. Interpretation of trust terms construing legal investments.
72-35-101. Subject matter jurisdiction.
72-35-102. Full-power court.
72-35-103. Principal place of administration of trust.
72-35-104. Jurisdiction over trustees and beneficiaries.
72-35-105. Basis of jurisdiction over trust, trust property, and trust parties.
72-35-106. Venue.
72-35-107. Jury trial.
72-35-201. Application of part.
72-35-202. Manner of mailing — when mailing complete.
72-35-203. Personal delivery instead of mailing.
72-35-206. Proof of giving notice — conclusiveness of order.
72-35-207. Additional notice.
72-35-208. Shortening time.
72-35-209. Notice of postponed hearings.
72-35-301. Petitioners — grounds for petition.
72-35-302. Commencement of proceeding.
72-35-303. Dismissal of petition.
72-35-306. Notice.
72-35-307. Request for special notice.
72-35-308. Request for copy of petition.
72-35-311. Authority to make necessary orders — temporary trustee.
72-35-312. Appeal.
72-35-313. Appointment of guardian ad litem.
72-35-314. Intermittent judicial intervention in trust administration.
72-35-315. Enforcement of beneficiary's rights under charitable trust by attorney general.
72-35-401. Application of part.
72-35-402. Transfer of place of administration or property from Montana.
72-35-403. Contents of petition.
72-35-404. Notice and hearing.
72-35-405. Order granting transfer.
72-35-406. Manner of transfer — discharge of trustee.
72-35-501. Application.
72-35-502. Transfer of place of administration or property to Montana.
72-35-503. Venue.
72-35-504. Contents of petition.
72-35-505. Notice and hearing.

72-35-506. Order accepting transfer and appointing trustee.
72-35-507. Conditional order accepting transfer.
72-35-508. Administration of transferred trust.
72-36-101. Personal liability of trustee to third persons on contracts.
72-36-102. Personal liability of trustee arising from ownership or control of trust estate.
72-36-103. Personal liability of trustee for torts.
72-36-104. Liability of dissenting cotrustee to third persons.
72-36-105. Assertion of claims against trust.
72-36-106. Liability as between trustee and trust estate.
72-36-201. Protection of third person dealing with trustee.
72-36-202. Application of property delivered to trustee by third person.
72-36-203. Protection of third person dealing with former trustee.
72-36-301. Creditor's rights against revocable trust during trustor's lifetime.
72-36-302. Creditor's rights against revocable trust after trustor's death.

**Section 163. Effective date.** [This act] is effective October 1, 2013.

**Section 164. Application to existing relationships.** (1) Except as otherwise provided in [this act], on [the effective date of this act]:

(a) [this act] applies to all trusts created before, on, or after [the effective date of this act];

(b) [this act] applies to all judicial proceedings concerning trusts commenced on or after [the effective date of this act];

(c) [this act] applies to judicial proceedings concerning trusts commenced before [the effective date of this act] unless the court finds that application of a particular provision of [this act] would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of [this act] does not apply and the superseded law applies;

(d) any rule of construction or presumption provided in [this act] applies to trust instruments executed before [the effective date of this act] unless there is a clear indication of a contrary intent in the terms of the trust; and

(e) an act done before [the effective date of this act] is not affected by [this act].

(2) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before [the effective date of this act], that statute continues to apply to the right even if it has been repealed or superseded.

Approved April 22, 2013

# CHAPTER NO. 265

[SB 292]

AN ACT REVISING MEDICAL PEER REVIEW LAWS TO CLARIFY THE MEANING OF THE TERMS "DATA" AND "INCIDENT REPORT" OR "OCCURRENCE REPORT"; AND AMENDING SECTIONS 37-2-401 AND 50-16-201, MCA.

WHEREAS, the Montana Legislature adopted Montana's peer review statutes over 50 years ago, noting that peer review is in the interest of the public health; and

WHEREAS, in Sistok v. Kalispell Regional Hospital, 251 Mont. 38, 823 P.2d 251 (1991), the Montana Supreme Court held that Montana's peer review statutes confer a privilege on data created by or at the request of a medical review committee; and

WHEREAS, in Sistok v. Kalispell Regional Hospital, the Montana Supreme Court also observed that the statute providing for confidentiality was developed and the privilege was conferred by the Legislature as a matter of public policy to encourage health care providers to join medical review committees in an effort to ensure the responsive and full discourse among the professionals involved and to promote an atmosphere free of apprehension so that constructive criticism could occur; and

WHEREAS, in Huether v. District Court, 2000 MT 158, 300 Mont. 212, 4 P.3d 1193, the Montana Supreme Court found that Montana's peer review statutes are typical of the statutes adopted by various states to encourage candor in medical review committees that review and evaluate the quality of medical care provided in their hospitals; and

WHEREAS, in Huether v. District Court, the Montana Supreme Court also noted that the goal of Montana's peer review statutes is to promote continuous improvement in the quality of health care delivery through review of standardized health care operations and the performance of doctors and staff; and

WHEREAS, the Legislature finds that the continuous review and improvement of health care is in the interest of all Montanans; and

WHEREAS, the Legislature finds it appropriate to revise certain definitions in order to clarify which information is privileged and which information is not privileged under Montana's peer review statutes.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 37-2-401, MCA, is amended to read:

**"37-2-401. Definitions.** As used in this part, the following definitions apply:

(1) (a) "Data" means written reports, notes, or records or oral reports or proceedings created by or at the request of a quality assurance committee that *may be shared with a medical practitioner, including the medical practitioner being reviewed, and that* are used exclusively in connection with quality assessment or improvement activities, including but not limited to the professional training, supervision, or discipline of a medical practitioner by a medical practice group. *The term includes all subsequent evaluations and analysis of an untoward event, including any opinions or conclusions of a reviewer.*

(b) The term does not include:

(i) incident reports or occurrence reports; or

(ii) health care information that is used in whole or in part to make decisions about an individual who is the subject of the health care information.

(2) "Health care facility" has the meaning provided in 50-5-101.

(3) (a) "Incident report" or "occurrence report" means the written business record of a medical practice group *that:*

*(i) may be but is not required to be* created *by the staff involved* in response to an untoward event, including but not limited to a patient injury, adverse outcome, or interventional error, for the purpose of ensuring a prompt evaluation of the event*; and*

*(ii) is a factual rendition of the event*.

(b) The terms do not include any subsequent evaluation of the event by a quality assurance committee*,* ~~that~~ *regardless of whether or not the subsequent evaluation of the event occurred* ~~was conducted~~ in response to an incident report or occurrence report. *The creation of an incident report or occurrence report is not a condition precedent for a subsequent evaluation of an event, and any subsequent evaluation of an event remains privileged and confidential pursuant to this part, regardless of the creation of an incident report or occurrence report.*

(4) "Medical practice group" means a group of two or more medical practitioners practicing medicine in a professional corporation, professional limited liability company, partnership, sole proprietorship, or associations of these entities.

(5) "Medical practitioner" means an individual licensed by the state of Montana to engage in the practice of medicine, osteopathy, podiatry, optometry, or a nursing specialty described in 37-8-202 or licensed as a physician assistant pursuant to 37-20-203.

(6) "Quality assurance committee" means a duly appointed committee within a medical practice group that administers a quality assurance program and may be called by another name within the medical practice group, including but not limited to a utilization review, peer review, medical ethics review, professional standards review, quality assurance, or quality improvement committee.

(7) "Quality assurance program" means a comprehensive, ongoing system of mechanisms established by a medical practice group for monitoring and evaluating the quality and appropriateness of the care provided to patients in order to:

(a) identify and take steps to correct any significant problems and trends in the delivery of care; and

(b) take advantage of opportunities to improve care.

(8) (a) "Records" means records of interviews, internal reviews and investigations, and all reports, statements, minutes, memoranda, charts, statistics, and other documentation generated during the activities of a quality assurance program.

(b) The term does not mean original medical records or other records kept relative to any patient in the course of the business of operating as a medical practice group."

**Section 2.** Section 50-16-201, MCA, is amended to read:

**"50-16-201. Definitions.** As used in this part, the following definitions apply:

(1) (a) "Data" means written reports, notes, or records or oral reports or proceedings created by or at the request of a utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee of a health care facility that *may be shared with a medical practitioner, including the medical practitioner being reviewed, and that* are used exclusively in connection with quality assessment or improvement activities, including the professional training, supervision, or discipline of a medical practitioner by a

health care facility. *The term includes all subsequent evaluations and analysis of an untoward event, including any opinions or conclusions of a reviewer.*

(b) The term does not include:

(i) incident reports or occurrence reports; or

(ii) health care information that is used in whole or in part to make decisions about an individual who is the subject of the health care information.

(2) "Health care facility" has the meaning provided in 50-5-101.

(3) (a) "Incident ~~reports~~ *report*" or "occurrence ~~reports~~ *report*" means a written business record of a health care facility~~,~~ *that:*

*(i) may be but is not required to be* created *by the staff involved* in response to an untoward event, such as a patient injury, adverse outcome, or interventional error, for the purpose of ensuring a prompt evaluation of the event~~.~~*; and*

*(ii) is a factual rendition of the event.*

(b) The terms do not include any subsequent evaluation of the event *created by or at the request of a utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee, regardless of whether or not the subsequent evaluation of the event occurred* in response to an incident report or occurrence report ~~by a utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee~~. *The creation of an incident report or occurrence report is not a condition precedent for a subsequent evaluation of an event, and any subsequent evaluation of an event remains privileged and confidential pursuant to this part, regardless of the creation of an incident report or occurrence report.*

(4) "Medical practitioner" means an individual licensed by the state of Montana to engage in the practice of medicine, osteopathy, podiatry, optometry, or a nursing specialty described in 37-8-202 or licensed as a physician assistant pursuant to 37-20-203."

Approved April 22, 2013

# CHAPTER NO. 266

[SB 340]

AN ACT REQUIRING SCHOOL DISTRICTS TO DISPLAY AMERICAN-MADE UNITED STATES FLAGS IN EVERY CLASSROOM AND TO MAKE COPIES OF CERTAIN GOVERNMENT DOCUMENTS AVAILABLE IN EVERY GRADE 7 THROUGH 12 CLASSROOM; AMENDING SECTION 20-3-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-3-324, MCA, is amended to read:

**"20-3-324. Powers and duties.** As prescribed elsewhere in this title, the trustees of each district shall:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher's aides, custodians, maintenance personnel, school bus drivers, food

service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the school districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or a budget amendment of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) establish the ANB, BASE budget levy, over-BASE budget levy, additional levy, operating reserve, and state impact aid amounts for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, impact aid fund, interlocal cooperative fund, and other funds as authorized by the state superintendent of public instruction in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) set the length of the school term, school day, and school week in accordance with 20-1-302;

(18) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, K-12 career and vocational/technical education, and special education parts of this title;

(19) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(20) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(21) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to the child;

(22) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except that trustees from a first-class school district may share the responsibility for visiting each school in the district;

(23) procure and display outside daily in suitable weather on school days at each school of the district an American flag that measures not less than 4 feet by 6 feet;

(24) provide that an American flag *manufactured in the United States* that measures approximately ~~12 inches by 18 inches~~ *3 feet by 5 feet* be prominently displayed in each classroom in each school of the district *no later than the beginning of the school year starting after July 1, 2014*, except in a classroom in which the flag may get soiled. ~~This requirement is waived if the flags are not provided by a local civic group.~~ *Districts are encouraged to work with civic groups to acquire flags through donation, and this requirement is waived if the flags are not provided by a civic group.*

*(25) for grades 7 through 12, provide that legible copies of the United States constitution, the United States Bill of Rights, and the Montana constitution printed in the United States or in electronic form are readily available in every classroom no later than the beginning of the school year starting after July 1, 2014. Districts are encouraged to work with civic groups to acquire the documents through donation, and this requirement is waived if the documents are not provided by a civic group.*

~~(25)~~*(26)* adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in 20-5-110;

~~(26)~~*(27)* upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties school district student assessment data for any test required by the board of public education;

~~(27)~~*(28)* consider and may enter into an interlocal agreement with a postsecondary institution, as defined in 20-9-706, that authorizes 11th and 12th grade students to obtain credits through classes available only at a postsecondary institution;

~~(28)~~*(29)* approve or disapprove the conduct of school on a Saturday in accordance with the provisions of 20-1-303;

~~(29)~~*(30)* consider and, if advisable for a high school or K-12 district, establish a student financial institution, as defined in 32-1-115; and

~~(30)~~*(31)* perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 22, 2013

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# CHAPTER NO. 267

[SB 351]

AN ACT REVISING LAWS RELATED TO CRIMINAL BACKGROUND CHECKS; PROVIDING FOR CRIMINAL BACKGROUND CHECKS OF RESIDENTS IN HOMES WHERE A POTENTIAL EMERGENCY PLACEMENT MAY BE MADE; PROVIDING REQUIREMENTS FOR EMERGENCY PLACEMENT OF A CHILD IN A HOME; PROVIDING REQUIREMENTS FOR CONDUCTING BACKGROUND CHECKS; AND PROVIDING RULEMAKING AUTHORITY.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Criminal background checks of adults residing in potential emergency placements authorized.** (1) (a) If a child is removed from the child's parental or custodial home for protective care pursuant to this part and an emergency placement is offered, the department or an authorized tribe may request, in accordance with the procedures set forth in 28 CFR 901.1 through 901.4, that each adult 18 years of age or older who is residing in a home where the potential emergency placement is to be made consent to a preliminary state and federal name-based background check that must be followed within 15 calendar days from the date that the name-based background search was conducted with the submission of fingerprints to the state repository, as defined in 44-5-103, for a fingerprint-based background check conducted in accordance with subsection (2) of this section.

(b) If a name-based background check demonstrates that none of the adults residing in the home where the emergency placement is to be made has been convicted of a disqualifying criminal offense, the department or authorized tribe may place the child in the home pending the outcome of the fingerprint-based background check.

(c) If an adult refuses to consent to the department's or an authorized tribe's request for a name-based and fingerprint-based background check, the department or authorized tribe may not place the child in a home in which the adult resides, or if the child was already placed in the home, the department or authorized tribe shall immediately remove the child from the home.

(2) An adult who consents to a name-based and fingerprint-based background check pursuant to subsection (1) shall submit to the department or an authorized tribe a complete set of fingerprints and written permission authorizing the department or the authorized tribe to submit the fingerprints to the state repository for processing of the state and federal background check. Results of the name-based and fingerprint-based background check must be provided to the quality assurance division of the department of public health and human services or to an authorized tribe.

(3) If the department or an authorized tribe elects to perform an initial name-based background check and a fingerprint-based background check pursuant to this section, the department or the authorized tribe may not make an emergency placement or continue an emergency placement in a home in which an adult resident has been convicted of a disqualifying criminal offense.

(4) The state repository and the federal bureau of investigation may charge a reasonable fee for processing a fingerprint-based criminal background check.

(5) If an emergency placement is denied as a result of a name-based background check of a resident and the resident contests the denial, the resident may within 15 calendar days of the denial submit to the department or

authorized tribe a complete set of fingerprints with written permission allowing the department or authorized tribe to submit the fingerprints to the state repository for processing of the state and federal background check.

(6) The department shall by rule designate those criminal offenses that constitute a disqualifying criminal offense under this section, which may include but are not limited to felony convictions for violent crimes, crimes involving children, family members, or the elderly or disabled, and crimes involving drugs in which the conviction occurred within a certain period of time.

(7) For the purposes of this section, the following definitions apply:

(a) "Authorized tribe" means the tribal child services unit and its approved designees responsible for overseeing foster care licensing for an Indian tribe located within the borders of Montana that has in place a valid tribal fingerprint program user agreement with the Montana department of justice.

(b) "Emergency placement" means an instance in which the department or an authorized tribe provides protective services and places a child in the home of private individuals, including but not limited to family, neighbors, or friends of the child.

**Section 2. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 41, chapter 3, part 3, and the provisions of Title 41, chapter 3, part 3, apply to [section 1].

Approved April 22, 2013

# CHAPTER NO. 268

[SB 361]

AN ACT REVISING THE NAMES OF THE "CORPORATION LICENSE TAX" AND THE "CORPORATION INCOME TAX"; CHANGING THE NAME OF THE "CORPORATION LICENSE TAX" TO THE "CORPORATE INCOME TAX"; CHANGING THE NAME OF THE "CORPORATION INCOME TAX" TO THE "ALTERNATIVE CORPORATE INCOME TAX"; AMENDING SECTIONS 5-4-104, 15-1-121, 15-1-205, 15-6-138, 15-30-2110, 15-30-2328, 15-30-3301, 15-30-3312, 15-30-3313, 15-31-101, 15-31-102, 15-31-111, 15-31-112, 15-31-113, 15-31-114, 15-31-115, 15-31-117, 15-31-125, 15-31-143, 15-31-161, 15-31-401, 15-31-402, 15-31-404, 15-31-406, 15-31-511, 15-31-522, 15-31-523, 15-31-531, 15-31-543, 15-31-551, 15-32-107, 15-50-207, 15-68-815, 20-9-630, 33-17-407, AND 33-27-103, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 5-4-104, MCA, is amended to read:

**"5-4-104. Tax expenditure criteria — legislation.** (1) The legislature recognizes the value of relevant information when making determinations regarding tax policy and tax expenditures. The legislature also recognizes the need to reevaluate tax expenditures after enactment. In consideration of these policy goals, the legislature encourages a policy of providing an explicit purpose of a tax expenditure and termination dates of no more than 6 years in any legislation creating, expanding, or continuing a tax expenditure.

(2) As used in this section, the term "tax expenditures" means those revenue losses attributable to provisions of Montana tax laws that allow a special exclusion, exemption, or deduction from gross income or that provide a special credit, a preferential rate of tax, or a deferral of tax liability including:

(a) personal income and ~~corporation license~~ *corporate income* tax exemptions;

(b) property tax exemptions for which application to the department is necessary;

(c) deferral of income;

(d) credits allowed against Montana personal income tax or Montana ~~corporation license~~ *corporate income* tax;

(e) deductions from income; and

(f) any other identifiable preferential treatment of income or property."

**Section 2.** Section 15-1-121, MCA, is amended to read:

**"15-1-121. Entitlement share payment — purpose — appropriation.** (1) As described in 15-1-120(3), each local government is entitled to an annual amount that is the replacement for revenue received by local governments for diminishment of property tax base and various earmarked fees and other revenue that, pursuant to Chapter 574, Laws of 2001, amended by section 4, Chapter 13, Special Laws of August 2002, and later enactments, were consolidated to provide aggregation of certain reimbursements, fees, tax collections, and other revenue in the state treasury with each local government's share. The reimbursement under this section is provided by direct payment from the state treasury rather than the ad hoc system that offset certain state payments with local government collections due the state and reimbursements made by percentage splits, with a local government remitting a portion of collections to the state, retaining a portion, and in some cases sending a portion to other local governments.

(2) The sources of dedicated revenue that were relinquished by local governments in exchange for an entitlement share of the state general fund were:

(a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;

(b) vehicle, boat, and aircraft taxes and fees pursuant to:

(i) Title 23, chapter 2, part 5;

(ii) Title 23, chapter 2, part 6;

(iii) Title 23, chapter 2, part 8;

(iv) 61-3-317;

(v) 61-3-321;

(vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001;

(vii) Title 61, chapter 3, part 7;

(viii) 5% of the fees collected under 61-10-122;

(ix) 61-10-130;

(x) 61-10-148; and

(xi) 67-3-205;

(c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);

(d) district court fees pursuant to:

(i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);

(ii) 25-1-202;

(iii) 25-9-506; and

(iv) 27-9-103;

(e) certificate of title fees for manufactured homes pursuant to 15-1-116;

(f) financial institution taxes collected pursuant to the former provisions of Title 15, chapter 31, part 7;

(g) all beer, liquor, and wine taxes pursuant to:

(i) 16-1-404;

(ii) 16-1-406; and

(iii) 16-1-411;

(h) late filing fees pursuant to 61-3-220;

(i) title and registration fees pursuant to 61-3-203;

(j) veterans' cemetery license plate fees pursuant to 61-3-459;

(k) county personalized license plate fees pursuant to 61-3-406;

(l) special mobile equipment fees pursuant to 61-3-431;

(m) single movement permit fees pursuant to 61-4-310;

(n) state aeronautics fees pursuant to 67-3-101; and

(o) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77, chapter 1, part 5.

(3) (a) Except as provided in subsection (3)(b), the total amount received by each local government in fiscal year 2010 as an entitlement share payment under this section is the base component for the fiscal year 2011 distribution, and in each subsequent year the prior year entitlement share payment, including any reimbursement payments received pursuant to subsection (7), is each local government's base component. The sum of all local governments' base components is the fiscal year entitlement share pool.

(b) The total amount received by each local government in fiscal year 2011 as an entitlement share payment under this section is the base component for fiscal year 2012 and 2013 distributions, and in each subsequent year the prior year entitlement share payment, including any reimbursement payments received pursuant to subsection (7), is each local government's base component. The sum of all local governments' base components is the fiscal year entitlement share pool.

(4) (a) With the exception of fiscal years 2012 and 2013, the base entitlement share pool must be increased annually by an entitlement share growth rate as provided for in this subsection (4). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year, with the exception of fiscal years 2012 and 2013.

(b) By October 1 of each year, the department shall calculate the growth rate of the entitlement share pool for the current year in the following manner:

(i) The department shall calculate the entitlement share growth rate based on the ratio of two factors of state revenue sources for the first, second, and third most recently completed fiscal years as recorded on the statewide budgeting and accounting system. The first factor is the sum of the revenue for the first and second previous completed fiscal years received from the sources referred to in subsection (2)(b), (2)(c), and (2)(g) divided by the sum of the revenue for the second and third previous completed fiscal years received from the same sources

multiplied by 0.75. The second factor is the sum of the revenue for the first and second previous completed fiscal years received from individual income tax as provided in Title 15, chapter 30, and ~~corporation~~ *corporate* income tax as provided in Title 15, chapter 31, divided by the sum of the revenue for the second and third previous completed fiscal years received from the same sources multiplied by 0.25.

(ii) Except as provided in subsection (4)(b)(iii), the entitlement share growth rate is the lesser of:

(A) the sum of the first factor plus the second factor; or

(B) 1.03 for counties, 1.0325 for consolidated local governments, and 1.035 for cities and towns.

(iii) In no instance can the entitlement growth factor be less than 1. The entitlement share growth rate is applied to the most recently completed fiscal year entitlement payment to determine the subsequent fiscal year payment.

(5) As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided for in subsection (8). The county or consolidated local government is responsible for making an allocation from the county's or consolidated local government's share of the entitlement share pool to each special district within the county or consolidated local government in a manner that reasonably reflects each special district's loss of revenue sources for which reimbursement is provided in this section. The allocation for each special district that existed in 2002 must be based on the relative proportion of the loss of revenue in 2002.

(6) (a) The entitlement share pools calculated in this section, the amounts determined under 15-1-123(2) for local governments, the funding provided for in subsection (8) of this section, and the amounts determined under 15-1-123(4) for tax increment financing districts are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. Except for the distribution made under 15-1-123(2)(b), the distributions must be made on a quarterly basis.

(b) (i) The growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. The growth factor in the entitlement share must be calculated separately for:

(A) counties;

(B) consolidated local governments; and

(C) incorporated cities and towns.

(ii) In each fiscal year, the growth amount for counties must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each county's percentage of the prior fiscal year entitlement share pool for all counties; and

(B) 50% of the growth amount must be allocated based upon the percentage that each county's population bears to the state population not residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each consolidated local government's percentage of the prior fiscal year entitlement share pool for all consolidated local governments; and

(B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local government's population bears to the state's total population residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each incorporated city's or town's percentage of the prior fiscal year entitlement share pool for all incorporated cities and towns; and

(B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's population bears to the state's total population residing within incorporated cities and towns as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(v) In each fiscal year, the amount of the entitlement share pool before the growth amount or adjustments made under subsection (7) are applied is to be distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

(7) If the legislature enacts a reimbursement provision that is to be distributed pursuant to this section, the department shall determine the reimbursement amount as provided in the enactment and add the appropriate amount to the entitlement share distribution under this section. The total entitlement share distributions in a fiscal year, including distributions made pursuant to this subsection, equal the local fiscal year entitlement share pool. The ratio of each local government's distribution from the entitlement share pool must be recomputed to determine each local government's ratio to be used in the subsequent year's distribution determination under subsections (6)(b)(ii)(A), (6)(b)(iii)(A), and (6)(b)(iv)(A).

(8) (a) Except for a tax increment financing district entitled to a reimbursement under 15-1-123(4), if a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any funding. If a tax increment financing district referred to in subsection (8)(b) terminates, then the funding for the district provided for in subsection (8)(b) terminates.

(b) Except for the reimbursement made under 15-1-123(4)(b), one-half of the payments provided for in this subsection (8)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection (8)(a), the entitlement share for tax increment financing districts is as follows:

| | | |
|---|---|---|
| Deer Lodge | TIF District 1 | $2,833 |
| Deer Lodge | TIF District 2 | 2,813 |
| Flathead | Kalispell - District 2 | 4,638 |
| Flathead | Kalispell - District 3 | 37,231 |
| Flathead | Whitefish District | 148,194 |
| Gallatin | Bozeman - downtown | 31,158 |
| Missoula | Missoula - 1-1C | 250,279 |

| | | |
|---|---|---|
| Missoula | Missoula - 4-1C | 30,009 |
| Silver Bow | Butte - uptown | 255,421 |

(9) The estimated fiscal year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from tax increment financing districts, from countywide transportation block grants, or from countywide retirement block grants.

(10) When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.

(11) A local government may appeal the department's estimation of the base component, the entitlement share growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211.

(12) A payment required pursuant to this section may not be offset by a debt owed to a state agency by a local government in accordance with Title 17, chapter 4, part 1."

**Section 3.** Section 15-1-205, MCA, is amended to read:

**"15-1-205. Biennial report — contents.** (1) The department shall transmit to the governor 20 days before the meeting of the legislature and make available to the legislature and the public a report of the department showing all the taxable property of the state, counties, and cities and its value. The department shall follow the provisions of 5-11-210 in preparing the report for the legislature.

(2) The report must also include the statewide average effective tax rate of taxable property in each class of property. The department may determine whether an appropriate effective tax rate may be derived for net proceeds, gross proceeds, agricultural land, and forest land.

(3) The report or supplements to the report must also include:

(a) the gross dollar amount of revenue loss attributable to:

(i) personal income and ~~corporation license~~ *corporate income* tax exemptions;

(ii) property tax exemptions for which application to the department is necessary;

(iii) deferral of income;

(iv) credits allowed against Montana personal income tax or Montana ~~corporation license~~ *corporate income* tax, reported separately;

(v) deductions from income; and

(vi) any other identifiable preferential treatment of income or property;

(b) any change in tax revenue of the state or any unit of local government attributable to a change in federal tax law; ~~and~~

(c) any change in the revenue of any unit of local government attributable to a change in state tax law;

(d) the year of enactment and provision of the Montana Code Annotated granting the tax benefits in subsection (3)(a); and

(e) the number of taxpayers benefiting from each of the tax provisions listed in subsection (3)(a).

(4) A distributional analysis of the data described in subsection (3) must be related to the income level and age of the taxpayer whenever the information is available.

(5) (a) When reporting the data described in subsection (3)(a), the department shall identify any known purpose of the preferential treatment.

(b) Based upon the purpose of the preferential treatment, the department shall outline the available data necessary to determine the effectiveness of the preferential treatment.

(6) In reporting the data described in subsection (3), the department shall report any comparable data, if available, from Wyoming, Idaho, North Dakota, and South Dakota and from any other state the department may choose.

(7) The department shall identify in a separate section of the report any changes that have been made or that are contemplated in property appraisal or assessment.

(8) The department may include a report, prepared by the department of transportation, showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures.

(9) The department shall provide an internet version of the report free of charge to the public and shall charge a fee for paper copies that is commensurate with the cost of printing the report."

**Section 4.** Section 15-6-138, MCA, is amended to read:

**"15-6-138. Class eight property — description — taxable percentage.** (1) Class eight property includes:

(a) all agricultural implements and equipment that are not exempt under 15-6-207 or 15-6-220;

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-219, and supplies except those included in class five under 15-6-135;

(c) for oil and gas production, all:

(i) machinery;

(ii) fixtures;

(iii) equipment, including flow lines and gathering lines, pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, and gas boosters, together with equipment that is skidable, portable, or movable;

(iv) tools that are not exempt under 15-6-219; and

(v) supplies except those included in class five;

(d) all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors as provided in 15-6-220, and supplies except those included in class five;

(e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class or that are rented under a purchase incentive rental program as defined in 15-6-202(4);

(f) special mobile equipment as defined in 61-1-101;

(g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(h) x-ray and medical and dental equipment;

(i) citizens' band radios and mobile telephones;

(j) radio and television broadcasting and transmitting equipment;

(k) cable television systems;

(l) coal and ore haulers;

(m) theater projectors and sound equipment; and

(n) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

(2) As used in this section, the following definitions apply:

(a) "Coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds an axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(b) "Commercial establishment" includes any hotel, motel, office, petroleum marketing station, or service, wholesale, retail, or food-handling business.

(c) "Flow lines and gathering lines" means pipelines used to transport all or part of the oil or gas production from an oil or gas well to an interconnection with a common carrier pipeline as defined in 69-13-101, a pipeline carrier as defined in 49 U.S.C. 15102(2), or a rate-regulated natural gas transmission or oil transmission pipeline regulated by the public service commission or the federal energy regulatory commission.

(3) Except as provided in 15-24-1402, 15-24-2102, and subsection (4) of this section class eight property is taxed at:

(a) as determined pursuant to subsection (4):

(i) for the first $2 million of taxable market value, 2%; or

(ii) for the first $3 million of taxable market value, 1.5%; and

(b) for all taxable market value in excess of the applicable amount of taxable market value in subsection (3)(a), 3%.

(4) (a) The adjusted taxable market value and rate in subsection (3)(a)(i) apply for class eight property unless in any year beginning with fiscal year 2013 the revenue collected from individual income tax and ~~corporation~~ *corporate* income tax exceeds the revenue collected from individual income tax and ~~corporation~~ *corporate* income tax in the previous fiscal year by more than 4%. In that case, for tax years beginning after the next December 31, the taxable market value and rate in subsection (3)(a)(ii) apply.

(b) For the purpose of making the determination required in subsection (4)(a), the department of administration shall certify to the secretary of state, by August 1 of each year in which class eight property is not taxed pursuant to subsection (3)(a)(ii), the amount of unaudited individual income tax and ~~corporation~~ *corporate* income tax revenue in the prior fiscal year as recorded when that fiscal year statewide accounting, budgeting, and human resource system records are closed in July.

(5) The class eight property of a person or business entity that owns an aggregate of $20,000 or less in market value of class eight property is exempt from taxation.

(6) The gas gathering facilities of a stand-alone gas gathering company providing gas gathering services to third parties on a contractual basis, owning more than 500 miles of gas gathering lines in Montana, and centrally assessed in tax years prior to 2009 must be treated as a natural gas transmission pipeline subject to central assessment under 15-23-101. For purposes of this subsection,

the gas gathering line ownership of all affiliated companies, as defined in section 1504(a) of the Internal Revenue Code, 26 U.S.C. 1504(a), must be aggregated for purposes of determining the 500-mile threshold."

**Section 5.** Section 15-30-2110, MCA, is amended to read:

**"15-30-2110. Adjusted gross income.** (1) Subject to subsection (13), adjusted gross income is the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105;

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after December 31, 2002, the amount of any dividend to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, or a county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-2101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and ranch risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-2602.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;

(r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero; and

(s) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in 15-31-163.

(3) A shareholder of a DISC that is exempt from the ~~corporation license~~ *corporate income* tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and who file separate Montana income tax returns are not required to recompute allowable passive losses according to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C. 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

(9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the

federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(11) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(12) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection (12)(a)(iv), not to exceed $5,000, from the taxpayer's adjusted gross income if the taxpayer:

(i) is a health care professional licensed in Montana as provided in Title 37;

(ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;

(iii) has had a student loan incurred as a result of health-related education; and

(iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment program described in subsection (12)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (12)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in

50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional.

(13) Notwithstanding the provisions of subsection (1), adjusted gross income does not include 40% of capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

(14) By November 1 of each year, the department shall multiply the amount of pension and annuity income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii) by the inflation factor for that tax year, but using the year 2009 consumer price index, and rounding the results to the nearest $10. The resulting amounts are effective for that tax year and must be used as the basis for the exemption determined under subsection (2)(c). (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)"

**Section 6.** Section 15-30-2328, MCA, is amended to read:

**"15-30-2328. (Temporary) Credit for contributions to qualified endowment — recapture of credit — deduction included as income.** (1) A taxpayer is allowed a tax credit against the taxes imposed by 15-30-2103 or 15-31-101 in an amount equal to 40% of the present value of the aggregate amount of the charitable gift portion of a planned gift made by the taxpayer during the year to any qualified endowment. The maximum credit that may be claimed by a taxpayer for contributions made from all sources in a year is $10,000. The credit allowed under this section may not exceed the taxpayer's income tax liability.

(2) The credit allowed under this section may not be claimed by an individual taxpayer if the taxpayer has included the full amount of the contribution upon which the amount of the credit was computed as a deduction under 15-30-2131(1) or 15-30-2152(2).

(3) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made.

(4) If during any tax year a charitable gift is recovered by the taxpayer, the taxpayer shall:

(a) include as income the amount deducted in any prior year that is attributable to the charitable gift to the extent that the deduction reduced the taxpayer's individual income tax or ~~corporation license~~ *corporate income* tax; and

(b) increase the amount of tax due under 15-30-2103 or 15-31-101 by the amount of the credit allowed in the tax year in which the credit was taken. (Terminates December 31, 2013—sec. 7, Ch. 4, L. 2005; secs. 2, 3, 4, 7(2), Ch. 208, L. 2007.)"

**Section 7.** Section 15-30-3301, MCA, is amended to read:

**"15-30-3301. Definition of small business corporation.** (1) Except as provided in subsection (2), the term "small business corporation" is synonymous with "S. corporation" as defined in 15-30-2101 and means a corporation for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is in effect.

(2) A corporation that would otherwise be a small business corporation may continue to be subject to the taxes imposed by Title 15, chapter 31, if all of the following conditions are met:

(a) on December 31, 1991, the corporation was doing business in Montana and had a valid subchapter S. corporation election but had not elected to be taxed as a Montana small business corporation;

(b) after December 31, 1991, the corporation has not filed as a Montana small business corporation; and

(c) the corporation files a ~~corporate license~~ *corporate income* tax return, as required by 15-31-111, reporting all income or loss as determined under Title 15, chapter 31, and attaches a copy of the federal subchapter S. corporate tax return."

**Section 8.** Section 15-30-3312, MCA, is amended to read:

**"15-30-3312. Composite returns and tax.** (1) A partnership or S. corporation may elect to file a composite return and pay a composite tax on behalf of participants. A participant is a partner, shareholder, member, or other owner who:

(a) is a nonresident individual, a foreign C. corporation, or a pass-through entity whose only Montana source income for the tax year is from the entity and other partnerships or S. corporations electing to file the composite return and pay the composite tax on behalf of that partner, shareholder, member, or other owner; and

(b) consents to be included in the filing.

(2) (a) Each participant's composite tax liability is the product obtained by:

(i) determining the tax that would be imposed, using the rates specified in 15-30-2103, on the sum obtained by subtracting the allowable standard deduction for a single individual and one exemption allowance from the participant's share of the entity's income from all sources as determined for federal income tax purposes; and

(ii) multiplying that amount by the ratio of the entity's Montana source income to the entity's income from all sources for federal income tax purposes.

(b) A participant's share of the entity's income is the aggregate of the participant's share of the entity's income, gain, loss, or deduction or item of income, gain, loss, or deduction.

(3) The composite tax is the sum of each participant's composite tax liability.

(4) The electing entity:

(a) shall remit the composite tax to the department;

(b) must be responsible for any assessments of additional tax, penalties, and interest, which additional assessments must be based on the total liability reflected in the composite return;

(c) shall represent the participants in any appeals, claims for refund, hearing, or court proceeding in any matters relating to the filing of the composite return;

(d) shall make quarterly estimated tax payments and be subject to the underpayment interest as prescribed by 15-30-2512(5)(a) computed on the composite tax liability included in the filing of a composite return; and

(e) shall retain powers of attorney executed by each participant included in the composite return, authorizing the entity to file the composite return and to act on behalf of each participant.

(5) The composite return must be made on forms the department prescribes and filed on or before the due date, including extensions, for filing the entity information return. The composite return is in lieu of an individual income tax return required under 15-30-2602 and 15-30-2604, a ~~corporation license~~

*corporate income* tax return required under 15-31-111, and ~~a corporation~~ *an alternative corporate* income tax return required under 15-31-403.

(6) The composite tax is in lieu of the taxes imposed under:

(a) 15-30-2103 and 15-30-2104;

(b) 15-31-101 and 15-31-121; and

(c) 15-31-403.

(7) The department may adopt rules that are necessary to implement and administer this section."

**Section 9.** Section 15-30-3313, MCA, is amended to read:

**"15-30-3313. Consent or withholding.** (1) A pass-through entity that is required to file an information return as provided in 15-30-3302 and that has a partner, shareholder, member, or other owner who is a nonresident individual, a foreign C. corporation, or a pass-through entity that itself has any partner, shareholder, member, or other owner that is a nonresident individual, foreign C. corporation, or pass-through entity shall, on or before the due date, including extensions, for the information return:

(a) with respect to any partner, shareholder, member, or other owner who is a nonresident individual:

(i) file a composite return;

(ii) file an agreement of the individual nonresident to:

(A) file a return in accordance with the provisions of 15-30-2602;

(B) timely pay all taxes imposed with respect to income of the pass-through entity; and

(C) be subject to the personal jurisdiction of the state for the collection of income taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; or

(iii) remit an amount equal to the highest marginal tax rate in effect under 15-30-2103 multiplied by the nonresident individual's share of Montana source income reflected on the pass-through entity's information return;

(b) with respect to any partner, shareholder, member, or other owner that is a foreign C. corporation:

(i) file a composite return;

(ii) file the foreign C. corporation's agreement to:

(A) file a return in accordance with the provisions of 15-31-111;

(B) timely pay all taxes imposed with respect to income of the pass-through entity; and

(C) be subject to the personal jurisdiction of the state for the collection of ~~corporation license and~~ *income taxes, corporate income taxes, and alternative corporate* income taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; or

(iii) remit an amount equal to the tax rate in effect under 15-31-121 multiplied by the foreign C. corporation's share of Montana source income reflected on the pass-through entity's information return; and

(c) with respect to any partner, shareholder, member, or other owner that is a pass-through entity, also referred to in this section as a "second-tier pass-through entity":

(i) file a composite return;

(ii) file a statement of the pass-through entity partner, shareholder, member, or other owner setting forth the name, address, and social security or federal identification number of each of that entity's partners, shareholders, members, or other owners and information that establishes that its share of Montana source income will be fully accounted in individual income *tax,* ~~or corporation license~~ *corporate income tax,* or *alternative corporate* income tax returns filed with the state; or

(iii) remit an amount equal to the highest marginal tax rate in effect under 15-30-2103 multiplied by its share of Montana source income reflected on the pass-through entity's information return.

(2) Any amount paid by a pass-through entity with respect to a nonresident individual pursuant to subsection (1)(a)(iii) must be considered as a payment on the account of the nonresident individual for the income tax imposed on the nonresident individual for the tax year pursuant to 15-30-2104. On or before the due date, including extensions, of the pass-through entity's information return provided in 15-30-3302, the pass-through entity shall furnish to the nonresident individual a record of the amount of tax paid on the individual's behalf.

(3) Any amount paid by a pass-through entity with respect to a foreign C. corporation pursuant to subsection (1)(b)(iii) must be considered as a payment on the account of the foreign C. corporation for the ~~corporation license~~ *corporate income* tax imposed on the foreign C. corporation for the tax year pursuant to 15-31-101 or the ~~corporation~~ *alternative corporate* income tax imposed on the foreign C. corporation for the tax year pursuant to 15-31-403. On or before the due date, including extensions, of the pass-through entity's information return provided in 15-30-3302, the pass-through entity shall furnish to the foreign C. corporation a record of the amount of tax paid on its behalf.

(4) Any amount paid by a pass-through entity with respect to a second-tier pass-through entity pursuant to subsection (1)(c)(iii) must be considered as payment on the account of the individual, trust, estate, or C. corporation to which Montana source income is directly or indirectly passed through and must be claimed as the distributable share of a refundable credit of the pass-through entity partner, shareholder, member, or other owner on behalf of which the amount was paid. On or before the due date, including extensions, of the pass-through entity's information return provided in 15-30-3302, the pass-through entity shall furnish to the second-tier pass-through entity a record of the refundable credit that may be claimed for the amount paid on its behalf.

(5) A pass-through entity is entitled to recover a payment made pursuant to subsection (1)(a)(iii), (1)(b)(iii), or (1)(c)(iii) from the partner, shareholder, member, or other owner on whose behalf the payment was made.

(6) Following the department's notice to a pass-through entity that a nonresident individual or foreign C. corporation did not file a return or timely pay all taxes as provided in subsection (1), the pass-through entity must, with respect to any tax year thereafter for which the nonresident individual or foreign C. corporation is not included in the pass-through entity's composite return, remit the amount described in subsection (1)(a)(iii) for the nonresident individual and the amount described in subsection (1)(b)(iii) for the foreign C. corporation.

(7) A publicly traded partnership described in 15-30-3302(4) that agrees to file an annual information return reporting the name, address, and taxpayer identification number for each person or entity that has an interest in the partnership that results in Montana source income or that has sold its interest in the partnership during the tax year is exempt from the composite return and

withholding requirements of Title 15, chapter 30. A publicly traded partnership shall provide the department with the information in an electronic form that is capable of being sorted and exported. Compliance with this subsection does not relieve a person or entity from its obligation to pay Montana income taxes.

(8) Nothing in this section may be construed as modifying the provisions of Article IV(18) of 15-1-601 and 15-31-312 allowing a taxpayer to petition for and the department to require methods to fairly represent the extent of the taxpayer's business activity in the state."

**Section 10.** Section 15-31-101, MCA, is amended to read:

**"15-31-101. Organizations subject to tax — *incorporation of terms that mean corporate income tax.*** (1) The term "corporation" includes an association, joint-stock company, common-law trust or business trust that does business in an organized capacity, all other corporations whether created, organized, or existing under and pursuant to the laws, agreements, or declarations of trust of any state, country, or the United States, and any limited liability company, limited liability partnership, partnership, or other entity that is treated as an association for federal income tax purposes and that is not a disregarded entity.

(2) The terms "engaged in business" and "doing business" both mean actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

(3) Except as provided in 15-31-103 or 33-2-705(4) or as may be otherwise specifically provided, a corporation engaged in business in the state of Montana shall annually pay to the state treasurer ~~as~~ a ~~license fee~~ *corporate income tax* for the privilege of carrying on business in this state the percentage or percentages of its total net income for the preceding tax year at the rate set forth in this chapter. If a corporation has income from business activity that is taxable both within and outside of this state, the ~~license fee~~ *corporate income tax* must be measured by the net income derived from or attributable to Montana sources as determined under part 3. Except as provided in 15-31-502 and subject to the due date provision in 15-31-111(2)(b), the tax is due and payable on the 15th day of the 5th month following the close of the tax year of the corporation. However, the tax becomes a lien as provided in this chapter on the last day of the tax year in which the income was earned and is for the privilege of carrying on business in this state for the tax year in which the income was earned.

(4) A bank organized under the laws of the state of Montana, of any other state, or of the United States and a savings and loan association organized under the laws of this state or of the United States is subject to the Montana ~~corporation license~~ *corporate income* tax provided for under this chapter. For tax years beginning on and after January 1, 1972, this subsection is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548).

*(5) Unless context requires otherwise, when the words "corporation income tax", "corporation license tax", "corporate license tax", "license tax", "license fee", or similar words appear in the Montana Code Annotated referring to the tax imposed under this chapter, the terms mean "corporate income tax".*"

**Section 11.** Section 15-31-102, MCA, is amended to read:

**"15-31-102. Organizations exempt from tax — unrelated business income not exempt.** (1) Except as provided in subsection (3), there may not be taxed under this title any income received by any:

(a) labor, agricultural, or horticultural organization;

(b) fraternal beneficiary, society, order, or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of the society, order, or association or their dependents;

(c) cemetery company owned and operated exclusively for the benefit of its members;

(d) corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

(e) business league, chamber of commerce, or board of trade not organized for profit, no part of the net income of which inures to the benefit of any private stockholder or individual;

(f) civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;

(g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

(h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or similar organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses;

(i) cooperative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a cooperative basis;

(j) corporations or associations organized for the exclusive purpose of holding title to property, collecting income from the property, and turning over the entire amount of the income, less expenses, to an organization that itself is exempt from the tax imposed by this title;

(k) wool and sheep pool, which is an association owned and operated by agricultural producers organized to market association members' wool and sheep, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses. Income, for this purpose, does not include expenses and money distributed to members contributing wool and sheep.

(l) corporation that qualifies as a domestic international sales corporation (DISC) under the provisions of section 991, et seq., of the Internal Revenue Code, 26 U.S.C. 991, et seq., and that has in effect for the entire taxable year a valid election under federal law to be treated as a DISC. If a corporation makes that election under federal law, each person who at any time is a shareholder of the corporation is subject to taxation under Title 15, chapter 30, on the earnings and profits of this DISC in the same manner as provided by federal law for all periods for which the election is effective.

(m) farmers' market association not organized for profit, no part of the net income of which inures to the benefit of any member, but that is organized for the sole purpose of providing for retail distribution of homegrown vegetables, handicrafts, and other products either grown or manufactured by the seller;

(n) common trust fund as defined in section 584(a) of the Internal Revenue Code, 26 U.S.C. 584(a).

(2) In determining the ~~license fee to be paid~~ *corporate income tax imposed* under this part, there may not be included any earnings derived from any public utility managed or operated by any subdivision of the state or from the exercise of any governmental function.

(3) Any unrelated business taxable income, as defined by section 512 of the Internal Revenue Code, 26 U.S.C. 512, as amended, earned by any exempt corporation resulting in a federal unrelated business income tax liability of more than $100 must be taxed as other corporation income is taxed under this title. An exempt corporation subject to taxation on unrelated business income under this section shall file a copy of its federal exempt organization business income tax return on which it reports its unrelated business income with the department ~~of revenue~~."

**Section 12.** Section 15-31-111, MCA, is amended to read:

**"15-31-111. Return to be filed — penalty and interest.** (1) A corporation subject to the ~~license~~ *corporate income* tax imposed under this chapter shall for each tax period file an accurate return of its net income for the tax period in the manner and form prescribed by the department. The return must contain all of the information that is appropriate and in the opinion of the department necessary to determine the correctness of the net income disclosed by the return and to carry out the provisions of this chapter. The return must be signed by the president, the vice president, the treasurer, the assistant treasurer, or the chief accounting officer.

(2) (a) Except as provided in subsection (2)(b), if the corporation is reporting on a calendar year basis, the return must be filed with the department on or before May 15 following the close of the calendar year. If the corporation is reporting on a fiscal year basis, the return must be filed with the department on or before the 15th day of the 5th month following the close of its fiscal year.

(b) (i) If the due date of the return falls on a holiday that defers a filing date as recognized by the Internal Revenue Service and that is not observed in Montana, the return may be made on the first business day after the holiday.

(ii) The department may extend filing dates and defer or waive interest, penalties, and other effects of late filing for a period not exceeding 1 year for taxpayers affected by a federally declared disaster or a terroristic or military action recognized for federal tax purposes under 26 U.S.C. 7508A.

(3) (a) A corporation is allowed an automatic extension of time for filing its return of up to 6 months following the date prescribed for filing of its tax return. The tax, penalty, and interest must be paid when the return is filed. Penalty and interest must be added to the tax due as provided in 15-31-510(2).

(b) The department may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists.

(4) Receivers, trustees in bankruptcy, or assignees operating the property or business of a corporation subject to the ~~license~~ *corporate income* tax imposed by this chapter shall make the return in the same manner and form as the corporation is required to make the return. Any ~~license~~ *corporate income* tax due on the basis of the return is assessed and collected in the same manner as if assessed directly against the corporation of whose business or property the receiver, trustee, or assignee has custody and control. The receiver, trustee, or assignee shall pay the tax out of the property of the corporation, prior to the claims of creditors or stockholders."

**Section 13.** Section 15-31-112, MCA, is amended to read:

**"15-31-112. Taxable period.** The ~~license fee shall~~ *corporate income tax must* be computed on the basis of the corporation's total net income for the taxable period. The corporation's taxable period ~~shall be its~~ *is the same as the* taxable year for federal income tax purposes. ~~In the event~~ *If* a corporation changes its taxable year, it shall promptly notify the department ~~of revenue~~."

**Section 14.** Section 15-31-113, MCA, is amended to read:

**"15-31-113. Gross income and net income.** (1) The term "gross income" means all income recognized in determining the corporation's gross income for federal income tax purposes and:

(a) including:

(i) interest exempt from federal income tax and exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered;

(ii) the portion of gain from a liquidation of the reporting corporation not recognized for federal corporate income tax purposes pursuant to sections 331 through 337 of the Internal Revenue Code, as those sections may be amended or renumbered, attributable to stockholders, either individual or corporate, not subject to Montana income or ~~license~~ *corporate income* tax under Title 15, chapter 30 or chapter 31, as appropriate, on the gain passing through to the stockholders pursuant to federal law; and

(b) excluding gain recognized for federal tax purposes as a shareholder of a liquidating corporation pursuant to sections 331 through 337 of the Internal Revenue Code, as those sections may be amended or renumbered, when the gain is required to be recognized by the liquidating corporation pursuant to subsection (1)(a)(ii) of this section.

(2) The term "net income" means the gross income of the corporation less the deductions set forth in 15-31-114.

(3) A corporation is not exempt from the ~~corporation license~~ *corporate income* tax unless specifically provided for under 15-31-101(3) or 15-31-102. Any corporation not subject to or liable for federal income tax but not exempt from the ~~corporation license~~ *corporate income* tax under 15-31-101(3) or 15-31-102 shall compute gross income for ~~corporation license~~ *corporate income* tax purposes in the same manner as a corporation that is subject to or liable for federal income tax according to the provisions for determining gross income in the federal Internal Revenue Code in effect for the taxable year."

**Section 15.** Section 15-31-114, MCA, is amended to read:

**"15-31-114. Deductions allowed in computing income.** (1) In computing the net income, the following deductions are allowed from the gross income received by the corporation within the year from all sources:

(a) all the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation contained in this section, and rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. A deduction is not allowed for salaries paid upon which the recipient has not paid Montana state income tax. However, when domestic corporations are taxed on income derived from outside the state, salaries of officers paid in connection with securing the income are deductible.

(b) (i) all losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for

the wear and tear and obsolescence of property used in the trade or business. The allowance is determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for depreciation must be the same as the elections made for federal income tax purposes. A deduction is not allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and a deduction may not be made for any amount of expense of restoring property or making good the exhaustion of property for which an allowance is or has been made. A depreciation or amortization deduction is not allowed on a title plant as defined in 33-25-105(15).

(ii) There is allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of 15-31-119.

(c) in the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements. The reasonable allowance must be determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for ~~corporation license~~ *corporate income* tax purposes must be the same as the elections made for federal income tax purposes.

(d) the amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived. Interest may not be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business unless the income from the property or business would be taxable under this part.

(e) (i) taxes paid within the year, except the following:

(A) taxes imposed by this part;

(B) taxes assessed against local benefits of a kind tending to increase the value of the property assessed;

(C) taxes on or according to or measured by net income or profits imposed by authority of the government of the United States;

(D) taxes imposed by any other state or country upon or measured by net income or profits.

(ii) Taxes deductible under this part must be construed to include taxes imposed by any county, school district, or municipality of this state.

(f) that portion of an energy-related investment allowed as a deduction under 15-32-103;

(g) (i) except as provided in subsection (1)(g)(ii) or (1)(g)(iii), charitable contributions and gifts that qualify for deduction under section 170 of the Internal Revenue Code, 26 U.S.C. 170, as amended.

(ii) The public service commission may not allow in the rate base of a regulated corporation the inclusion of contributions made under this subsection.

(iii) A deduction is not allowed for a charitable contribution using a charitable gift annuity unless the annuity is a qualified charitable gift annuity as defined in 33-20-701.

(h) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201.

(2) In lieu of the deduction allowed under subsection (1)(g), the taxpayer may deduct the fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(a) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(b) the property is not transferred by the donee in exchange for money, other property, or services; and

(c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of subsection (2)(b).

(3) In the case of a regulated investment company or a fund of a regulated investment company, as defined in section 851(a) or 851(g) of the Internal Revenue Code of 1986, 26 U.S.C. 851(a) or 851(g), as that section may be amended or renumbered, there is allowed a deduction for dividends paid, as defined in section 561 of the Internal Revenue Code of 1986, 26 U.S.C. 561, as that section may be amended or renumbered, except that the deduction for dividends is not allowed with respect to dividends attributable to any income that is not subject to tax under this chapter when earned by the regulated investment company. For the purposes of computing the deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(7) and 855, as those sections may be amended or renumbered, apply. A regulated investment company is not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal Revenue Code of 1986, 26 U.S.C. 243 through 245, as those sections may be amended or renumbered."

**Section 16.** Section 15-31-115, MCA, is amended to read:

**"15-31-115. Reaffirmation of bond income inclusion in definition of net income for ~~corporation license~~ *corporate income* tax purposes.** Notwithstanding the provisions of any other law, the income from bonds or other obligations issued by any state or political subdivision of a state are included in gross and net income for purposes of the ~~corporation license~~ *corporate income* tax."

**Section 17.** Section 15-31-117, MCA, is amended to read:

**"15-31-117. Tax deductibility.** (1) The amount of contributions made by a small business to its independent liability fund as defined in 33-27-103 is deductible to that small business on its Montana corporate ~~license~~ *income* tax or *alternative* corporate income tax return for the taxable year in which the contributions are made to the fund.

(2) Administrative costs under 33-27-117(1), except those paid from the principal of an independent liability fund, are deductible on the Montana corporate ~~license~~ *income* tax or *alternative* corporate income tax return for the taxable year in which they are paid or accrued.

(3) Income on the money, assets, and investments in an independent liability fund as defined in 33-27-103 may be contributed to the fund. If it is not so contributed, it is taxable in accordance with the applicable provisions of this chapter."

**Section 18.** Section 15-31-125, MCA, is amended to read:

**"15-31-125. Determination of tax credit.** A new or expanding manufacturing corporation may receive ~~a license~~ *an income* tax credit based on a percentage of wages paid its new employees within this state for a period of 3 years as ~~follows:~~ *provided in this section. For* the first 3 years of operation of a new corporation or the first 3 years of expansion of an expanding corporation, a credit of 1% of the total new wages paid in this state, as wages are defined in 39-51-201, may be allowed. In determining total wages for an expanding corporation, only those wages paid in support of the expansion are considered in ascertaining the credit. The payroll and number of jobs of the corporation in the 12-month period immediately preceding the expansion are averaged to determine eligibility for the credit."

**Section 19.** Section 15-31-143, MCA, is amended to read:

**"15-31-143. Return and payment on corporate dissolution.** (1) Each corporation doing business in Montana shall pay an excise tax for the exercise of that privilege, and the amount of the excise tax must be based upon the total taxable net income of a corporation during the entire period of time that it is engaged in business in this state. No remission of that obligation for the last year in which a corporation engages in business in Montana was intended by the original enactment of this section.

(2) Each corporation that is dissolved or ceases to do business in Montana shall, upon the dissolution or cessation of business, make a return and pay the ~~corporation license~~ *corporate income* tax determined on the basis of its net income for the final period in which it did business in this state at the rate provided in 15-31-121 and 15-31-122, in addition to all other ~~corporation license~~ *corporate income* taxes for which the corporation may then be liable."

**Section 20.** Section 15-31-161, MCA, is amended to read:

**"15-31-161. (Temporary) Credit for contribution by corporations to qualified endowment — recapture of credit — deduction included as income.** (1) A corporation is allowed a credit in an amount equal to 20% of a charitable gift against the taxes otherwise due under 15-31-101 for charitable contributions made to a qualified endowment, as defined in 15-30-2327. The maximum credit that may be claimed by a corporation for contributions made from all sources in a year under this section is $10,000. The credit allowed under this section may not exceed the corporate taxpayer's income tax liability. The credit allowed under this section may not be claimed by a corporation if the taxpayer has included the full amount of the contribution upon which the amount of the credit was computed as a deduction under 15-31-114. There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made.

(2) If during any tax year a charitable gift is recovered by the corporation, the corporation shall:

(a) include as income the amount deducted in any prior year that is attributable to the charitable gift to the extent that the deduction reduced the taxpayer's ~~corporation license~~ *corporate income* tax or ~~corporation~~ *alternative corporate* income tax; and

(b) increase the amount of tax due under 15-31-101 by the amount of the credit allowed in the tax year in which the credit was taken. (Terminates December 31, 2013—sec. 7, Ch. 4, L. 2005; secs. 2, 3, 4, 7(2), Ch. 208, L. 2007.)"

**Section 21.** Section 15-31-401, MCA, is amended to read:

**"15-31-401. Application of ~~license~~ *corporate income tax* and ~~income taxes~~ *alternative corporate income tax.*** (1) It is the intent of the legislature

that the ~~corporation license~~ *corporate income* tax ~~shall~~ *must* be applied to all corporations subject to taxation under part 1 of this chapter. Except as provided in subsection (2), the *alternative corporate* income tax provided by this part ~~shall~~ *must* be applied to corporations that are not taxable under part 1 of this chapter but are taxable under an income tax.

(2) During its first 5 taxable years of activity in Montana, the net income earned from research and development activities by a research and development firm as described in 15-31-103 is not subject to either the ~~corporation license~~ *corporate income* tax provided in part 1 of this chapter or to the ~~corporation~~ *alternative corporate* income tax provided in this part."

**Section 22.** Section 15-31-402, MCA, is amended to read:

**"15-31-402. Short title — administration of part.** This part ~~shall be known as and~~ may be cited as the "~~Corporation~~ *"Alternative Corporate* Income Tax"~~, and it shall be administered by the~~. *The* department ~~of revenue~~ *shall administer the provisions of this part*."

**Section 23.** Section 15-31-404, MCA, is amended to read:

**"15-31-404. Offset for ~~license~~ *corporate income* taxes — *alternative corporate* income tax collected considered ~~license~~ *corporate income* tax.** There must be offset against the ~~corporation~~ *alternative corporate* income tax imposed for any period the amount of any tax imposed against the corporation for the same period under parts 1, 3, and 5 of this chapter. If taxes, interest, and penalties have been or will be assessed against, paid by, or collected from a corporation under this part and the assessment, payment, or collection should have been made under parts 1, 3, and 5 of this chapter, the taxes, interest, and penalties must be considered as having been assessed, paid, or collected under parts 1, 3, and 5 as of the date they were made."

**Section 24.** Section 15-31-406, MCA, is amended to read:

**"15-31-406. ~~License~~ *Corporate income* tax sections incorporated by reference.** The provisions of the following sections of this chapter are incorporated into this part by reference and made a part of this part:

(1) that part of 15-31-101 that defines the term "corporation" and 15-31-102, which specifies the classes of organizations whose income may not be taxed;

(2) sections 15-31-111 through 15-31-114, 15-31-117 through 15-31-119, 15-31-141, 15-31-142, 15-31-301 through 15-31-313, 15-31-501 through 15-31-506, 15-31-509, 15-31-511, 15-31-525, 15-31-526, 15-31-531, 15-31-532, 15-31-541, and 15-31-543, except that the term "gross income" must be construed as excluding the net amount of interest income from valid obligations of the United States and except that wherever the words "tax", *"corporate income tax",* "license tax", "license fee", "corporation excise tax", or ~~like~~ *similar* words appear, referring to the tax imposed under part 1 of this chapter, there is substituted the words "*alternative corporate* income tax"."

**Section 25.** Section 15-31-511, MCA, is amended to read:

**"15-31-511. Confidentiality of tax records.** (1) Except as provided in this section, in accordance with a proper judicial order, or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any return or report required under this chapter or any other information relating to taxation secured in the administration of this chapter; or

(b) any federal return or information in or disclosed on a federal return or report required by law or rule of the department ~~of revenue~~ under this chapter.

(2) (a) An officer or employee charged with custody of returns and reports required by this chapter may not be ordered to produce any of them or evidence of anything contained in them in any administrative proceeding or action or proceeding in any court, except:

(i) in an action or proceeding in which the department is a party under the provisions of this chapter; or

(ii) in any other tax proceeding or on behalf of a party to an action or proceeding under the provisions of this chapter when the returns or reports or facts shown in them are directly pertinent to the action or proceeding.

(b) If the production of a return, report, or information contained in them is ordered, the court shall limit production of and the admission of returns, reports, or facts shown in them to the matters directly pertinent to the action or proceeding.

(3) This section does not prohibit:

(a) the delivery of a certified copy of any return or report filed in connection with a return to the taxpayer who filed the return or report or to the taxpayer's authorized representative;

(b) the publication of statistics prepared in a manner that prevents the identification of particular returns, reports, or items from returns or reports;

(c) the inspection of returns and reports by the attorney general or other legal representative of the state in the course of an administrative proceeding or litigation under this chapter;

(d) access to information under subsection (4);

(e) the director of revenue from permitting a representative of the commissioner of internal revenue of the United States or a representative of a proper officer of any state imposing a tax on the income of a taxpayer to inspect the returns or reports of a corporation. The department may also furnish those persons abstracts of income, returns, and reports; information concerning any item in a return or report; and any item disclosed by an investigation of the income or return of a corporation. The director of revenue may not furnish that information to a person representing the United States or another state unless the United States or the other state grants substantially similar privileges to an officer of this state charged with the administration of this chapter.

(f) the disclosure of information to the commissioner of insurance's office that is necessary for the administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20.

(4) On written request to the director or a designee of the director, the department shall:

(a) allow the inspection of returns and reports by the legislative auditor, but the information furnished to the legislative auditor is subject to the same restrictions on disclosure outside that office as provided in subsection (1); and

(b) provide ~~corporation income~~ *corporate income* tax *and alternative corporate income tax* information, including any information that may be required under Title 15, chapter 30, part 33, to the legislative fiscal analyst, as provided in 5-12-303 or 15-1-106, and the office of budget and program planning, as provided in 15-1-106 or 17-7-111. The information furnished to the legislative fiscal analyst and the office of budget and program planning is subject to the same restrictions on disclosure outside those offices as provided in subsection (1).

(5) A person convicted of violating this section shall be fined not to exceed $500. If a public officer or public employee is convicted of violating this section, the person is dismissed from office or employment and may not hold any public office or public employment in the state for a period of 1 year after dismissal or, in the case of a former officer or employee, for 1 year after conviction."

**Section 26.** Section 15-31-522, MCA, is amended to read:

**"15-31-522. When immediate payment demanded.** If the department ~~of revenue finds~~ *determines* that the assessment or collection of the tax or a deficiency in tax due under any ~~corporation license~~ *corporate income* tax statute of Montana for any taxable period will be jeopardized in whole or in part by delay, it may mail notice of its findings to the taxpayer, together with a demand for immediate payment of the tax or deficiency declared to be in jeopardy, including penalty and accrued interest. In the case of a tax for a current period, the department may declare the taxable period of the taxpayer immediately terminated and shall mail or issue notice of its findings to the taxpayer, together with a demand for immediate payment of the tax based on the period declared terminated. A jeopardy assessment is immediately due and payable, and proceedings for collection may be commenced at once."

**Section 27.** Section 15-31-523, MCA, is amended to read:

**"15-31-523. Suspension or forfeiture on delinquency.** (1) If a tax computed and levied under this chapter is not paid or if a return is not filed before 5 p.m. on the last day of the 11th month after the date of delinquency, the corporate powers, rights, and privileges of the delinquent taxpayer, if it is a domestic corporation, must be suspended, and if the delinquent taxpayer is a foreign corporation, it ~~shall forfeit~~ *forfeits* its rights to do intrastate business in this state. If a domestic corporation fails for a period of 5 consecutive years either to file a return or to pay the ~~corporation license~~ *corporate income* tax, the department shall notify the corporation by mail addressed to the latest address on file in its office that the corporation will become dissolved if it fails to file all delinquent reports and pay all delinquent ~~corporation license~~ *corporate income* taxes within a period of 60 days after the mailing of the notice. If the delinquent reports are not made and all delinquent ~~corporation licenses~~ *taxes* are not paid before the expiration of the 60-day period, the department shall certify this fact to the secretary of state, and upon receipt of the certificate, the corporation must be dissolved and the secretary of state shall indicate, by the secretary of state's records, the dissolution.

(2) The department shall transmit the name of each corporation described in subsection (1) to the secretary of state, who shall immediately record the transmission in a manner that is available to the public. The suspension, forfeiture, or dissolution provided for in this section becomes effective immediately when the record is made, and the certificate of the secretary of state is conclusive evidence of the suspension, forfeiture, or dissolution."

**Section 28.** Section 15-31-531, MCA, is amended to read:

**"15-31-531. Credit for overpayment — interest on overpayment.** (1) If the department determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest must be allowed on overpayments at the same rate as is charged on delinquent taxes, as provided in 15-1-216, due from the due date of the return or from the date of overpayment,

whichever is later, to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest may not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(4) A payment not made incident to a bona fide and orderly discharge of an actual ~~corporation license~~ *corporate income* tax liability or one reasonably assumed to be imposed by this chapter is not considered an overpayment with respect to which interest is allowable."

**Section 29.** Section 15-31-543, MCA, is amended to read:

**"15-31-543. Forfeiture of right to engage in business — penalties.** (1) A corporation that purposely fails to file a return at the time specified in 15-31-502 or that purposely files a false or fraudulent return may be adjudged by a court of competent jurisdiction to forfeit the right to continue to engage in business in the state as a corporation until the ~~license~~ *corporate income* tax, together with all penalties, interest, and costs, is paid. The forfeiture may be enforced by proper proceedings in court.

(2) Each officer or employee of any corporation or other person who, without fraudulent intent, fails to file, sign, or verify any return or to supply any information within the time required by the provisions of this chapter is liable for the penalty imposed by 15-1-216. The department shall assess and collect any penalty in the same manner as is provided in this chapter with regard to delinquent taxes."

**Section 30.** Section 15-31-551, MCA, is amended to read:

**"15-31-551. Certified copies of ~~corporation license~~ *corporate income* tax returns to taxpayer — fee.** Certified copies of returns filed for ~~corporation license~~ *corporate income* tax under 15-31-111 may be furnished by the department to the taxpayer or the taxpayer's authorized representative upon payment of 50 cents for each page."

**Section 31.** Section 15-32-107, MCA, is amended to read:

**"15-32-107. Loans by utilities and financial institutions — tax credit for interest differential for loans made prior to July 1, 1995.** (1) Except as provided in subsection (4), a public utility or a financial institution that lent money or made qualifying installations under this section as it read prior to July 1, 1995, may compute the difference between interest it actually receives on the transactions and the interest that would have been received at the prevailing average interest rate for home improvement loans, as prescribed in rules made by the public service commission. The utility may apply the difference so computed as a credit against its tax liability for the electrical energy producer's license tax under 15-51-101 or for the ~~corporation license~~ *corporate income* tax under chapter 31, part 1. The public service commission shall regulate rates in such a manner that a utility making loans under this section may not make a profit as the result of this section. The financial institution may apply the difference so computed as a credit against its tax liability for the ~~corporation license~~ *corporate income* tax under chapter 31, part 1.

(2) A utility may not claim a tax credit under this section exceeding $750,000 in any tax year. A financial institution may not claim a tax credit under this section exceeding $2,000 in any tax year.

(3) The public service commission may make rules to implement this section as it applies to public utilities only.

(4) A public utility whose purchases of or investments in conservation are placed in the rate base as provided in Title 69, chapter 3, part 7, may not receive a tax credit under subsection (1)."

**Section 32.** Section 15-50-207, MCA, is amended to read:

**"15-50-207. Credit against other taxes — credit for personal property taxes and certain fees.** (1) (a) The additional license fees withheld or otherwise paid as provided in this chapter may be used as a credit on the contractor's ~~corporation license~~ *corporate income* tax provided for in chapter 31 of this title or on the contractor's income tax provided for in chapter 30, depending upon the type of tax the contractor is required to pay under the laws of the state.

(b) The credit allowed under this subsection (1) may be used as a carryforward against taxes imposed by chapter 30 or 31 for the 5 succeeding tax years. The entire amount of the credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

(2) Personal property taxes and the fee in lieu of tax on buses, trucks having a manufacturer's rated capacity of more than 1 ton, or truck tractors, as provided in 61-3-529, and the registration fee on light vehicles, as provided in 61-3-321(2) and 61-3-562, paid in Montana on any personal property or vehicle of the contractor that is used in the business of the contractor and is located within this state may be credited against the license fees required under this chapter. However, in computing the tax credit allowed by this section against the contractor's ~~corporation license tax or~~ income tax *or corporate income tax*, the tax credit against the license fees required under this chapter may not be considered as license fees paid for the purpose of the income tax or ~~corporation license~~ *corporate income* tax credit."

**Section 33.** Section 15-68-815, MCA, is amended to read:

**"15-68-815. Information — confidentiality — agreements with another state.** (1) (a) Except as provided in subsections (2) through (4), it is unlawful for an employee of the department or any other public official or public employee to divulge or otherwise make known information that is disclosed in a report or return required to be filed under this chapter or information that concerns the affairs of the person making the return and that is acquired from the person's records, officers, or employees in an examination or audit.

(b) This section may not be construed to prohibit the department from publishing statistics if they are classified in a way that does not disclose the identity and content of any particular report or return. A person violating the provisions of this section is subject to the penalty provided in 15-30-2618 or 15-31-511 for violating the confidentiality of individual income tax or ~~corporation license~~ *corporate income tax* information.

(2) (a) The department may enter into an agreement with the taxing officials of another state for the interpretation and administration of the laws of their state that provide for the collection of a sales tax or use tax in order to promote fair and equitable administration of the laws and to eliminate double taxation.

(b) In order to implement the provisions of this chapter, the department may furnish information on a reciprocal basis to the taxing officials of another state if the information remains confidential under statutes within the state receiving the information that are similar to this section.

(3) In order to facilitate processing of returns and payment of taxes required by this chapter, the department may contract with vendors and may disclose data to the vendors. The data disclosed must be administered by the vendor in a manner consistent with this section.

(4) This section may not be construed to limit the investigative authority of the legislative branch, as provided in 5-11-106, 5-12-303, or 5-13-309."

**Section 34.** Section 20-9-630, MCA, is amended to read:

**"20-9-630. School district block grants.** (1) (a) The office of public instruction shall provide a block grant to each school district based on:

(i) the revenue received by each district in fiscal year 2001 from vehicle taxes and fees, corporate ~~license~~ *income* taxes paid by financial institutions, aeronautics fees, state land payments in lieu of taxes, and property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999; and

(ii) any reimbursement to be made to a school district pursuant to subsection (2).

(b) Block grants must be calculated using the electronic reporting system that is used by the office of public instruction and school districts. The electronic reporting system must be used to allocate the block grant amount into each district's budget as an anticipated revenue source by fund.

(2) If the legislature enacts a reimbursement provision that is to be distributed pursuant to this section, the office of public instruction shall determine the reimbursement amount as provided in the enactment and add the appropriate amount to block grant distributions under this section. Except for the reimbursement made under 15-1-123(3)(b), the total of reimbursement distributions made pursuant to this subsection in a fiscal year must be added to all other distributions to the school district in the fiscal year to determine the distribution for the subsequent fiscal year.

(3) Each year, 70% of each district's block grant must be distributed in November and 30% of each district's block grant must be distributed in May at the same time that guaranteed tax base aid is distributed.

(4) (a) The block grant for the district general fund is equal to the amount received in fiscal year 2011 by the district general fund from the block grants provided for in subsection (1) and the amount received by the district general fund under subsection (2), except the amount received under 15-1-123(3)(b).

(b) The block grant for the district transportation fund is equal to the amount received in fiscal year 2011 by the district transportation fund from the block grants provided for in subsection (1) and the amount received by the district transportation fund under subsection (2), except the amount received under 15-1-123(3)(b).

(c) (i) The combined fund block grant is equal to the amount received in fiscal year 2011 and the amount received under subsection (2), except the amount received under 15-1-123(3)(b).

(ii) The school district may deposit the combined fund block grant into any budgeted fund of the district."

**Section 35.** Section 33-17-407, MCA, is amended to read:

**"33-17-407. Nonresident insurance producer to pay taxes — annual report required.** (1) A nonresident insurance producer is subject to personal income, business income, or corporate ~~license~~ *income* taxes for all income earned on insurance policies issued to cover subjects or risks residing, located, or to be performed in Montana and written within the boundaries of this state.

(2) A nonresident insurance producer shall file annually a Montana income tax return as required in Title 15."

**Section 36.** Section 33-27-103, MCA, is amended to read:

**"33-27-103. Definitions.** As used in 15-30-2118, 15-30-2141, 15-31-117, 15-31-118, and this chapter, the following definitions apply:

(1) "Fiscal year" means the 12-month period used by a particular small business in preparing and filing its Montana individual income tax, corporate ~~license~~ *income* tax, or *alternative* corporate income tax return.

(2) "Independent liability fund" means a collection of money, assets, and investments that has been set aside by a small business to meet the needs of any liability claims, except workers' compensation claims, brought against it by third parties.

(3) "Liability claim" means any legal or extralegal action by a third party asserting a right to compensation for a wrong done to it by a small business with an independent liability fund.

(4) "Small business" means any commercial or nonprofit enterprise qualified to do business in the state and qualified as a small business under the criteria established by the federal small business administration on April 20, 1987.

(5) "Third party" means a person other than an employee or the management of a small business or of a subsidiary or closely related enterprise of a small business."

**Section 37. Name change — directions to code commissioner.** Wherever a reference to the "corporation license tax" appears in legislation enacted by the 2013 legislature, the code commissioner is directed to change it to a reference to the "corporate income tax".

**Section 38. Coordination instruction.** If House Bill No. 35 and [this act] are passed and approved and if both contain a section that amends 15-6-138, then the section amending 15-6-138 in House Bill No. 35 is void.

**Section 39. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 40. Applicability.** [This act] applies to tax years beginning after December 31, 2013.

Approved April 22, 2013

# CHAPTER NO. 269

[SB 408]

AN ACT GENERALLY REVISING ELECTION LAWS; PROVIDING THAT THE TWO CANDIDATES WHO RECEIVE THE MOST VOTES IN CERTAIN PRIMARY ELECTIONS FOR PARTISAN OFFICES ADVANCE TO THE GENERAL ELECTION IRRESPECTIVE OF PARTY AFFILIATION; ELIMINATING SEPARATE PARTY BALLOTS AND PROVIDING FOR ONE PRIMARY BALLOT CONTAINING ALL PRIMARY RACES; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED

ELECTORS OF MONTANA; AMENDING SECTIONS 2-16-615, 5-2-402, 5-2-403, 5-2-404, 5-2-406, 7-2-2219, 7-3-176, 7-3-218, 7-3-313, 7-3-412, 7-3-512, 7-3-704, 7-3-1256, 7-4-2106, 7-4-2206, 7-4-2302, 7-4-2310, 7-4-4112, 13-1-101, 13-1-103, 13-4-102, 13-10-201, 13-10-203, 13-10-204, 13-10-209, 13-10-211, 13-10-301, 13-10-325, 13-10-326, 13-10-327, 13-10-402, 13-10-403, 13-10-404, 13-10-405, 13-10-501, 13-10-504, 13-10-505, 13-12-201, 13-12-202, 13-12-203, 13-12-205, 13-12-207, 13-13-214, 13-13-225, 13-13-241, 13-14-111, 13-14-112, 13-14-113, 13-14-114, 13-14-115, 13-14-117, 13-14-118, 13-15-201, 13-15-205, 13-15-206, 13-15-208, 13-15-405, 13-15-406, 13-15-507, 13-16-101, 13-16-201, 13-16-211, 13-16-412, 13-16-418, 13-16-419, 13-16-501, 13-17-103, 13-19-205, 13-21-205, 13-25-101, 13-25-201, 13-25-205, 13-25-303, 13-35-106, 13-35-205, 13-35-206, 13-35-207, 13-35-214, 13-35-218, 13-35-221, 13-35-225, 13-35-226, 13-36-101, 13-36-102, 13-36-103, 13-36-104, 13-36-201, 13-36-202, 13-36-203, 13-36-206, 13-36-207, 13-36-209, 13-36-210, 13-36-211, 13-36-212, 13-37-127, 13-37-216, 13-37-218, 13-38-101, AND 13-38-201, MCA; REPEALING SECTIONS 13-10-302, 13-10-303, 13-10-305, 13-10-311, 13-10-502, 13-10-503, 13-10-507, 13-10-601, 13-10-602, 13-10-604, AND 13-38-204, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-16-615, MCA, is amended to read:

**"2-16-615. Filing of recall petitions — mandamus for refusal.** (1) Recall petitions for elected officers ~~shall~~ *must* be filed with the official who is provided by law to accept the declaration of ~~nomination~~ *candidacy* or petition for nomination for ~~such~~ *the* office. Recall petitions for appointed state officers ~~shall~~ *must* be filed with the secretary of state and for appointed county or municipal officers ~~shall~~ *must* be filed with the county election administrator. Recall petitions for appointed officers from other political subdivisions ~~shall~~ *must* be filed with the county election administrator if the boundaries of the political subdivisions lie wholly within one county or otherwise with the secretary of state.

(2) If the secretary of state, county election administrator or other filing official refuses to accept and file any petition for recall with the proper number of signatures of qualified electors, any elector may within 10 days after ~~such~~ *the* refusal apply to the district court for a writ of mandamus. If it is determined that the petition is sufficient, the district court shall order the petition to be filed with a certified copy of the writ attached ~~thereto~~, as of the date when it was originally offered for filing. On a showing that any filed petition is not sufficient, the court may enjoin certification, printing, or recall election.

(3) All ~~such~~ suits or appeals ~~therefrom shall~~ *under this section must* be advanced on the court docket and heard and decided by the court as expeditiously as possible.

(4) Any aggrieved party may file an appeal within 10 days after any adverse order or decision as provided by law."

**Section 2.** Section 5-2-402, MCA, is amended to read:

**"5-2-402. Appointment by board of county commissioners — county central committee role — timeframes.** (1) Except as provided in subsection (5) or as otherwise provided by law, whenever a vacancy occurs in the legislature, the vacancy must be filled by appointment by the board of county commissioners or, in the event of a multicounty district, the boards of county commissioners of the counties comprising the district sitting as one appointing board.

(2) (a) Whenever a vacancy is within a single county, the board of county commissioners shall make the appointment as described in 5-2-403, 5-2-404, or 5-2-406.

(b) Whenever a vacancy is within a multicounty district, the boards of county commissioners shall sit as one appointing board. The selection of an individual to fill the vacancy must be as follows:

(i) The presiding officer of the board of county commissioners of the county in which the person resided whose vacancy is to be filled shall call a meeting for the purpose of appointing the member of the legislature and shall preside at the meeting.

(ii) Each commissioner's vote is determined by the following formula: 100 multiplied by (A divided by B) multiplied by (1 divided by C), where:

(A) A is the total votes cast in the respective county for the person vacating the legislative seat or, if the vacating person was not elected, the votes cast for the last person to be elected for the current term;

(B) B is the total votes cast for that person in the legislative district; and

(C) C is the number of authorized commissioners on the board of the commissioner whose vote is being determined.

(iii) The person selected to fill the vacancy is the one who receives the highest number above 50 that results from the calculation in subsection (2)(b)(ii). If none of the candidates receives a number higher than 50 from that calculation, the selection board shall cast its votes again in the same manner for the persons receiving the two highest numbers. If neither vote results in a candidate receiving a number higher than 50 from the calculation provided in subsection (2)(b)(ii), then 5-2-404 applies.

(c) If a vacancy occurs in a holdover senate seat after holdover senators have been assigned to new districts under each reapportionment, the formula in subsection (2)(b)(ii) must be applied using the votes cast for the senatorial candidates at the last election in which votes were cast for a senate candidate. Only the number of votes cast by electors residing in the new senate district ~~for senate candidates of the party to which the person vacating the seat belonged~~ may be counted. The secretary of state shall provide an estimate of the number of votes cast ~~for each party~~ by county or portion of a county. The selection process is the same as provided in subsection (2)(b)(iii).

(3) The appointment process to fill a vacant legislative seat under this section is as follows:

(a) Within 7 days of being notified of a vacancy as described in 2-16-501, the secretary of state shall notify the board of county commissioners. ~~and~~ *If the vacating legislator marked a party preference on the legislator's most recent declaration of candidacy filed with the secretary of state or election administrator, the secretary of state shall notify* the *relevant* county central committee of the county where the vacating legislator is a resident, if the legislative seat is within one county, or the boards of county commissioners and the corresponding county central committees if the legislative seat is in a multicounty district. If the legislator ~~is an~~ *did not mark a party preference, marked "independent", or marked a party preference for a party that does not have a county central committee as the party preference on the legislator's most recent declaration of candidacy filed with the secretary of state or election administrator,* ~~independent or belongs to a party for which there is no county central committee,~~ the notification of county commissioners suffices.

(b) The county central committee or committees, upon receipt of notification of a vacancy, have 45 days to propose a list of prospective appointees, pursuant to 5-2-403(1). The county central committee or the county central committees, acting together, shall forward the list of names to the appointing board within the 45-day period.

(c) The appointing board shall make and confirm an appointment and notify the secretary of state within 15 days:

(i) after receiving the list of prospective appointees from the county central committee or committees;

(ii) after 45 days have expired after the notification of vacancy if the county central committee or committees have not provided a list of prospective appointees; or

(iii) after notification of a vacancy if the legislator vacating the seat is an independent.

(4) If the legislature is in session, the notification process in subsection (3)(a) must be followed within 5 days. The process described in subsection (3)(b) must take place in 5 days. The process described in subsection (3)(c) must take place in 5 days.

(5) Notwithstanding subsection (6), if a vacancy occurs prior to a primary election, 13-10-326 applies. If a vacancy occurs after a primary and prior to a general election, 13-10-327 applies.

(6) If the legislature is called into special session within 85 days of a general election, a person must be appointed to fill a legislative vacancy pursuant to subsections (1) through (4)."

**Section 3.** Section 5-2-403, MCA, is amended to read:

**"5-2-403. Appointee ~~to be of same~~ *and* political party *preference.*** (1) Whenever an appointee's predecessor ~~served~~ *declared a political party preference on the last declaration of candidacy filed with the secretary of state or election administrator* ~~as a member of a political party~~, the appointee named under 5-2-402 must be a member of *or share a preference for* the same political party and must be selected from a list of three individuals provided:

(a) by the county central committee in a district within a single county; or

(b) by the county central committees, acting together, in a multicounty district, as described in 5-2-402.

(2) Whenever the appointing board is unable to elect an appointee from the submitted list, the appointing board shall request a second list of three names from the county central committee or committees. The second list may not contain any of the names submitted on the first list. The appointing board shall then select an appointee from the individuals named on both lists.

(3) The provisions of this section do not apply if the predecessor ~~served~~ *did not declare a party preference or preferred an independent party preference designation* ~~as an independent~~."

**Section 4.** Section 5-2-404, MCA, is amended to read:

**"5-2-404. Procedure upon failure of one candidate to receive majority vote.** In the event that a decision cannot be made by the appointing board because of failure of any candidate to receive a majority of the votes, the final decision may be made by lot from the first and second lists of candidates as provided by 5-2-403 or from a list of three individuals if the predecessor ~~served as an independent~~ *did not declare a party preference or preferred an independent party preference designation on the predecessor's last declaration of candidacy*

*filed with the secretary of state or election administrator*, in accordance with rules of selection adopted by the appointing board."

**Section 5.** Section 5-2-406, MCA, is amended to read:

**"5-2-406. Elections to fill vacancies in senate.** (1) Whenever a vacancy occurs 85 days or more before the general election held during the second year of the term, an individual may be appointed, pursuant to 5-2-402, if the legislature is called into special session. However, the appointment may run only until a person is elected to complete the term at the upcoming general election and sworn into office. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 85 days or more prior to the primary election during the second year, the same procedure as is used for senators who will be elected to full 4-year terms at that general election must be utilized.

(b) Whenever the vacancy occurs on or after the 85th day prior to the primary election, ~~any political party desiring to enter~~ a candidate ~~in the general election shall select a candidate~~ *may enter the race* as provided in 13-10-327 ~~and 13-38-204. A political party shall notify the secretary of state of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate must be filed with the secretary of state on or before the 85th day prior to the general election~~.

(2) Whenever a vacancy occurs on or after the 85th day prior to the general election held during the second year of the term, the person appointed by the board under 5-2-402 shall serve until the end of the term."

**Section 6.** Section 7-2-2219, MCA, is amended to read:

**"7-2-2219. Conduct of election.** (1) (a) The board issuing the notice of election pursuant to 7-2-2215 shall require the county election administrator to furnish to the election judges of each precinct in the proposed new county all election supplies and equipment necessary to conduct the election that are not specifically directed to be furnished by the election administrator of another county or counties.

(b) The election administrator of each county from which territory is taken for the proposed new county shall, not less than 5 days before the date of the election, furnish for each precinct within the proposed new county a precinct register for the precincts of the proposed new county that are within their respective counties.

(2) The elections provided for in 7-2-2215 are governed and controlled by the general election laws of the state to the extent that the general election laws are applicable and except as otherwise provided in this section. The provisions of the election laws relating to preparation, printing, and distribution of sample ballots, except the provisions of these laws relating to primary elections in this state, apply to any election provided for in this part. All returns of an election must be made to and canvassed by the board of county commissioners calling the election.

(3) ~~All nominations of candidates~~ *Candidates* for offices required to be filled at the election ~~must be made~~ *may appear on the ballot only* in the manner provided by law ~~for the nomination of candidates by petition~~."

**Section 7.** Section 7-3-176, MCA, is amended to read:

**"7-3-176. Election of commission members.** (1) If the question of reviewing the local government and establishing a study commission is approved, an election to fill the positions on the local government study

commission must be held in conjunction with the first regularly scheduled election of the local government conducted after 90 days following the election establishing the study commission. A primary election may not be held.

(2) The names of study commission candidates who have filed declarations of ~~nomination~~ *candidacy* not later than 75 days before the date of the election must be placed on the ballot. There is no filing fee. The election is nonpartisan, and candidates must be listed without party or other designation or slogan. The secretary of state shall prescribe the ballot form for study commissioners.

(3) Candidates for study commission positions must be electors of the local government for which the study commission has been established. The candidates may not be elected officials of the local government.

(4) The number of candidates, equal to the number of study commission positions to be elected, receiving the highest number of votes, which includes votes cast for candidates who have officially filed ~~nominations~~ *declarations* and votes for write-in candidates, must be declared elected. If there is a tie vote among candidates, the governing body shall decide by lot which candidate will fill the position.

(5) If the number of study commissioners elected is not equal to the number required to be selected, the presiding officer of the governing body, with the confirmation of the governing body, shall appoint the additional study commissioners within 20 days of the election. An elected official of the local government may not be appointed."

**Section 8.** Section 7-3-218, MCA, is amended to read:

**"7-3-218. Selection of commission members.** The commission ~~shall~~ *must* be:

(1) elected at large;

(2) elected by districts in which candidates must reside and ~~which~~ *that* are apportioned by population;

(3) elected at large ~~and nominated~~ by a plan ~~of nomination~~ that ~~may not preclude the possibility of~~ *allows* the majority of the electors ~~nominating~~ *to elect* candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside; or

(4) elected by any combination of districts, in which candidates must reside and ~~which~~ *that* are apportioned by population, and at large."

**Section 9.** Section 7-3-313, MCA, is amended to read:

**"7-3-313. Selection of commission members.** The commission ~~shall~~ *must* be:

(1) elected at large;

(2) elected by districts in which candidates must reside and ~~which~~ *that* are apportioned by population;

(3) elected at large ~~and nominated~~ by a plan ~~of nomination~~ that ~~may not preclude the possibility of~~ *allows* the majority of the electors ~~nominating~~ *to elect* candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside; or

(4) elected by any combination of districts, in which candidates must reside and ~~which~~ *that* are apportioned by population, and at large."

**Section 10.** Section 7-3-412, MCA, is amended to read:

**"7-3-412. Selection of commission members.** The commission ~~shall~~ *must* be:

(1) elected at large;

(2) elected by districts in which candidates must reside and ~~which~~ *that* are apportioned by population;

(3) elected at large and ~~nominated~~ by a plan ~~of nomination~~ that ~~may not preclude the possibility of~~ *allows* the majority of the electors ~~nominating~~ *to elect* candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside; or

(4) elected by any combination of districts, in which candidates must reside and ~~which~~ *that* are apportioned by population, and at large."

**Section 11.** Section 7-3-512, MCA, is amended to read:

**"7-3-512. Selection of commission members.** The commission ~~shall~~ *must* be:

(1) elected at large;

(2) elected by districts in which candidates must reside and ~~which~~ *that* are apportioned by population;

(3) elected at large ~~and nominated~~ by a plan ~~of nomination~~ that ~~may not preclude the possibility of~~ *allows* the majority of the electors ~~nominating~~ *to elect* candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside; or

(4) elected by any combination of districts, in which candidates must reside and ~~which~~ *that* are apportioned by population, and at large."

**Section 12.** Section 7-3-704, MCA, is amended to read:

**"7-3-704. Legislative body.** (1) The charter ~~shall~~ *must* provide for an elected legislative body (called a commission or council) or ~~shall~~ *must* provide for a legislative body comprised of all qualified electors. For elected legislative bodies, the charter shall specify the number of members ~~thereof~~ *of the body*, their term of office, election on a partisan or nonpartisan basis, the grounds for their removal, and the method for filling vacancies.

(2) The charter ~~shall~~ *must* provide for the ~~nomination and~~ election of commissions:

(a) at large;

(b) by districts in which candidates must reside and ~~which~~ *that* are apportioned by population;

(c) by a combination of districts, in which candidates must reside and ~~which~~ *that* are apportioned by population, and at large; or

(d) elected at large ~~and nominated~~ by a plan ~~of nomination~~ that ~~may not preclude the possibility of~~ *allows* the majority of the electors ~~nominating~~ *to elect* candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside."

**Section 13.** Section 7-3-1256, MCA, is amended to read:

**"7-3-1256. Appointive officers not to seek other office.** Any appointive officer or employee of the municipality who ~~shall become~~ *becomes* a candidate for ~~nomination or~~ election to any public office shall immediately forfeit the office or employment held under the municipality."

**Section 14.** Section 7-4-2106, MCA, is amended to read:

**"7-4-2106. Vacancy on board of county commissioners — resigning member not to participate in filling pending vacancy.** (1) For the purposes of this part, "vacancy" has the same meaning as prescribed in 2-16-501.

(2) Whenever a vacancy occurs in the board of county commissioners from a failure to elect or otherwise, the remaining county commissioners shall fill the vacancy and the appointee shall hold office until the next general election unless otherwise provided in subsection (3) or (4). The procedure to be used to fill the vacancy is as follows:

(a) If the former incumbent ~~represented a party eligible for a primary election under 13-10-601~~ *marked a party preference on the incumbent's most recent declaration of candidacy as filed with the election administrator and that party preference corresponds with a party with a county central committee organized under Title 13, chapter 38, part 2*, the county central committee of that party shall submit to the remaining commissioners three names of people who have lived in the unrepresented district for at least 2 years preceding the day the vacancy occurs. The remaining commissioners shall appoint one of these three to fill the vacancy. Whenever the remaining commissioners are unable to elect an appointee from the submitted list, they shall request a second list of three names from the county central committee. The second list may not contain any of the names submitted on the first list. The remaining commissioners shall then select an appointee from the individuals named on both lists.

(b) If the former incumbent was independent or ~~was originally nominated by~~ *indicated a party preference on the incumbent's most recent declaration of candidacy as filed with the election administrator with* a party that does not *have a county central committee organized under Title 13, chapter 38, part 2,* ~~meet the requirements of 13-10-601~~ or if the vacancy occurs from a failure to elect, the remaining commissioners shall invite applications for the vacancy in a notice published as provided in 13-1-108 and shall accept an application from any person who has lived in the unrepresented district for at least 2 years preceding the day the vacancy occurs. The remaining commissioners shall appoint one of these applicants to fill the vacancy.

(3) Whenever a vacancy occurs 75 days or more before the general election held during the second or fourth year of the term, an individual must be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 75 days or more before the primary election during the second or fourth year of the term, the same procedure must be used as is used to elect county commissioners to full 6-year terms.

(b) Whenever the vacancy occurs after the 75th day preceding the primary election, ~~any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-38-204. A political party shall notify the clerk and recorder of the party nominee. A~~ *a* person desiring to be a candidate ~~as an independent~~ *on the ballot in the general election* shall ~~follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate must be filed~~ *file a declaration of candidacy* with the clerk and recorder on or before the 75th day prior to the general election. A candidate for a nonpartisan office shall file as provided in Title 13, chapter 14.

(4) Whenever a vacancy occurs after the 75th day preceding the general election held during the fourth year of the term, the person appointed by the remaining county commissioners under subsection (2) shall serve until the end of the term.

(5) (a) If multiple vacancies occur simultaneously so that a quorum cannot be established, the county compensation board provided for in 7-4-2503 shall, subject to subsection (5)(c) of this section, appoint enough commissioners to

allow for a quorum to be established. The vacancies must be filled in the order in which the commissioners' terms would have expired.

(b) If vacancies occur at different times but, because appointments have not yet been made, a quorum cannot be established, the county compensation board shall, subject to subsection (5)(c), appoint enough commissioners to allow for a quorum to be established. The county compensation board shall appoint each commissioner in the order that the vacancy occurred.

(c) (i) A commissioner appointed under this subsection (5) must meet the residency requirement in 7-4-2104(2) and must be from the same district as the commissioner being replaced.

(ii) If a commissioner being replaced ~~represented a party eligible for a primary election under 13-10-601~~ *marked a party preference on the incumbent's most recent declaration of candidacy and that party preference corresponds with a party with a county central committee organized under Title 13, chapter 38, part 2*, the county central committee of that party shall, within 30 days of the occurrence of the vacancy, submit to the county compensation board three names of people who have lived in the unrepresented district for at least 2 years prior to the occurrence of the vacancy. The county compensation board shall appoint each commissioner from the list of names provided by the county central committee.

(d) Once a quorum can be established, the county commissioners forming the quorum shall appoint the remaining commissioners as provided in this section.

(e) If a county compensation board does not exist, appointments under this subsection (5) must be made by a district judge having jurisdiction in the county.

(6) If a member of the board of county commissioners has submitted the member's resignation as provided in 2-16-502 or if proceedings have begun to remove the member from office under 2-16-501, that member may not be considered to be a remaining member of the commission as provided in this section and may not participate in filling the vacancy to be created when the resignation becomes effective."

**Section 15.** Section 7-4-2206, MCA, is amended to read:

**"7-4-2206. Vacancies.** (1) For the purposes of this part, "vacancy" has the same meaning as prescribed in 2-16-501.

(2) Vacancies in all county offices, except that of county commissioner, must be filled by appointment by the board of county commissioners. Except as provided in subsections (3) through (5), the appointee holds the office, if elective, until the person elected at the next general election is certified pursuant to 13-15-406. If the office is not elective, the appointee serves at the pleasure of the commissioners.

(3) Whenever a vacancy occurs 75 days or more before the general election held during the second year of the term, an individual must be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 75 days or more before the primary election during the second year of the term, the same procedure must be used as is used to elect a person to that office for a full 4-year term.

(b) Whenever the vacancy occurs after the 75th day before the primary election, any ~~political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-38-204. A political party shall notify the clerk and recorder of the party nominee. A~~ person desiring to be a candidate

~~as an independent~~ shall ~~follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate must be filed~~ *file a declaration of candidacy* with the clerk and recorder on or before the 75th day before the general election. A candidate for a nonpartisan office shall file as provided in Title 13, chapter 14.

(4) Whenever a vacancy occurs after the 75th day before the general election held during the second year of the term, the person appointed by the commissioners under subsection (2) shall serve until the end of the term.

(5) Vacancies occurring in the office of justice of the peace must be filled as provided in Title 3, chapter 10, part 2."

**Section 16.** Section 7-4-2302, MCA, is amended to read:

**"7-4-2302. Petition for consolidation of county offices.** (1) At any time not later than 45 days before the date on which declarations ~~for nomination~~ *of candidacy* may first be filed for any county office, a petition in writing may be filed with the board of county commissioners of a county asking for the consolidation of any two or more of ~~said~~ *those* offices by the board of ~~such~~ *the* county.

(2) The petition ~~shall~~ *must* be signed by not less than 15% of the registered electors of ~~such~~ *the* county."

**Section 17.** Section 7-4-2310, MCA, is amended to read:

**"7-4-2310. Order for consolidation of offices.** (1) In consolidating county offices, the board of county commissioners shall, not less than 7 days before the date on which declarations ~~for nomination~~ *of candidacy* may first be filed for any office to be consolidated or not less than 6 months prior to the appointment to the offices to be consolidated, make and enter an order combining any two or more of the within-named offices.

(2) Whenever an order consolidating two or more offices is made, the order ~~shall~~ *must* be entered in full on the board's minutes of proceedings.

(3) The order ~~shall~~ *must* be published in a newspaper of general circulation, printed and published in the county or counties affected, for a period of 2 successive weeks following the date of the making and entering of the order."

**Section 18.** Section 7-4-4112, MCA, is amended to read:

**"7-4-4112. Filling of vacancy.** (1) When a vacancy occurs in any elective office, ~~this~~ *the* position is considered open and subject to ~~nomination and~~ election ~~at~~ *during* the next ~~general~~ municipal election *cycle* in the same manner as the election of any other person holding the same office, except the term of office is limited to the unexpired term of the person who originally created the vacancy. Pending an election and qualification, the council shall, by a majority vote of the members, appoint a person within 30 days of the vacancy to hold the office until a successor is elected and qualified.

(2) If all council positions become vacant at one time, the board of county commissioners shall appoint persons within 5 days to hold office as a city council member. The appointed city council member shall then appoint persons to any other vacant elective offices.

(3) A vacancy in the office of city council member must be filled from the ward in which the vacancy exists."

**Section 19.** Section 13-1-101, MCA, is amended to read:

**"13-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Active elector" means an elector whose name has not been placed on the inactive list due to failure to respond to confirmation notices pursuant to 13-2-220 or 13-19-313.

(2) "Active list" means a list of active electors maintained pursuant to 13-2-220.

(3) "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(4) "Application for voter registration" means a voter registration form prescribed by the secretary of state that is completed and signed by an elector, submitted to the election administrator, and contains voter registration information subject to verification as provided by law.

(5) "Ballot" means a paper ballot counted manually or a paper ballot counted by a machine, such as an optical scan system or other technology that automatically tabulates votes cast by processing the paper ballots.

(6) "Candidate" means:

(a) an individual who has filed a declaration *of candidacy,* ~~or~~ petition for nomination, ~~acceptance of nomination,~~ or appointment as a candidate for public office as required by law;

(b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure ~~nomination~~ *selection to advance* or election to any office at any time, whether or not the office for which the individual will seek ~~nomination~~ *selection to advance* or election is known when the:

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; or

(c) an officeholder who is the subject of a recall election.

*(7) "Certificate of selection" means a certificate awarded to the individual or individuals authorized by law to advance from a primary election and appear on the general election ballot.*

~~(7)~~*(8)* (a) "Contribution" means:

(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(ii) a transfer of funds between political committees;

(iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residences for a candidate or other individual;

(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees; or

(iv) filing fees paid by the candidate.

~~(8)~~*(9)* "Election" means a general, regular, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

~~(9)~~*(10)* "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections not administered by the county, the term means the school district clerk.

~~(10)~~*(11)* "Elector" means an individual qualified to vote under state law.

~~(11)~~*(12)* (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection ~~(7)~~ *(8)*;

(ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

(iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees.

~~(12)~~*(13)* "Federal election" means a general or primary election in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

~~(13)~~*(14)* "General election" or "regular election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted as a constitutional initiative at a regular election, regular election means an election held at the time provided in 13-1-104(1).

~~(14)~~*(15)* "Inactive elector" means an individual who failed to respond to confirmation notices and whose name was placed on the inactive list pursuant to 13-2-220 or 13-19-313.

~~(15)~~*(16)* "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220 or 13-19-313.

~~(16)~~*(17)* "Individual" means a human being.

~~(17)~~*(18)* (a) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question.

(b) For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes a "ballot issue" upon preparation and transmission by

the secretary of state of the form of the petition or referral to the person who submitted the proposed issue.

~~(18)~~*(19)* "Legally registered elector" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.

~~(19)~~*(20)* "Mail ballot election" means any election that is conducted under Title 13, chapter 19, by mailing ballots to all active electors.

*(21) "Partisan primary" means a presidential preference primary or a political party precinct committee officer race.*

~~(20)~~*(22)* "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (6).

~~(21)~~*(23)* "Place of deposit" means a location designated by the election administrator pursuant to 13-19-307 for a mail ballot election conducted under Title 13, chapter 19.

~~(22)~~*(24)* "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

(a) to support or oppose a candidate or a committee organized to support or oppose a candidate ~~or a petition for nomination~~; or

(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(c) as an earmarked contribution.

~~(23)~~*(25)* "Political subdivision" means a county, consolidated municipal-county government, municipality, special district, or any other unit of government, except school districts, having authority to hold an election for officers or on a ballot issue.

~~(24)~~*(26)* "Polling place election" means an election primarily conducted at polling places rather than by mail under the provisions of Title 13, chapter 19.

~~(25)~~*(27)* "Primary" or "primary election" means an election held throughout the state *at times specified by law* to ~~nominate~~ *narrow the number of* candidates for public office ~~at times specified by law, including nominations of candidates for offices of political subdivisions when the time for nominations is set on the same date for all similar subdivisions in the state~~.

~~(26)~~*(28)* "Provisional ballot" means a ballot cast by an elector whose identity or eligibility to vote has not been verified as provided by law.

~~(27)~~*(29)* "Provisionally registered elector" means an individual whose application for voter registration was accepted but whose identity or eligibility has not yet been verified as provided by law.

~~(28)~~*(30)* "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

~~(29)~~*(31)* "Random-sample audit" means an audit involving a manual count of ballots from designated races and ballot issues in precincts selected through a random process as provided in 13-17-503.

~~(30)~~*(32)* "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

*(33) "Selection to advance" or "selected to advance" means the status given to an individual authorized by law to advance from a primary election and appear on the general election ballot.*

~~(31)~~*(34)* "Special election" means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.

~~(32)~~*(35)* "Statewide voter registration list" means the voter registration list established and maintained pursuant to 13-2-107 and 13-2-108.

*(36) "Top two primary" means the primary election process for partisan public offices, except political party precinct committee offices or elections for a presidential preference primary, to narrow the number of candidates for each office to the two candidates who, irrespective of political party preference, receive the highest number of votes cast in the race.*

~~(33)~~*(37)* "Transfer form" means a form prescribed by the secretary of state that may be filled out by an elector to transfer the elector's registration when the elector's residence address has changed within the county.

~~(34)~~*(38)* "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in 13-15-206.

~~(35)~~*(39)* "Voted ballot" means a ballot that is:

(a) deposited in the ballot box at a polling place;

(b) received at the election administrator's office; or

(c) returned to a place of deposit.

~~(36)~~*(40)* "Voting system" or "system" means any machine, device, technology, or equipment used to automatically record, tabulate, or process the vote of an elector cast on a paper ballot."

**Section 20.** Section 13-1-103, MCA, is amended to read:

**"13-1-103. Determination of winner.** *(1)* The individual receiving the highest number of valid votes for any office at ~~an~~ *a general election, nonpartisan election, or partisan primary* election is *selected to advance or* elected ~~or nominated~~ to that office.

*(2) In a top two primary, the two individuals receiving the most votes are selected to advance.*"

**Section 21.** Section 13-4-102, MCA, is amended to read:

**"13-4-102. Manner of choosing election judges.** (1) Subject to 13-4-107, election judges must be chosen from lists of qualified registered electors for each precinct in the county, submitted at least 45 days before the primary election in even-numbered years by the county central committees of the political parties eligible to nominate candidates in the *last presidential* primary.

(2) The list of each party may contain more names than the number of election judges to be appointed. The names of those not appointed as election judges must be given to the election administrator for use in making appointments to fill vacancies.

(3) Each board of election judges must include judges representing all parties that have submitted lists as provided in subsection (1). No more than the number of election judges needed to obtain a simple majority may be appointed from the list of one political party in each precinct. If any of the political parties entitled to do so fail to submit a list meeting the requirements of this section, the governing body shall, to the extent possible, appoint judges so that all parties eligible to participate in the primary are represented on each board.

(4) The election administrator shall make appointments to fill vacancies from the list provided for in subsection (2). If the list is insufficient or if one or more of the eligible political parties fails to submit a list meeting the requirements of this section, the election administrator may select enough

people meeting the qualifications of 13-4-107 to fill election judge vacancies in all precincts.

(5) An elector chosen to potentially serve as an election judge must be notified of selection at least 30 days before the primary election in even-numbered years. Each elector who agrees to serve as an election judge shall attend a training class conducted under 13-4-203 and shall continue to serve as provided in 13-4-103."

**Section 22.** Section 13-10-201, MCA, is amended to read:

**"13-10-201. Declaration ~~for nomination~~ *of candidacy* — term limitations.** (1) Each candidate in the primary election, except nonpartisan candidates filing under the provisions of Title 13, chapter 14, shall file a declaration ~~for nomination~~ *of candidacy* with the secretary of state or election administrator. Except for a candidate who files under 13-38-201, a candidate may not file for more than one public office. Each candidate for governor shall file a joint declaration ~~for nomination~~ *of candidacy* with a candidate for lieutenant governor.

(2) A declaration ~~for nomination~~ *of candidacy* must be filed in the office of:

(a) the secretary of state for placement of a name on the ballot for the presidential preference primary, a congressional office, a state or district office to be voted for in more than one county, a member of the legislature, or a judge of the district court;

(b) the election administrator for a county, municipal, precinct, or district office (other than a member of the legislature or judge of the district court) to be voted for in only one county.

(3) Each candidate shall sign the declaration and send with it the required filing fee or, in the case of an indigent candidate, send with it the ~~documents~~ *statement* required by 13-10-203. Unless filed electronically with the secretary of state, the declaration ~~for nomination~~ *of candidacy* must be acknowledged by an officer empowered to acknowledge signatures or by the officer of the office at which the filing is made.

*(4) (a) In a top two primary, each candidate may state the candidate's political party preference on the declaration of candidacy. A candidate may not declare a preference for more than one party. When identifying a political party preference, a candidate is not restricted to identifying an established party and may use a limited number of characters, according to rules adopted by the secretary of state, to identify a political party preference.*

*(b) In a top two primary, a declaration of political party preference is not evidence that the candidate has been nominated or endorsed by the political party or that the party approves of or associates with that candidate.*

~~(4)~~*(5)* ~~The~~ *In a partisan primary, the* declaration *of candidacy*, when filed, is conclusive evidence that the elector is a candidate for nomination by the elector's party. For a partisan election, an elector may not file a declaration for more than one party's nomination.

~~(5)~~*(6)* (a) The declaration ~~for nomination~~ *of candidacy* must be in the form and contain the information prescribed by the secretary of state.

(b) A person seeking ~~nomination~~ *election* to the legislature shall provide the secretary of state with a street address, legal description, or road designation to indicate the person's place of residence. If a candidate for the legislature changes residence, the candidate shall, within 15 days after the change, notify the secretary of state on a form prescribed by the secretary of state.

(c) The secretary of state and election administrator shall furnish declaration ~~for nomination~~ *of candidacy* forms to individuals requesting them.

~~(6)~~*(7)* (a) Except as provided in 13-10-211 and subsection ~~(6)(b)~~ *(7)(b)* of this section, a candidate's declaration ~~for nomination~~ *of candidacy* must be filed no sooner than 135 days before the election in which the office first appears on the ballot and no later than 5 p.m., 75 days before the date of the primary election.

(b) For an election held pursuant to 13-1-104(1)(a) or 13-1-107(1) or for a political subdivision that holds an election on the date of either of those elections, a candidate's declaration ~~for nomination~~ *of candidacy* must be filed no sooner than 145 days before the election in which the office first appears on the ballot and no later than 5 p.m., 85 days before the date of the primary election.

~~(7)~~*(8)* A declaration ~~for nomination~~ *of candidacy* form may be sent by facsimile transmission if a facsimile facility is available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the election administrator or to the secretary of state.

~~(8)~~*(9)* For the purposes of implementing Article IV, section 8, of the Montana constitution, the secretary of state shall apply the following conditions:

(a) A term of office for an official serving in the office or a candidate seeking the office is considered to begin on January 1 of the term for which the official is elected or for which the candidate seeks election and end on December 31 of the term for which the official is elected or for which the candidate seeks election.

(b) A year is considered to start on January 1 and end on the following December 31.

(c) "Current term", as used in Article IV, section 8, of the Montana constitution, has the meaning provided in 2-16-214."

**Section 23.** Section 13-10-203, MCA, is amended to read:

**"13-10-203. Indigent candidates.** If an individual is unable to pay a filing fee, the filing officer shall accept ~~the following documents~~ in lieu of a filing fee~~:~~

~~(1) from a successful write-in candidate,~~ a statement that the candidate is unable to pay the filing fee~~;~~

~~(2) from a candidate for nomination, a statement that the candidate is unable to pay the filing fee and a written petition for nomination as a candidate that meets the following requirements:~~

~~(a) the petition contains the name of the office to be filled and the candidate's name and residence address;~~

~~(b) the petition contains signatures numbering 5% or more of the total vote cast for the successful candidate for the same office at the last general election;~~

~~(c) the signatures are those of electors residing within the political subdivision of the state in which the candidate petitions for nomination; and~~

~~(d) the signatures have been submitted to the appropriate election administrator at least 1 week prior to the applicable deadline in 13-10-201(6) and have been certified by the appropriate election administrator by the procedure provided in 13-27-303 and 13-27-304~~."

**Section 24.** Section 13-10-204, MCA, is amended to read:

**"13-10-204. Write-in ~~nominations~~ *candidates.*** (1) An individual ~~nominated~~ *receiving the highest or second-highest number of votes in a primary election* by having the individual's name written in and counted as provided in 13-15-206(5) or otherwise placed on the primary ballot ~~and desiring to accept the nomination~~ may not have the individual's name appear on the general election ballot unless the individual~~:~~

~~(a) received at least 5% of the total votes cast for the successful candidate for the same office at the last general election;~~

~~(b)~~ files with the secretary of state or election administrator, no later than 10 days after the official canvass, a written declaration indicating acceptance of ~~the nomination;~~ *selection to advance* and

~~(c)~~ complies with the provisions of 13-37-126.

(2) A write-in candidate who was exempt from filing a declaration of intent under 13-10-211 shall, at the time of filing the declaration of acceptance, pay the filing fee specified in 13-10-202 or, if indigent, file the ~~appropriate documents~~ *statement* described in 13-10-203."

**Section 25.** Section 13-10-209, MCA, is amended to read:

**"13-10-209. Arrangement and preparing of primary ballots.** (1) (a) Ballots for a primary election must be arranged and prepared in the same manner and number as provided in chapter 12 for general election ~~ballots, except that there must be separate ballots for each political party entitled to participate. The name of the political party must appear at the top of the separate ballot for that party and need not appear opposite each candidate's name~~.

*(b) (i) In a top two primary election, the political party preference declared by the candidate on the declaration of candidacy under 13-10-201 must appear with the candidate's name on the ballot. The word "preference" must follow the candidate's preferred party, if any. If a candidate has not declared a preference for a political party, the words "no party preference" must appear on the ballot with the candidate's name. Nothing in a top two primary election portion of the ballot may indicate whether a candidate has been endorsed or nominated by a political party. The top two primary portion or portions of the ballot must clearly and conspicuously state that candidates in that section are not nominees or members of or endorsed by or otherwise associated with the candidate's political party preference.*

*(ii) Information must be printed on the ballot and in the voter information pamphlet provided for in 13-27-401 to inform voters that in the top two primary the two candidates who receive the most votes for the office will advance to a general election regardless of either candidate's political party preference.*

~~(b) Nonpartisan offices and ballot issues may be prepared on separate ballots or may appear on the same ballot as partisan offices if:~~

*(2) (a) All offices and ballot issues must appear on one ballot. The ballot must be arranged to eliminate the possibility of widespread voter confusion.*

~~(i) each~~ *Each* section ~~is~~ *must be* clearly identified as separate~~;~~.

~~(ii) the nonpartisan offices and ballot issues appear on each party's ballot; and~~

~~(iii) with~~ *(b) With* respect to ballot issues, written approval is obtained as provided in 13-27-502.

~~(2)~~*(3)* An election administrator ~~does~~ *is* not ~~need~~ *required* to prepare a primary ballot ~~for a political party if:~~

~~(a) the party does not have candidates for more than half of the offices to appear on the ballot; or~~

~~(b)~~ *if* no more than ~~one candidate files for nomination by that party~~ *two candidates file* for any of the offices to appear on the ballot.

~~(3)~~*(4)* If, pursuant to subsection ~~(2)~~ *(3)*, in a primary election held under 13-1-107(1) a primary ballot ~~for a political party~~ is not prepared, the secretary of

state shall certify that a primary election is unnecessary ~~for that party~~ and shall instruct the election administrator to certify the names of the candidates ~~for that party~~ for the general election ballot only.

~~(4) The separate ballots for each party must have the same appearance. Each set of party ballots must bear the same number. If prepared as a separate ballot, the nonpartisan ballot may have a different appearance than the party ballots but must be numbered in the same order as the party ballots.~~

~~(5) If a ballot issue is to be voted on at a primary election, it may be placed on the nonpartisan ballot or a separate ballot. A separate ballot may have a different appearance than the other ballots in the election but must be numbered in the same order.~~

*(5) (a) If a partisan primary is held, the ballot must contain the following:*

*(i) a clear and conspicuous, segregated area for the elector to mark the political party the elector wishes to affiliate with for the purposes of voting in the primary election;*

*(ii) an option for the elector to mark "none of the above" with respect to political party affiliation; and*

*(iii) a clear and conspicuous statement that only electors who mark a political party affiliation may vote on the partisan primary portion of the ballot.*

*(b) A vote cast in a partisan primary may be counted only if the elector has marked an affiliation with one political party, a vote cast in a partisan primary corresponds only to the marked party's primary, and the elector has voted only once for each office.*

(6) Each elector must receive a set of ballots that includes the ~~party~~ *partisan primary*, *top two primary,* nonpartisan, and ballot issue choices."

**Section 26.** Section 13-10-211, MCA, is amended to read:

**"13-10-211. Declaration of intent for write-in candidates.** (1) Except as provided in subsection (8), a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. Except for a candidate who files under 13-38-201, a candidate may not file for more than one public office. The declaration of intent must be filed with the secretary of state or election administrator, depending on where a declaration of ~~nomination~~ *candidacy* for the desired office is required to be filed under 13-10-201, or with the school district clerk for a school district office. When a county election administrator is conducting the election for a school district, the school district clerk or school district office that receives the declaration of intent shall notify the county election administrator of the filing. Except as provided in subsections (2) and (3), the declaration must be filed no later than 5 p.m. on the 10th day before the date established under 13-13-205 on which a ballot must be available for absentee voting for the election and must contain:

(a) (i) the candidate's first and last names;

(ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the candidate's last name;

(iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and

(iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;

(b) the candidate's mailing address;

(c) a statement declaring the candidate's intention to be a write-in candidate;

(d) the title of the office sought;

(e) the date of the election;

(f) the date of the declaration; and

(g) the candidate's signature.

(2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than 5 p.m. on the day before the election if, after the deadline prescribed in subsection (1), a candidate for the office that the write-in candidate is seeking dies or is charged with a felony offense.

(3) A person seeking to become a write-in candidate in a mail ballot election or for a trustee position in a school board election shall file a declaration of intent no later than 5 p.m. on the 26th day before the election.

(4) The secretary of state shall notify each election administrator of the names of write-in candidates who have filed a declaration of intent with the secretary of state. Each election administrator and school district clerk shall notify the election judges in the county or district of the names of write-in candidates who have filed a declaration of intent.

(5) A declaration of intent may be provided to the election administrator or secretary of state:

(a) by facsimile transmission if a facsimile facility is available for receipt;

(b) in person; or

(c) by mail.

(6) A declaration is not valid until the filing fee required pursuant to 13-10-202 is received by the secretary of state or the election administrator.

(7) A write-in candidate who files a declaration of intent for a general election may not file with a partisan, nonpartisan, or independent designation.

(8) Except as provided in 13-38-201(5), the requirements in subsection (1) do not apply if:

(a) an election is held;

(b) a person's name is written in on the ballot;

(c) the person is qualified for and seeks election to the office for which the person's name was written in; and

(d) no other candidate has filed a declaration *of candidacy* or petition for nomination or a declaration of intent."

**Section 27.** Section 13-10-301, MCA, is amended to read:

**"13-10-301. ~~Casting of ballot~~ *Primary election procedures.*** (1) Unless otherwise provided by law, the conduct of the primary election, the voting procedure, the counting, tallying, and return of ballots and all election records and supplies, the canvass of votes, the certification and notification of ~~nominees~~ *candidates*, recounts, procedures upon tie votes, and any other necessary election procedures must be at the same times and in the same manner as provided for in the laws for the general election.

~~(2) At a primary election, the elector shall cast votes on only one of the party ballots, preparing the ballot as provided in 13-13-117. After casting votes on any other ballots received other than the party ballots, the elector shall ensure the proper disposition of the ballots in accordance with instructions provided pursuant to 13-13-112.~~

~~(3)~~*(2)* The elector's ballot must be handled as prescribed in 13-13-117."

**Section 28.** Section 13-10-325, MCA, is amended to read:

**"13-10-325. Withdrawal from ~~nomination~~ *election.*** (1) (a) A candidate ~~for nomination or candidate for election to an office~~ may withdraw from the election by sending a statement of withdrawal to the officer with whom the candidate's declaration, petition, or acceptance of ~~nomination~~ *selection to advance* was filed. The statement must contain all information necessary to identify the candidate and the office sought. Unless filed electronically with the secretary of state, the statement of withdrawal ~~from nomination~~ must be acknowledged by an officer empowered to acknowledge signatures or by the officer of the office at which the filing is made.

(b) Except as provided in subsection (1)(c), a candidate may not withdraw later than 85 days before a general election or 75 days before a primary election.

(c) A candidate may not withdraw later than 85 days before a general election conducted pursuant to 13-1-104(1)(a) or a primary election conducted pursuant to 13-1-107(1).

(2) Filing fees paid by the candidate may not be refunded."

**Section 29.** Section 13-10-326, MCA, is amended to read:

**"13-10-326. Vacancy prior to primary election.** (1) Except as provided in subsection (2):

(a) if a candidate ~~for nomination~~ for a partisan office dies or withdraws 75 days or more before the primary election, *an individual intending* ~~the affected political party may appoint someone~~ to replace ~~the~~ *that* candidate ~~by~~ *may use* the procedure provided in ~~13-10-327~~ *13-10-201*; or

(b) if a candidate ~~for nomination~~ for a partisan office *who marked a party preference on the candidate's most recent declaration of candidacy* dies less than 75 days before the primary election, the affected political party shall appoint a candidate after the primary election as provided in 13-10-327 if ~~a~~ *the* candidate for that office ~~for~~ *who preferred or associated with* that party was ~~not nominated at the primary election~~ *selected to advance*.

(2) For an election conducted pursuant to 13-1-104(1)(a) or 13-1-107(1):

(a) if a candidate ~~for nomination~~ for a partisan office dies or withdraws 85 days or more before the primary election, ~~the affected political party may appoint someone~~ *an individual intending* to replace the candidate ~~by~~ *in the primary election may use* the procedure provided in ~~13-10-327~~ *13-10-201*; or

(b) if a candidate ~~for nomination~~ for a partisan office *who marked a party preference on the candidate's most recent declaration of candidacy* dies less than 85 days before the primary election, the affected political party shall appoint a candidate after the primary election as provided in 13-10-327 if ~~a~~ *the* candidate for that office ~~for~~ *who preferred or associated with* that party was ~~not nominated at the primary election~~ *selected to advance*.

(3) This section does not allow a political party to appoint a candidate for an office if ~~no~~ *a* candidate ~~for nomination by~~ *who declared a preference for* that party ~~filed~~ *did not file* for the office before the primary election."

**Section 30.** Section 13-10-327, MCA, is amended to read:

**"13-10-327. Vacancy after primary and prior to general election.** (1) Except as provided in 13-10-328 for a vacancy in the candidacy of either governor or lieutenant governor caused by the death of a candidate, if a ~~party~~ candidate *marked a party preference on the candidate's most recent declaration of candidacy filed with the secretary of state or election administrator and that candidate* dies or withdraws after the primary and before the general election, the affected political party shall appoint someone to replace the candidate in one of the following ways:

(a) For offices to be filled by the state at large, the state central committee shall make the appointment as provided by the rules of the party.

(b) For offices to be filled in districts including more than one county, a committee appointed by the county central committees of all counties in the district shall make the appointment. Procedures for the appointment of the committee and making the appointment must be provided in party rules.

(c) For offices to be filled in counties, municipalities, or districts wholly within a county, the appointment must be made under rules adopted by the county central committee.

(2) Except as provided in this section, appointments to fill vacancies must be made no later than 76 days before the election. A candidate may not officially withdraw 85 days or less before a general election. However, if a candidate for partisan office dies less than 85 days before the general election, the affected political party *for which the candidate declared a preference, as stated on the most recent declaration of candidacy form filed with the secretary of state or election administrator,* shall appoint a candidate within 5 days after being notified of the vacancy. One of the procedures provided in 13-12-204 must be used to place the name of the appointee on the ballot if necessary.

(3) The appointing committee shall send a certificate to the officer with whom a declaration ~~for nomination~~ *of candidacy* for the office would be filed, with the information required on a declaration ~~for nomination~~ *of candidacy* and the name of the candidate for whom the appointee is to be substituted. The appointee shall send a signed and acknowledged acceptance of the appointment and the filing fee for the office.

(4) The officer receiving the certificate of appointment, accompanied by a statement of acceptance and the filing fee, shall certify the name of the appointee for the ballot."

**Section 31. Top two primary restrictions — exceptions.** (1) If two or fewer candidates seek advancement to the general election, those candidates shall immediately advance without appearing on the primary election ballot.

(2) The top two primary may not be used as a process for a political party to nominate or endorse a candidate for a partisan public office. A top two primary may not be construed as a regulation of how a political party may nominate or endorse a candidate. A party preference may not be used to limit the voting options available to a voter.

**Section 32.** Section 13-10-402, MCA, is amended to read:

**"13-10-402. Ballot.** *(1)* The regular ~~party~~ primary ~~ballots~~ *ballot* ~~shall~~ *must* be used for the presidential preference primary election.

*(2)* The presidential section of the ballot ~~shall~~ *must* be placed before any other section~~,~~ *whether* national, state, or local."

**Section 33.** Section 13-10-403, MCA, is amended to read:

**"13-10-403. Form of ballot.** The presidential preference ballot ~~shall~~ *must* list all candidates ~~nominated~~ in accordance with the provisions of this part and ~~shall, in addition,~~ *must* include a presidential ballot position ~~which shall be~~ *that is* designated as "no preference" and a blank write-in space."

**Section 34.** Section 13-10-404, MCA, is amended to read:

**"13-10-404. Placement of candidate on primary ballot — methods of qualification.** Before an individual intending to qualify as a presidential candidate may qualify for placement on the ballot, the individual shall qualify by one or more of the following methods:

(1) The individual has submitted a ~~declaration~~ *petition* for nomination *as provided in 13-10-501* to the secretary of state ~~pursuant to 13-10-201(2) and has been nominated on petitions with~~ *containing* the verified signatures of at least 500 qualified electors. ~~The secretary of state shall prescribe the form and content of the petition.~~

(2) The individual has submitted a declaration ~~for nomination~~ *of candidacy* to the secretary of state pursuant to 13-10-201, and the secretary of state has determined, by the time that declarations ~~for nomination~~ *of candidacy* are to be filed, that the individual is eligible to receive payments pursuant to the federal Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031, et seq."

**Section 35.** Section 13-10-405, MCA, is amended to read:

**"13-10-405. Submission and verification of petition.** Petitions of nomination for the presidential preference primary election and the affidavits of circulation required by 13-27-302 must be presented to the election administrator of the county in which the signatures are gathered at least 1 week before the primary election filing deadline prescribed in ~~13-10-201(6)(b)~~ *13-10-201(7)(b).* A filing fee is not required. The election administrator shall verify the signatures in the manner prescribed in 13-27-303 through 13-27-308 and ~~must~~ *shall* forward the petitions to the secretary of state by the filing deadline prescribed in ~~13-10-201(6)(b)~~ *13-10-201(7)(b).*"

**Section 36.** Section 13-10-501, MCA, is amended to read:

**"13-10-501. Petition for nomination ~~by independent candidates or political parties not eligible to participate in primary election~~ — *form.*** ~~(1) Except as provided in 13-10-504, nominations for public office by an independent candidate or a political party that does not meet the requirements of 13-10-601 may be made by a petition for nomination.~~

~~(2)~~*(1)* ~~The~~ *A* petition *for nomination* must contain the same information and the oath of the candidate required for a declaration ~~for nomination~~ *of candidacy*.

~~(3)~~*(2)* If a petition is filed by a political party, it must contain the party name and, in five words or less, the principle that the body represents.

~~(4)~~*(3)* The form of the petition must be prescribed by the secretary of state, and the secretary of state shall furnish sample copies to the election administrators and on request to any individual.

~~(5)~~*(4)* Each sheet of a petition must contain signatures of electors residing in only one county."

**Section 37.** Section 13-10-504, MCA, is amended to read:

**"13-10-504. Independent or minor party candidates for president or vice president.** (1) An individual who desires to run for president or vice president as an independent candidate ~~or as a candidate of a party not qualified under 13-10-601~~ shall file a petition for nomination *as provided in 13-10-501* with the secretary of state 76 days prior to the date of the general election.

(2) The petition and the affidavits of circulation required by 13-27-302 must first be submitted, at least 1 week before the deadline for filing, to the election administrator in the county where the signer resides for verification and certification by the procedures provided in 13-27-303 through 13-27-306.

(3) The petition must have the signatures of electors equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election or 5,000 electors, whichever is less. The names of the candidates for the required number of presidential electors allowable to Montana must be certified to the secretary of state no later than 76 days before the general election.

(4) A qualified independent presidential candidate may amend the petition and designate or choose a named vice presidential candidate until the filing date provided in 13-25-101."

**Section 38.** Section 13-10-505, MCA, is amended to read:

**"13-10-505. Applicability.** The provisions of 13-10-501 ~~through~~ *and* 13-10-504 ~~shall~~ *may* not be used to fill vacancies or to nominate candidates in nonpartisan elections ~~except for nominations to fill a vacancy as provided in 13-25-205~~."

**Section 39.** Section 13-12-201, MCA, is amended to read:

**"13-12-201. Secretary of state to certify ballot.** (1) Seventy-five days or more before a federal general election, the secretary of state shall certify to the election administrators the name and party *preference, party,* or other designation of each candidate entitled to appear on the ballot and the ballot issues as shown in the official records of the secretary of state's office, which must include the notification specified in 13-37-126.

(2) The election administrator shall certify the name and *party preference,* party, or other designation of each candidate entitled to appear on the ballot and the ballot issues as shown in the official records of the election administrator's office, which must include the notification specified in 13-37-126, and shall have the official ballots prepared.

(3) If a candidate for the legislature is no longer eligible under Article V, section 4, of the Montana constitution to seek the office for which the candidate has filed because the candidate has changed residence, the secretary of state shall notify the candidate that the candidate is required to withdraw as provided in 13-10-325."

**Section 40.** Section 13-12-202, MCA, is amended to read:

**"13-12-202. Ballot form and uniformity.** (1) The secretary of state shall adopt statewide uniform rules that prescribe the ballot form for each type of ballot used in this state. The rules must conform to the provisions of this title unless the voting system used clearly requires otherwise. At a minimum, the rules must address:

(a) the manner in which each type of ballot may be corrected under 13-12-204;

(b) what provisions must be made on the ballot for write-in candidates;

(c) the size and content of stubs on paper ballots, except as provided in 13-19-106(1);

(d) how unvoted ballots must be handled;

(e) how the number of individuals voting and the number of ballots cast must be recorded; ~~and~~

(f) the order and arrangement of voting system ballots*; and*

*(g) the difference in appearance between a party preference designation and a party designation to prevent the possibility of voter confusion*.

(2) The names of all candidates to appear on the ballots must be in the same font size and style.

(3) Notwithstanding 13-19-106(1), when the stubs are detached, it must be impossible to distinguish any one of the ballots from another ballot for the same office or issue.

(4) The ballots must contain the name of each candidate ~~whose nomination is~~ certified under law for an office and no other names, except that the names of

candidates for president and vice president of the United States must appear on the ballot as provided in 13-25-101(5)."

**Section 41.** Section 13-12-203, MCA, is amended to read:

**"13-12-203. Appearance of candidate's name and party designation on ballot.** (1) *(a)* Subject to 13-12-202 ~~and except as provided in 13-10-209 for nonpartisan offices and 13-10-303 for certain other candidates~~, in partisan elections, candidates' names must appear under the title of the office sought, with the name of the *candidate's political* party *preference or, in partisan primaries, the candidate's party* in not more than three words appearing opposite or below the name.

*(b) If a candidate has not declared a preference for a political party, the words "no party preference" must appear on the ballot with the candidate's name.*

(2) Subject to 13-12-202, in nonpartisan general elections, the candidates' names must appear under the title of the office sought, with no description or designation appearing with the name unless partisan and nonpartisan offices appear on the same ballot. In such a case, the names of nonpartisan candidates must appear with the word "Nonpartisan"."

**Section 42.** Section 13-12-205, MCA, is amended to read:

**"13-12-205. Arrangement of names — rotation on ballot.** (1) The candidates' names must be arranged alphabetically on the ballot according to surnames under the title of the respective offices and rotated as provided in this section.

(2) (a) If two or more individuals are candidates for ~~nomination or election to~~ the same office, the election administrator shall divide the ballot forms into sets equal in number to the greatest number of candidates for any office. ~~The candidates for nomination to an office by each political party must be considered separately in determining the number of sets necessary for a primary election.~~

(b) The election administrator shall begin with a form arranged alphabetically and rotate the names of the candidates so that each candidate's name will be at the top of the list for each office on substantially an equal number of ballots. If it is not numerically possible to place each candidate's name at the top of the list, the names must be rotated in groups so that each candidate's name is as near the top of the list as possible on substantially an equal number of ballots.

(c) If the county contains more than one legislative district, the election administrator may rotate each candidate's name so that it will be at or near the top of the list for each office on substantially an equal number of ballots in each house district.

(d) For purposes of rotation, the offices of president and vice president and of governor and lieutenant governor must be considered as a group.

(e) No more than one of the sets may be used in preparing the ballot for use in any one precinct, and all ballots furnished for use in any precinct must be identical."

**Section 43.** Section 13-12-207, MCA, is amended to read:

**"13-12-207. Order of placement.** (1) The order on the ballot for state and federal offices must be as follows:

(a) If the election is in a year in which a president of the United States is to be elected, in spaces separated from the balance of the party tickets *or ballot* by a line must be the names and spaces for voting for candidates for president and

vice president. The names of candidates for president and vice president for each political party must be grouped together.

(b) United States senator;

(c) United States representative;

(d) governor and lieutenant governor;

(e) secretary of state;

(f) attorney general;

(g) state auditor;

(h) state superintendent of public instruction;

(i) public service commissioners;

(j) clerk of the supreme court;

(k) chief justice of the supreme court;

(l) justices of the supreme court;

(m) district court judges;

(n) state senators;

(o) members of the Montana house of representatives.

(2) The following order of placement must be observed for county offices:

(a) clerk of the district court;

(b) county commissioner;

(c) county clerk and recorder;

(d) sheriff;

(e) coroner;

(f) county attorney;

(g) county superintendent of schools;

(h) county auditor;

(i) public administrator;

(j) county assessor;

(k) county treasurer;

(l) surveyor;

(m) justice of the peace.

(3) The secretary of state shall designate the order for placement on the ballot of any offices not on the above lists, except that the election administrator shall designate the order of placement for municipal, charter, or consolidated local government offices and district offices when the district is part of only one county.

(4) Constitutional amendments must be placed before statewide referendum and initiative measures. Ballot issues for a county, municipality, school district, or other political subdivision must follow statewide measures in the order designated by the election administrator.

(5) If any offices are not to be elected they may not be listed, but the order of the offices to be filled must be maintained.

(6) If there is a short-term and a long-term election for the same office, the long-term office must precede the short-term."

**Section 44.** Section 13-13-214, MCA, is amended to read:

**"13-13-214. Mailing absentee ballot to elector — delivery to person other than elector.** (1) (a) Except as provided in 13-13-213 and in subsection

(1)(c) of this section, the election administrator shall mail, postage prepaid, to each legally registered elector and provisionally registered elector from whom the election administrator has received a valid absentee ballot application under 13-13-211 and 13-13-212 whatever official ballots are necessary.

(b) The election administrator shall mail the ballots in a manner that conforms to the deadlines established for ballot availability in 13-13-205.

(c) The election administrator may deliver a ballot in person to an individual other than the elector if:

(i) the elector has designated the individual, either by a signed letter or by making the designation on the application form in a manner prescribed by the secretary of state or pursuant to 13-1-116;

(ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt of the ballot;

(iii) the election administrator believes that the individual receiving the ballot is the designated person; and

(iv) the designated person has not previously picked up ballots for four other electors.

(2) The election administrator shall enclose with the ballots:

(a) a secrecy envelope, free of any marks that would identify the voter; and

(b) an envelope for the return of the ballots. The envelope must be self-addressed by the election administrator and an affirmation in the form prescribed by the secretary of state must be printed on the back of the envelope.

(3) The election administrator shall ensure that the ballots provided to an absentee elector are marked as provided in 13-13-116 and shall remove the stubs from the ballots, keeping the stubs in numerical order with the application for absentee ballots, if applicable, or in a precinct envelope or container for that purpose.

~~(4) If the ballots sent to the elector are for a primary election, the election administrator shall enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or marked in any way so that it can be identified as being used by any one elector.~~

~~(5)~~*(4)* Instructions for voting must be enclosed with the ballots. ~~Instructions for primary elections must include use of the envelope for unvoted ballots.~~ The instructions must include information concerning the type or types of writing instruments that may be used to mark the absentee ballot. The instructions must include information regarding use of the secrecy envelope and use of the return envelope. The election administrator shall include a voter information pamphlet with the instructions if:

(a) a statewide ballot issue appears on the ballot mailed to the elector; and

(b) the elector requests a voter information pamphlet."

**Section 45.** Section 13-13-225, MCA, is amended to read:

**"13-13-225. Special absentee election boards — members — appointment.** (1) The election administrator shall designate and appoint a number of special absentee election boards as needed to serve in various places to deliver ballots to electors who are entitled to vote by absentee ballot as provided in 13-13-229.

(2) In a partisan election, each special absentee election board must consist of two members, one from each of the two political parties receiving the highest number of votes in the state during the last preceding *presidential* general

election, if possible. Board members shall reside in the county in which they serve.

(3) A member of a special absentee election board may not be a candidate or a spouse, ascendant, descendant, brother, or sister of a candidate or of a candidate's spouse or the spouse of any one of these if the candidate's name appears on a ballot in the county."

**Section 46.** Section 13-13-241, MCA, is amended to read:

**"13-13-241. Examination of absentee ballot return envelopes — deposit of absentee and unvoted ballots — rulemaking.** (1) (a) Upon receipt of each absentee ballot signature envelope, an election administrator shall compare the signature of the elector or elector's agent on the absentee ballot request or on the elector's voter registration card with the signature on the return envelope.

(b) If the elector is legally registered and the signature on the return envelope matches the signature on the absentee ballot application or on the elector's voter registration card, the election administrator or an election judge shall handle the ballot as a regular ballot.

(c) (i) If the elector is provisionally registered and the signature on the return envelope matches the signature on the absentee ballot application or on the elector's voter registration card, the election administrator or an election judge shall open the outer return envelope and determine whether the elector's voter identification and eligibility information, if enclosed pursuant to 13-13-201, is sufficient pursuant to rules adopted under 13-2-109 to legally register the elector.

(ii) If the voter identification and eligibility information is sufficient to legally register the elector, the ballot must be handled as a regular ballot.

(iii) If voter identification or eligibility information was not enclosed or the information enclosed is insufficient to legally register the elector, the ballot must be handled as a provisional ballot under 13-15-107.

(2) If a voted absentee ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot.

~~(3) In a primary election, unvoted party ballots must be separated from the secrecy envelopes and handled without being removed from their enclosure envelopes. If an unvoted party ballot is not received, the election administrator shall process the voted party ballot as if the unvoted party ballot had been received.~~

~~(4)~~*(3)* If an elector's ballot is to be handled as a provisional ballot, the election administrator shall notify the absentee elector as provided in 13-13-245.

~~(5)~~*(4)* If the signature on the absentee ballot return envelope does not match the signature on the absentee ballot request form or on the elector's voter registration card or if there is no signature on the absentee ballot return envelope, the election administrator shall notify the elector as provided in 13-13-245.

~~(6)~~*(5)* If at any point there is a question concerning the validity of a particular ballot, the question must be resolved as provided in 13-13-245.

~~(7)~~*(6)* After receiving an absentee ballot secrecy envelope and if the validity of the ballot is confirmed pursuant to 13-13-245, then no sooner than 1 business day before election day, the election official may, in the presence of a poll watcher, open the secrecy envelope and place the ballot in the proper, secured ballot box until tabulation occurs on election day.

~~(8)~~*(7)* The election administrator shall safely and securely keep the absentee ballots in the election administrator's office until delivered by the election administrator to the election judges.

~~(9)~~*(8)* The secretary of state shall develop administrative rules to establish the process and procedures to be used during the early preparation of ballots to ensure the security of the ballots and the secrecy of the votes during the early preparation period. The rules must include but are not limited to:

(a) the allowable distance from the observers to the judges and ballots;

(b) the security in the observation area;

(c) secrecy of votes during the preparation of the ballots; and

(d) security of the secured ballot boxes in storage until tabulation procedures begin on election day."

**Section 47.** Section 13-14-111, MCA, is amended to read:

**"13-14-111. Application of general laws.** Except as otherwise provided in this chapter, candidates for nonpartisan offices, including judicial offices, must be ~~nominated and~~ elected according to the provisions of this title."

**Section 48.** Section 13-14-112, MCA, is amended to read:

**"13-14-112. Declarations ~~for nomination~~ *of candidacy* — fee — filing.** (1) Nonpartisan candidates shall file declarations ~~for nomination~~ *of candidacy* as required by the primary election laws in a form prescribed by the secretary of state except as provided in 13-14-113. A candidate may not file for more than one public office.

(2) Declarations may not indicate political affiliation. The candidate may not state in the declaration any principles or measures that the candidate advocates or any slogans.

(3) Each individual filing a declaration shall pay the fee prescribed by law for the office that the individual seeks.

(4) Declarations must be filed:

(a) in the office of the secretary of state or the appropriate election administrator as provided in 13-10-201; and

(b) within the applicable filing period provided in ~~13-10-201(6)(a)~~ *13-10-201(7)(a)* or ~~(6)(b)~~ *(7)(b)* for the office that the individual seeks."

**Section 49.** Section 13-14-113, MCA, is amended to read:

**"13-14-113. Filing for offices without salary or fees.** (1) Candidates for nonpartisan offices for which a salary or fees are not paid shall file with the appropriate official a petition for nomination containing the information and the oath of the candidate required for a declaration ~~of nomination~~ *of candidacy* in a form prescribed by the secretary of state.

(2) Petitions for nomination must be filed within the applicable filing period provided in ~~13-10-201(6)(a)~~ *13-10-201(7)(a)* or ~~(6)(b)~~ *(7)(b)*.

(3) A candidate may not file for more than one public office."

**Section 50.** Section 13-14-114, MCA, is amended to read:

**"13-14-114. Register of candidates.** On receipt of a declaration or petition, the secretary of state or election administrator shall, if a register is kept, make an entry in the register of candidates ~~for nomination~~, on a page different from entries made for *partisan* candidates ~~of political parties~~."

**Section 51.** Section 13-14-115, MCA, is amended to read:

**"13-14-115. Preparation and distribution of nonpartisan primary ballots — determination on conducting primary.** (1) The election

administrators shall arrange, prepare, and distribute primary ballots for nonpartisan offices, designated "nonpartisan primary ballots". The ballots must be arranged and prepared as provided in 13-10-209 and *must* be without political *party* designation *or preference*.

(2) (a) The election administrator of a political subdivision may determine that a local nonpartisan portion of a primary election need not be held if:

(i) the number of candidates for an office exceeds three times the number to be elected to that office in no more than one-half of the offices on the ballot; and

(ii) the number of candidates in excess of three times the number to be elected is not more than one for any office on the ballot.

(b) If the election administrator determines that a primary election need not be held pursuant to subsection (2)(a), the administrator shall give notice to the governing body that a primary election will not be held.

(3) The governing body may require that a primary election be held if it passes a resolution not more than 10 days after the close of filing by candidates for election stating that a primary election must be held."

**Section 52.** Section 13-14-117, MCA, is amended to read:

**"13-14-117. Placing names on ballots for general election.** (1) Except as provided in *7-4-2106(3)(b), 7-4-2206(3)(b), 13-1-103(2), and* subsection (2) *of this section*, candidates ~~for nomination~~ equal to twice the number to be elected at the general election who receive the highest number of votes cast at the primary ~~are the nominees for the office~~ *election advance to the general election*. If the number of candidates is not more than twice the number to be elected, then all candidates ~~are nominees for the office~~ *advance to the general election*.

(2) If, pursuant to 13-14-115(2), a local nonpartisan portion of a primary election is not held, then all candidates who filed for an office ~~are nominees for the office~~ *advance to the general election*."

**Section 53.** Section 13-14-118, MCA, is amended to read:

**"13-14-118. Vacancies among ~~nominees~~ *candidates* after ~~nomination~~ *primary* and before general election.** (1) If after the primary election and before the 85th day before the general election a candidate is not able to run for the office for any reason, the vacancy must be filled by the candidate next in rank in number of votes received in the primary election.

(2) If a vacancy for a nonpartisan nomination cannot be filled as provided in subsection (1) and the vacancy occurs no later than 85 days before the general election, a 10-day period for accepting declarations ~~for nomination or statements of candidacy and nominating petitions~~ *of candidacy* for the office must be declared by:

(a) the governor for national, state, judicial district, legislative, or any multicounty district office;

(b) the governing body of the appropriate political subdivision for all other offices.

(3) The names of the candidates who filed as provided in subsection (2) must be certified and must appear on the general election ballot in the same manner as candidates ~~nominated~~ in the primary.

(4) If the vacancy occurs later than 85 days before the general election and a qualified individual is not elected to the office at the general election, the office is vacant and must be filled as provided by law."

**Section 54.** Section 13-15-201, MCA, is amended to read:

**"13-15-201. Preparation for count — absentee ballot count procedures.** (1) ~~Subject to 13-10-311, to~~ *To* prepare for a count of ballots, the counting board or, if appointed, the absentee counting board shall take ballots out of the box to determine whether each ballot is single.

(2) The board shall count all ballots to ensure that the total number of ballots corresponds with the total number of names in the pollbook.

(3) If the board cannot reconcile the total number of ballots with the pollbook, the board shall submit to the election administrator a written report stating how many ballots were missing or in excess and any reason of which they are aware for the discrepancy. Each judge on the board shall sign the report.

(4) A ballot that is not marked as official is void and may not be counted unless all judges on the board agree that the marking is missing because of an error by election officials, in which case the ballot must be marked "unmarked by error" on the back and must be initialed by all judges.

(5) If two or more ballots are folded or stuck together to look like a single ballot, they must be laid aside until the count is complete. The counting board shall compare the count with the pollbooks, and if a majority believes that the ballots folded together were voted by one elector, the ballots must be rejected and handled as provided in 13-15-108, otherwise they must be counted.

(6) Only valid absentee ballots may be counted in an election conducted under this chapter.

(7) For the purpose of this chapter, a voted absentee ballot is valid only if:

(a) the elector's signature on the affirmation on the return envelope is verified pursuant to 13-13-241; and

(b) it is received before 8 p.m. on election day, except as provided in 13-21-206 and 13-21-207.

(8) (a) A ballot is invalid if:

(i) problems with the ballot have not been resolved pursuant to 13-13-245;

(ii) any identifying marks are placed on the ballot by the elector; or

(iii) except as provided in subsection (8)(b), more than one ballot is enclosed in a single return or secrecy envelope.

(b) The provisions of subsection (8)(a)(iii) do not apply if:

(i) there are multiple elections being held at the same time and the envelope contains only one ballot for each election; or

(ii) the return envelope contains ballots from the same household, each ballot is in its own secrecy envelope, and the return envelope contains a valid signature for each elector who has returned a ballot."

**Section 55.** Section 13-15-205, MCA, is amended to read:

**"13-15-205. Items to be delivered to election administrator by election judges — disposition of other items.** (1) Before they adjourn, the election judges shall enclose in a strong envelope or package, securely fastened:

(a) the precinct register;

(b) the list of individuals challenged;

(c) the pollbook;

(d) both of the tally sheets.

(2) The election judges shall enclose in a separate container, securely sealed, all unused ballots with the numbered stubs attached.

(3) The election judges shall enclose in a separate container, securely sealed, all ballots voted, including those not counted or allowed, and detached stubs from all counted or rejected absentee ballots. This envelope must be endorsed on the outside "ballots voted". ~~At the primary election the unvoted party ballots must be enclosed in a separate container, securely sealed, and marked on the outside "unvoted ballots".~~

(4) Each election judge shall write the judge's name across all seals.

(5) The return form provided for in 13-15-101 must be returned with the items provided for in this section but may not be sealed in any of the containers.

(6) The containers required by this section must be delivered to the election administrator by the chief election judge or another judge appointed by the chief judge in the manner ordered by the election administrator.

(7) The election administrator shall instruct the chief election judge in writing on the proper disposition of all other election materials and supplies."

**Section 56.** Section 13-15-206, MCA, is amended to read:

**"13-15-206. Counting votes — uniformity — rulemaking — definitions.** (1) When conducting vote counts as provided by law, a counting board, absentee ballot counting board, or recount board shall count and determine the validity of each vote in a uniform manner as provided in this section.

(2) A manual count or recount of votes must be conducted as follows:

(a) One election judge on the board shall read the ballot while the two other judges on the board shall each record on an official tally sheet the number of valid votes cast for each individual or ballot issue. Write-in votes must be counted in accordance with subsection (5) and rules adopted pursuant to subsection (7). If a vote has not been cast according to instructions, the vote must be considered questionable and the entire ballot must be set aside and votes on the ballot must be handled as provided in subsection (4).

(b) (i) After the vote count is complete, the tally sheets of the two judges recording the votes must be compared.

(ii) If the two tallies match, the judges shall record in the pollbook:

(A) the names of all individuals who received votes;

(B) the offices for which individuals received votes;

(C) the total votes received by each individual as shown by the tally sheets; and

(D) the total votes received for or against each ballot issue, if any.

(iii) If the tallies do not match, the count must be conducted again as provided in this subsection (2) until the two tallies match.

(3) (a) When a voting system is counting votes:

(i) if a vote is recognized and counted by the system, it is a valid vote;

(ii) if a vote is not recognized and counted by the system, it is not a valid vote;

(iii) write-in votes must be counted in accordance with rules adopted pursuant to subsection (7).

(b) If the voting system cannot process the ballot because of the ballot's condition or if the voting system registers an unvoted ballot or an overvote, which must be considered a questionable vote, the entire ballot must be set aside and the votes on the ballot must be counted as provided in subsection (4).

(c) If an election administrator or counting board has reason to believe that a voting system is not functioning correctly, the election administrator shall follow the procedures prescribed in 13-15-209.

(d) After all valid votes have been counted and totaled, the judges shall record in the pollbook the information specified in subsection (2)(b)(ii).

(4) (a) (i) Before being counted, each questionable vote on a ballot set aside under subsection (2)(a) or (3)(b) must be reviewed by the counting board. The counting board shall evaluate each questionable vote according to rules adopted by the secretary of state.

(ii) If a majority of the counting board members agree that under the rules the voter's intent can be clearly determined, the vote is valid and must be counted according to the voter's intent.

(iii) If a majority of the counting board members do not agree that the voter's intent can be clearly determined under the rules, the vote is not valid and may not be counted.

(b) If a ballot was set aside under subsection (3)(b) because it could not be processed by the voting system due to the ballot's condition, the counting board shall transfer all valid votes to a new ballot that can be processed by the voting system.

(5) A write-in vote may be counted if:

(a) (i) the write-in vote identifies an individual by a designation filed pursuant to 13-10-211(1)(a); or

(ii) pursuant to 13-10-211(8), a declaration of ~~nomination~~ *candidacy* was not filed and the write-in vote identifies an individual who is qualified for the office; and

(b) the oval, box, or other designated voting area on the ballot is marked.

(6) A vote is not valid and may not be counted if the elector's choice cannot be determined as provided in this section.

(7) The secretary of state shall adopt rules defining a valid vote and a valid write-in vote for each type of ballot and for each type of voting system used in the state. The rules must provide a sufficient guarantee that all votes are treated equally among jurisdictions using similar ballot types and voting systems.

(8) Local election administrators shall adopt policies to govern local processes that are consistent with the provisions of this title and that provide for:

(a) the security of the counting process against fraud;

(b) the place and time and public notice of each count or recount;

(c) public observance of each count or recount, including observance by representatives authorized under 13-16-411;

(d) the recording of objections to determinations on the validity of an individual vote or to the entire counting process; and

(e) the keeping of a public record of count or recount proceedings.

(9) For purposes of this section, "overvote" means an elector's vote that has been interpreted by the voting system as an elector casting more votes than allowable for a particular office or ballot issue."

**Section 57.** Section 13-15-208, MCA, is amended to read:

**"13-15-208. Determining total ~~vote~~ *votes* cast for all candidates for ~~an~~ office.** When an elector may vote for two or more candidates for the same office, the total ~~vote~~ *votes* cast for all candidates for the office ~~is~~ *are* the total ~~vote~~ *votes* cast for all candidates divided by the number of candidates officially ~~declared nominated or~~ *declared as selected to advance or as* elected as shown by the official returns."

**Section 58.** Section 13-15-405, MCA, is amended to read:

**"13-15-405. Declaration or certification of results.** (1) The board shall declare ~~nominated~~ *as selected to advance* or *as* elected the individuals having the highest number of votes cast for each county and precinct office, except as provided in *13-1-103(2) and* 13-10-204.

(2) The board shall proclaim the adoption or rejection of a county ballot issue.

(3) The board shall certify the results of the canvass of votes cast for individuals for political subdivision offices and for and against political subdivision ballot issues to the governing body of each political subdivision participating in the election.

(4) If there is a tie vote for a county office, an office of a political subdivision wholly within the county, a precinct office, or a ballot issue voted on only in that county or portion of that county, the board shall certify the vote to the election administrator.

(5) The board shall certify the results of the canvass of votes cast for justice of the peace, city judge, and municipal court judge to the supreme court in order to ensure compliance with 3-1-1502 or 3-1-1503."

**Section 59.** Section 13-15-406, MCA, is amended to read:

**"13-15-406. Certificates to be issued by the election administrator.** The election administrator shall, except as provided in 13-37-127, deliver a certificate of ~~nomination~~ *selection* or election to each individual declared elected by the board."

**Section 60.** Section 13-15-507, MCA, is amended to read:

**"13-15-507. Declaration, proclamation, and certification of results.** The board shall declare ~~nominated or elected~~ the individual having the highest number of votes cast for each office *as selected to advance or as elected*, except as provided in 13-10-204. The board shall proclaim the adoption or rejection of ballot issues. Certified copies of the report required in 13-15-506, the declaration of ~~nominated or elected~~ individuals *selected to advance or elected*, the proclamation of adoption or rejection of ballot issues, and the effective date of adopted ballot issues ~~shall~~ *must* be delivered to the governor."

**Section 61.** Section 13-16-101, MCA, is amended to read:

**"13-16-101. County governing body as county recount board.** (1) The county recount board must consist of three members.

(2) Three members of the governing body must be appointed by the presiding officer if there are more than three members of the governing body.

(3) If three members of the governing body cannot attend when the board meets, any vacant position must be filled by one or more county officers chosen by the remaining members of the governing body.

(4) If a member of the recount board is a candidate for an office ~~or nomination~~ for which votes are to be recounted, the member must be disqualified.

(5) The election administrator is secretary of the recount board, and the board may hire any additional clerks as needed.

(6) The board may appoint county employees or hire clerks to assist as needed."

**Section 62.** Section 13-16-201, MCA, is amended to read:

**"13-16-201. Conditions under which recount to be conducted.** (1) A recount must be conducted if:

(a) a candidate for a precinct office or for a county, municipal, or district office voted for in only one county, other than a legislator or a judge of the district court, is defeated by a margin not exceeding 1/4 of 1% of the total votes cast or by a margin not exceeding 10 votes, whichever is greater, and the defeated candidate, within 5 days after the official canvass, files with the election administrator a verified petition stating that the candidate believes that a recount will change the result and that a recount ~~of the votes for the office or nomination~~ should be conducted;

(b) a candidate for a congressional office, a state or district office voted on in more than one county, the legislature, or judge of the district court is defeated by a margin not exceeding 1/4 of 1% of the total votes cast for all candidates for the same position and the defeated candidate, within 5 days after the official canvass, files a petition with the secretary of state as set forth in subsection (1)(a). The secretary of state shall immediately notify by certified mail each election administrator whose county includes any precincts that voted for the office, and a recount must be conducted in those precincts.

(c) a question submitted to the vote of the people of a county, municipality, or district within a county is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed with the election administrator. This petition must be signed by not less than 10 electors of the jurisdiction and must be filed within 5 days after the official canvass.

(d) a question submitted to the vote of the people of the state is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed with the secretary of state. This petition must be signed by not less than 100 electors of the state, representing at least five counties of the state, and must be filed within 5 days after the official canvass.

(e) a question submitted to the vote of the people of a multicounty district is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed with the secretary of state. This petition must be signed by not less than 25 electors of the district, representing at least two counties, and must be filed within 5 days after the official canvass.

(f) a canvassing board petitions for a recount as provided in 13-15-403.

(2) If the election is a school election, the petition is filed with the filing officer with whom the declarations ~~for nomination~~ *of candidacy* for school district office were filed or with whom the school ballot issue was filed.

(3) When a recount is required under subsection (1)(b), (1)(d), or (1)(e), the secretary of state shall immediately notify each election administrator of the filing of the petition, and a recount must be conducted in all precincts in each affected county."

**Section 63.** Section 13-16-211, MCA, is amended to read:

**"13-16-211. Recounts allowed if bond posted to cover all costs.** (1) If a candidate for a public office is defeated by a margin exceeding 1/4 of 1% but not exceeding 1/2 of 1% of the total votes cast for all candidates for the same position, the candidate may, within 5 days after the official canvass, file with the officer with whom the candidate's declaration ~~or petition for nomination~~ *of candidacy* was filed a petition stating that the candidate believes a recount will change the result of the election.

(2) The unsuccessful candidate shall post a bond with the clerk and recorder of the county in which the candidate resides. The bond must be in an amount set by the clerk and recorder sufficient to cover all costs of the recount incurred by each county in which a recount is sought, including loss of time of regular employees caused by absence from their regular duties.

(3) Upon the filing of a petition and posting of a bond under this section, the board of county canvassers in each county affected shall meet and recount the ballots specified in the petition."

**Section 64.** Section 13-16-412, MCA, is amended to read:

**"13-16-412. Procedure for recounting paper ballots.** To conduct a recount of paper ballots:

(1) the election administrator shall provide to the recount board, unopened, each sealed package or envelope received from the election judges of the precinct or precincts in which a recount is ordered, containing all the paper ballots voted in the precinct or precincts;

(2) a member of the recount board shall open each sealed package or envelope and remove the ballots, and the board shall count the votes on each ballot manually in the manner provided in 13-15-206(2)~~, except that if the office to be recounted is on a partisan primary election ballot, votes are recounted only on the party ballots that are subject to the recount~~; and

(3) the recount must be tallied on previously prepared tally sheets. The tally sheets must show the names of the respective candidates, the office or offices for which a recount is made, and the number of each election precinct."

**Section 65.** Section 13-16-418, MCA, is amended to read:

**"13-16-418. Certification after recount.** (1) Immediately after the recount, the county recount board shall certify the result.

(2) At least two members of the board shall sign the certificate, and it must be attested to under seal by the election administrator.

(3) The certificate must set forth in substance the proceedings of the board and the appearance of any candidates or representatives. The certificate must adequately designate:

(a) each precinct recounted;

(b) the vote of each precinct according to the official canvass previously made;

(c) the ~~nomination, position,~~ *office* or question involved; and

(d) the correct vote of each precinct as determined by the recount.

(4) When the certificate relates to a recount for a congressional office, a state or district office voted on in more than one county, a legislative office, or an office of judge of the district court or a ballot issue voted on in more than one county, the certificate must be made in duplicate. One copy must be transmitted immediately to the secretary of state by certified mail.

(5) (a) If the recount relates to a county, municipal, or district office voted for in only one county, other than that of a legislator or a judge of the district court, or a precinct office or a ballot issue voted on in only one county, the county recount board shall immediately recanvass the returns as corrected by the certificate showing the result of the recount and make a corrected abstract of the votes.

(b) If the corrected abstract shows no change in the result, no further action is needed.

(c) If there is a change in the result, a new certificate of *selection or* election ~~or nomination~~ must be issued to each candidate found to be *selected to advance or* elected ~~or nominated~~ and the first certificate is void. The individual receiving the second certificate must be *selected to advance or* elected ~~or nominated to the office~~."

**Section 66.** Section 13-16-419, MCA, is amended to read:

**"13-16-419. Recount by board of state canvassers.** (1) When the secretary of state receives certificates from all county recount boards, the secretary of state shall file them, shall fix a time and place, as soon as possible, for reconvening the board of state canvassers, and shall notify the members.

(2) The board of state canvassers shall recanvass the official returns on the office, ~~nomination, position,~~ *selection to advance,* or question as corrected by the certificates and make a new and corrected abstract of the votes cast.

(3) (a) If the corrected abstract shows no change in the results, further action may not be taken.

(b) If there is a change in the results, the first certificate is void and a new certificate of *selection or* election ~~or nomination~~ must be issued in the same manner as the certificate ~~of election or nomination~~ was previously issued ~~to each candidate elected or nominated~~."

**Section 67.** Section 13-16-501, MCA, is amended to read:

**"13-16-501. Tie vote after recount.** (1) If the recount shows a tie vote for any office ~~and it cannot be determined who has been nominated by the primary election~~, the election officer with whom the candidates' ~~nominating~~ declarations *of candidacy* or petitions were filed shall determine by lot which ~~candidate shall be nominated~~ *candidates advance to the general election*. Written notice of the time and place of the drawing ~~shall~~ *must* be given to each candidate involved.

(2) If the recount after a general election shows a tie vote ~~and it cannot be determined who has been elected~~, the office or position ~~shall~~ *must* be filled as provided by 13-16-502 through 13-16-506."

**Section 68.** Section 13-17-103, MCA, is amended to read:

**"13-17-103. Required specifications for voting systems.** (1) A voting system may not be approved under 13-17-101 unless the voting system:

(a) allows an elector to vote in secrecy;

(b) prevents an elector from voting for any candidate or on any ballot issue more than once;

(c) prevents an elector from voting on any office or ballot issue for which the elector is not entitled to vote;

(d) allows an elector to vote only for the candidates of the party selected by the elector in ~~the~~ *a partisan* primary election;

(e) allows an elector to vote a split ticket in a general election if the elector desires;

(f) allows each valid vote cast to be registered and recorded within the performance standards adopted pursuant to subsection (2);

(g) is protected from tampering for a fraudulent purpose;

(h) prevents an individual from seeing or knowing the number of votes registered for any candidate or on any ballot issue during the progress of voting;

(i) allows write-in voting;

(j) will, if purchased by a jurisdiction within the state, be provided with a guarantee that the training and technical assistance will be provided to election officials under the contract for purchase of the voting system;

(k) uses a paper ballot that allows votes to be manually counted; and

(l) allows auditors to access and monitor any software program while it is running on the system to determine whether the software is running properly.

(2) To implement the provisions of subsection (1)(f), the secretary of state shall adopt rules setting a benchmark performance standard that must be met in tests by each voting system prior to approval under 13-17-101. The standard must be based on commonly accepted industry standards for readily available technologies."

**Section 69.** Section 13-19-205, MCA, is amended to read:

**"13-19-205. Written plan for conduct of election — amendments — approval procedures.** (1) The election administrator shall prepare a written plan for the conduct of the election and shall submit it to the secretary of state in a manner that ensures that it is received at least 60 days prior to the date set for the election.

(2) The written plan must include:

(a) a timetable for the election; and

(b) sample written instructions that will be sent to the electors. The instructions must include but are not limited to:

(i) information on the estimated amount of postage required to return the ballot;

(ii) (A) the location of the places of deposit and the days and times when ballots may be returned to the places of deposit, if the information is available; or

(B) if the information on location and hours of places of deposit is not available, a section that will allow the information to be added before the instructions are mailed to electors; and

(iii) any applicable instructions specified under 13-13-214~~(5)~~*(4)*.

(3) The plan may be amended by the election administrator any time prior to the 35th day before election day by notifying the secretary of state in writing of any changes.

(4) Within 5 days of receiving the plan and as soon as possible after receiving any amendments, the secretary of state shall approve, disapprove, or recommend changes to the plan or amendments.

(5) When the written plan has been approved, the election administrator shall proceed to conduct the election according to the approved plan unless the election is canceled for any reason provided by law."

**Section 70.** Section 13-21-205, MCA, is amended to read:

**"13-21-205. Federal write-in absentee ballot.** (1) A United States elector may register, if not already registered, and vote in any election by completing, signing, and returning a federal write-in absentee ballot and meeting the requirements in 13-21-206.

(2) (a) A United States elector voting a federal write-in absentee ballot for a federal general election may designate a candidate by writing in the name of the candidate or*, for a presidential preference primary or presidential general election,* by writing in the name of the political party for which the elector is voting. A written designation of the political party must be counted as a vote for the candidate of that party *in a presidential race*.

(b) (i) Except as provided in subsection (2)(b)(ii), a United States elector may vote in any election for a public office other than for a federal office by using the addendum provided in the federal write-in absentee ballot and writing in the title of the office and the name of the candidate for whom the elector is voting.

(ii) If the elector is voting in a *partisan* primary election, the elector shall identify the elector's political party affiliation as provided for in the appropriate section of the ballot. A vote cast by writing in the name of a candidate who is not affiliated with the elector's identified party is void and may not be counted.

(3) A vote may not be voided for reasons of misspellings, abbreviations, or other minor variations of the candidate's name.

(4) If the elector receives the regular absentee ballot after the elector has voted and mailed a federal write-in absentee ballot, the elector may vote and return the regular absentee ballot."

**Section 71.** Section 13-25-101, MCA, is amended to read:

**"13-25-101. Nomination of electors — ballot.** (1) In the manner and number provided by ~~law~~ *the rules of the political party pursuant to 13-10-407*, each political party ~~qualified under 13-10-601~~ *with a presidential candidate on the ballot* shall nominate presidential electors for this state and file with the secretary of state certificates of nomination in a form and by the date prescribed by the secretary of state.

(2) In the event of the death of a candidate for president or vice president after a certificate of nomination has been filed, a new candidate for president or vice president, or both, may be nominated for the affected political party and a new certificate of nomination may be filed with the secretary of state by the date prescribed by the secretary of state.

(3) A candidate for election to the office of president or vice president may withdraw from the election by sending a statement of withdrawal to the secretary of state. The statement of withdrawal:

(a) must contain all information necessary to identify the candidate and the office sought; and

(b) unless filed electronically, must be acknowledged by an officer empowered to acknowledge signatures or by the officer of the office at which the filing is made.

(4) A candidate may not withdraw later than the deadline prescribed by the secretary of state for nomination of presidential electors.

(5) The secretary of state shall certify to the election administrator the names of the candidates for president and vice president of the several political parties, which must be placed on the ballot by one of the methods provided in 13-12-204.

(6) If the name of a new candidate for president or vice president, or both, is certified to the secretary of state in less than 76 days pursuant to subsection (1), the secretary of state shall immediately certify the new name or names to the election administrators and the new name or names must be placed on the ballot by one of the methods provided in 13-12-204.

(7) The names of candidates for electors of president and vice president may not appear on the ballot."

**Section 72.** Section 13-25-201, MCA, is amended to read:

**"13-25-201. Election of United States senators and representatives.** (1) United States senators and representatives ~~shall~~ *must* be elected at the general election preceding commencement of the term to be filled.

(2) ~~Nominations and elections shall~~ *Elections must* be as provided by law for governor."

**Section 73.** Section 13-25-205, MCA, is amended to read:

**"13-25-205. ~~Nominations for special~~ *Special* election *for United States representative.*** (1) When a special election is ordered to fill a vacancy in the office of United States representative, ~~each political party shall choose a candidate according to the rules of the party~~ *a special primary election to narrow the number of candidates to the top two must be conducted prior to the special election*. ~~Nominations by parties must be made no later than 85 days before the date set for the election.~~

(2) ~~Nominating petitions~~ *Declarations of candidacy* may be filed ~~by independent candidates~~ for the office up to 5 p.m. of the 85th day before the *special primary* election."

**Section 74.** Section 13-25-303, MCA, is amended to read:

**"13-25-303. Designation of electors.** Pursuant to 13-25-101, each political party ~~qualified under 13-10-601~~ or unaffiliated presidential candidate shall submit to the secretary of state the names of two qualified individuals for each elector position in this state. One of the individuals must be designated as the elector nominee and the other must be designated as the alternate elector nominee. Unless otherwise provided by 13-25-305 through 13-25-308, Montana's electors are the winning electors under the laws of this state."

**Section 75.** Section 13-35-106, MCA, is amended to read:

**"13-35-106. Ineligibility to hold office because of conviction.** In addition to all other penalties prescribed by law:

(1) a candidate who is convicted of violating any provision of this title, except 13-35-207(9), is ineligible to be a candidate for any public office in the state of Montana until final discharge from state supervision;

(2) a campaign treasurer who is convicted of violating any provision of this title, except 13-35-207(9), is ineligible to be a candidate for any public office or to hold the position of campaign treasurer in any campaign in the state of Montana until final discharge from state supervision;

(3) if an elected official or a candidate is adjudicated to have violated any provision of this title, except 13-35-207(9), the individual must be removed from ~~nomination~~ *candidacy* or office~~, as the case may be, even though the individual was regularly nominated or elected~~."

**Section 76.** Section 13-35-205, MCA, is amended to read:

**"13-35-205. Tampering with election records and information.** A person is guilty of tampering with public records or information and is punishable as provided in 45-7-208 whenever the person:

(1) suppresses any declaration or certificate of ~~nomination~~ *selection or election* that has been filed;

(2) purposely causes a vote to be incorrectly recorded as to the candidate or ballot issue voted on;

(3) in an election return, knowingly adds to or subtracts from the votes actually cast at the election;

(4) changes any ballot after it has been completed by the elector;

(5) adds a ballot to those legally polled at an election, either before or after the ballots have been counted, with the purpose of changing the result of the election;

(6) causes a name to be placed on the registry lists other than in the manner provided by this title; or

(7) changes a poll list or checklist."

**Section 77.** Section 13-35-206, MCA, is amended to read:

**"13-35-206. Injury to election equipment, materials, and records.** A person is guilty of criminal mischief or tampering with public records and information, as appropriate, and is punishable as provided in 45-6-101 or 45-7-208, as applicable, whenever the person:

(1) prior to or on election day, knowingly defaces or destroys any list of candidates posted in accordance with the provisions of the law;

(2) during an election:

(a) removes or defaces instructions for the voters; or

(b) removes or destroys any of the supplies or other conveniences placed in the voting station for the purpose of enabling a voter to prepare the voter's ballot;

(3) removes any ballots from the polling place before the closing of the polls with the purpose of changing the result of the election;

(4) carries away or destroys any poll lists, checklists, ballots, ballot boxes, or other equipment for the purpose of disrupting or invalidating an election;

(5) knowingly detains, mutilates, alters, or destroys any election returns;

(6) mutilates, secretes, destroys, or alters election records, except as provided by law;

(7) tampers with, disarranges, defaces, injures, or impairs a voting system with the intent to alter the outcome of an election;

(8) mutilates, injures, or destroys a ballot or appliance used in connection with a voting system; or

(9) fraudulently defaces or destroys a declaration *of candidacy* or certificate of ~~nomination~~ *selection*."

**Section 78.** Section 13-35-207, MCA, is amended to read:

**"13-35-207. Deceptive election practices.** A person is guilty of false swearing, unsworn falsification, or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-202, 45-7-203, or 45-7-208, as applicable, whenever the person:

(1) falsely represents the person's name or other information required upon the person's registry card and causes registration with the card;

(2) signs a registry card knowingly witnessing any false or misleading statement;

(3) knowingly causes a false statement, certificate, or return of any kind to be signed;

(4) falsely makes a declaration *of candidacy* or certificate of ~~nomination~~ *selection*;

(5) files or receives for filing a declaration *of candidacy* or certificate of ~~nomination~~ *selection* knowing that all or part of the declaration or certificate is false;

(6) forges or falsely makes the official endorsement of a ballot;

(7) forges or counterfeits returns of an election purporting to have been held at a precinct, municipality, or ward where no election was in fact held;

(8) knowingly substitutes forged or counterfeit returns of election in place of the true returns for a precinct, municipality, or ward where an election was held;

(9) signs a name other than the person's own to a petition, signs more than once for the same ballot issue, or signs a petition while not being a qualified elector of the state; or

(10) makes a false oath or affidavit where an oath or affidavit is required by law."

**Section 79.** Section 13-35-214, MCA, is amended to read:

**"13-35-214. Illegal influence of voters.** A person may not, directly or indirectly, individually or through any other person, for any election, in order to induce any elector to vote or refrain from voting or to vote for or against any particular candidate, political party ~~ticket~~, or ballot issue:

(1) give, lend, agree to give or lend, offer, or promise any money, liquor, or valuable consideration or promise or endeavor to procure any money, liquor, or valuable consideration;

(2) promise to appoint another person or promise to secure or aid in securing the appointment~~, nomination,~~ or election of another person to a public or private position or employment or to a position of honor, trust, or emolument in order to aid or promote the candidate's ~~nomination or~~ election, except that the candidate may publicly announce or define the candidate's choice or purpose in relation to an election in which the candidate may be called to take part if elected."

**Section 80.** Section 13-35-218, MCA, is amended to read:

**"13-35-218. Coercion or undue influence of voters.** (1) A person, directly or indirectly, individually or through any other person, in order to induce or compel a person to vote or refrain from voting for any candidate, ~~the ticket of~~ *any candidates of or associating with* any *particular* political party, or any ballot issue before the people, may not:

(a) use or threaten to use any force, coercion, violence, restraint, or undue influence against any person; or

(b) inflict or threaten to inflict, individually or with any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person.

(2) A person who is a minister, preacher, priest, or other church officer or who is an officer of any corporation or organization, religious or otherwise, may not, other than by public speech or print, urge, persuade, or command any voter to vote or refrain from voting for or against any candidate, *any candidates of or associating with a particular* political party ~~ticket~~, or ballot issue submitted to the people because of the person's religious duty or the interest of any corporation, church, or other organization.

(3) A person may not, by abduction, duress, or any fraudulent contrivance, impede or prevent the free exercise of the franchise by any voter at any election or compel, induce, or prevail upon any elector to give or to refrain from giving the elector's vote at any election.

(4) A person may not, in any manner, interfere with a voter lawfully exercising the right to vote at an election in order to prevent the election from being fairly held and lawfully conducted.

(5) A person on election day may not obstruct the doors or entries of any polling place or engage in any solicitation of a voter within the room where votes are being cast or elsewhere in any manner that in any way interferes with the election process or obstructs the access of voters to or from the polling place."

**Section 81.** Section 13-35-221, MCA, is amended to read:

**"13-35-221. Improper ~~nominations~~ *candidacy.*** (1) A person may not pay or promise valuable consideration to another, in any manner or form, for the purpose of inducing the other person to be or to refrain from or to cease being a candidate, and a person may not solicit or receive any payment or promise from another for that purpose.

(2) A person, in consideration of any gift, loan, offer, promise, or agreement, as mentioned in subsection (1), may not:

(a) be ~~nominated~~ *selected to advance* or refuse to be ~~nominated~~ *selected to advance* ~~as a candidate at an election~~;

(b) become, individually or in combination with any other person ~~or persons~~, a candidate for the purpose of defeating the ~~nomination~~ *candidacy* or election of any other person, without a bona fide intent to obtain the office; or

(c) withdraw if the person has been nominated.

(3) Upon complaint made to any district court, the judge shall issue a writ of injunction restraining the officer whose duty it is to prepare official ballots for a ~~nominating~~ *primary* election from placing the name of a person on the ballot as a candidate for ~~nomination~~ *election* to any office if the judge is convinced that:

(a) the person ~~has sought the nomination or~~ seeks to have the person's name presented to the voters as a candidate for ~~nomination by any political party~~ *selection to advance to the general election* for any mercenary or venal consideration or motive; and

(b) the person's candidacy ~~for the nomination~~ is not in good faith."

**Section 82.** Section 13-35-225, MCA, is amended to read:

**"13-35-225. Election materials not to be anonymous — statement of accuracy.** (1) All communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, internet website, or other form of general political advertising must clearly and conspicuously include the attribution "paid for by" followed by the name and address of the person who made or financed the expenditure for the communication. When a candidate or a candidate's campaign finances the expenditure, the attribution must be the name and the address of the candidate or the candidate's campaign. In the case of a political committee, the attribution must be the name of the committee, the name of the committee treasurer, and the address of the committee or the committee treasurer.

(2) *(a)* Communications in a partisan ~~election~~ *primary* financed by a candidate or a political committee organized on the candidate's behalf must state the candidate's party affiliation or include the party symbol.

*(b) Communications in a top two primary financed by a candidate or a political committee organized on the candidate's behalf must state the candidate's party preference, if one was filed on the declaration of candidacy, with the word "preference" after the party or must include the party symbol and state that it is a candidate's party preference only.*

(3) (a) Printed election material described in subsection (1) that includes information about another candidate's voting record must include:

(i) a reference to the particular vote or votes upon which the information is based;

(ii) a disclosure of contrasting votes known to have been made by the candidate on the same issue if closely related in time; and

(iii) a statement, signed as provided in subsection (3)(b), that to the best of the signer's knowledge, the statements made about the other candidate's voting record are accurate and true.

(b) The statement required under subsection (3)(a) must be signed:

(i) by the candidate if the election material was prepared for the candidate or the candidate's political committee and includes information about another candidate's voting record; or

(ii) by the person financing the communication or the person's legal agent if the election material was not prepared for a candidate or a candidate's political committee.

(4) If a document or other article of advertising is too small for the requirements of subsections (1) through (3) to be conveniently included, the candidate responsible for the material or the person financing the communication shall file a copy of the article with the commissioner of political practices, together with the required information or statement, at the time of its public distribution.

(5) If information required in subsections (1) through (3) is omitted or not printed, upon discovery of or notification about the omission, the candidate responsible for the material or the person financing the communication shall:

(a) file notification of the omission with the commissioner of political practices within 5 days of the discovery or notification;

(b) bring the material into compliance with subsections (1) through (3); and

(c) withdraw any noncompliant communication from circulation as soon as reasonably possible."

**Section 83.** Section 13-35-226, MCA, is amended to read:

**"13-35-226. Unlawful acts of employers and employees.** (1) It is unlawful for any employer, in paying employees the salary or wages due them, to include with their pay the name of any candidate or any political mottoes, devices, or arguments containing threats or promises, express or implied, calculated or intended to influence the political opinions or actions of the employees.

(2) It is unlawful for an employer to exhibit in a place where the employer's workers or employees may be working any handbill or placard containing:

(a) any threat, promise, notice, or information that, in case any particular ticket or political party, organization, or candidate is elected:

(i) work in the employer's place or establishment will cease, in whole or in part, or will be continued or increased;

(ii) the employer's place or establishment will be closed; or

(iii) the salaries or wages of the workers or employees will be reduced or increased; or

(b) other threats or promises, express or implied, intended or calculated to influence the political opinions or actions of the employer's workers or employees.

(3) A person may not coerce, command, or require a public employee to support or oppose any political committee, ~~the nomination or~~ election of any person to public office, or the passage of a ballot issue.

(4) A public employee may not solicit support for or opposition to any political committee, ~~the nomination or~~ election of any person to public office, or the passage of a ballot issue while on the job or at the place of employment. However, subject to 2-2-121, this section does not restrict the right of a public employee to perform activities properly incidental to another activity required or authorized by law or to express personal political views.

(5) A person who violates this section is liable in a civil action authorized by 13-37-128, brought by the commissioner of political practices or a county attorney pursuant to 13-37-124 and 13-37-125."

**Section 84.** Section 13-36-101, MCA, is amended to read:

**"13-36-101. Grounds for contest of ~~nomination or~~ election to public office.** An elector may contest ~~the right of~~ any ~~person to any nomination or~~ *person's* election to public office *or selection to advance* for which the elector has the right to vote if the elector believes that:

(1) a deliberate, serious, and material violation of any provision of the law relating to ~~nominations or~~ elections *or selections to advance* has occurred;

(2) the person was not, at the time of the election, eligible to be a candidate for the office;

(3) votes were cast illegally or were counted or canvassed in an erroneous or fraudulent manner."

**Section 85.** Section 13-36-102, MCA, is amended to read:

**"13-36-102. Time for commencing contest.** (1) Five days or less after a candidate has been certified as ~~nominated~~ *selected to advance*, a person wishing to contest the ~~nomination to~~ *selection to advance for* any public office shall give notice in writing to the candidate whose ~~nomination~~ *selection* the person intends to contest, briefly stating the cause for the contest. The contestant shall make application to the district court in the county where the contest is to be had. The judge shall then set the time for the hearing. The contestant shall serve notice 3 days before the hearing is scheduled. The notice must state the time and place of the hearing.

(2) Any action to contest the right of a candidate to be declared elected to an office or to annul and set aside the election or to remove from or deprive any person of an office of which the person is the incumbent for any offense mentioned in this title must, unless a different time is stated, be commenced within 1 year after the day of election at which the offense was committed."

**Section 86.** Section 13-36-103, MCA, is amended to read:

**"13-36-103. Court having jurisdiction of proceedings.** An application for filing a statement, payment of a claim, or correction of an error or false recital in a filed statement or an action or proceeding to annul and set aside the election of any person declared elected to an office or to remove or deprive any person of the person's office for an offense mentioned in this title or any petition to excuse any person or candidate in accordance with the power of the court to excuse, as provided in 13-36-209, must be made or filed in the district court of the county in which the certificate, declaration, or acceptance of the person's ~~nomination as a candidate~~ *selection to advance* for the office ~~to which the person is declared nominated or elected~~ is filed or in which the incumbent resides."

**Section 87.** Section 13-36-104, MCA, is amended to read:

**"13-36-104. ~~Nomination~~ *Primary election* contests.** In the case of ~~nomination~~ *primary election* contests, the judge of the district court shall hear and determine the case and make all necessary orders for the trial of the case and carrying the judgment into effect. The order of the judge must express the

will of a majority of the legal voters ~~of the political party~~, as indicated by their votes, disregarding technicalities or errors in spelling. Each party is entitled to subpoenas. The registrar shall issue a certificate to the person declared ~~nominated~~ by the court *to have been selected to advance*. The certificate is conclusive evidence of the right of the person to hold the nomination."

**Section 88.** Section 13-36-201, MCA, is amended to read:

**"13-36-201. Contents of contest petition.** Any petition contesting the right of any person to ~~a nomination~~ *a selection to advance* or *to* election must set forth the name of every person whose election is contested and the grounds of the contest. The petition may not be amended unless the amendment is authorized by a court."

**Section 89.** Section 13-36-202, MCA, is amended to read:

**"13-36-202. Reception of illegal votes — allegations and evidence.** When the reception of illegal votes is alleged as a cause of contest, it is sufficient to state generally that in one or more specified voting precincts illegal votes were given to the candidate whose ~~nomination~~ *selection to advance* or election is contested that, if taken from the candidate, will reduce the number of the candidate's legal votes below the number of legal votes given to some other candidate for the same office. Testimony may not be received of any illegal votes unless the party contesting the election delivers to the opposite party, at least 3 days before trial, a written list of the number of illegal votes and by whom given that the party intends to prove at trial. This provision may not prevent the contestant from offering evidence of illegal votes not included in the statement if the contestant did not know and by reasonable diligence was unable to learn of the additional illegal votes and by whom they were given before delivering the written list."

**Section 90.** Section 13-36-203, MCA, is amended to read:

**"13-36-203. Form of complaint.** (1) A petition or complaint filed under the provisions of this chapter is sufficient if it is in substantially the following form:

In the District Court of the
.... Judicial District,
for the County of ...., State of Montana.

A B (or A B and C D), Contestants,

vs.

E F, Contestee.

The petition of the contestant (or contestants) named above alleges:

That an election was held (in the state, district, county, or city of ....), on the .... day of ...., 20..., for the (nomination of a candidate for) (or election of a) (state the office).

That .... and .... were candidates at the election and the board of canvassers has returned .... as being ~~nominated~~ *selected to advance to the general election* (or elected) ~~at the election~~.

That contestant A B voted (or had a right to vote, as the case may be) at the election (or claims to have had a right to be returned as ~~the nominee~~ *selected to advance* or *as the* officer elected ~~or nominated at the election~~ or was a candidate at the election, as the case may be) and that contestant C D (here state in a similar manner the right of each contestant).

The contestant (or contestants) further allege (here state the facts and grounds on which the contestants rely).

The contestants ask that it be determined by the court that.... was not ~~nominated~~ *selected to advance* (or elected) and that the election was void or that A B or C D, as the case may be, was ~~nominated~~ *selected to advance* (or elected) and ask for other relief that the court may find appropriate.

(2) The complaint must be verified by the affidavit of one of the petitioners in the manner required by law for the verification of complaints in civil cases."

**Section 91.** Section 13-36-206, MCA, is amended to read:

**"13-36-206. Notice of filing — prompt hearing.** On the filing of a petition under this part, the clerk shall immediately notify the judge of the court and issue a citation to the person whose ~~nomination~~ *selection to advance* or office is contested, citing the person to appear and answer not less than 3 or more than 7 days after the date of filing the petition. The court shall hear the cause, and the contest must take precedence over all other business on the court docket and must be tried and disposed of with all convenient dispatch. The court is always considered to be in session for the trial of contest cases."

**Section 92.** Section 13-36-207, MCA, is amended to read:

**"13-36-207. Hearing of contest.** The petitioner (contestant) and the contestee may appear and produce evidence at the hearing, but ~~no~~ *a* person other than the petitioner and contestee may *not* be made a party to the proceedings on the petition and ~~no~~ *a* person other than the parties and their attorneys may *not* be heard except by order of the court. If more than one petition is pending or the election of more than one person is contested, the court may in its discretion order the cases to be heard together and may apportion the costs, disbursements, and attorney fees between the parties and shall finally determine all questions of law and fact, except that the judge may impanel a jury to decide on questions of fact. In the case of ~~nominations or~~ elections *or selections to advance* other than for federal congressional offices, the court shall immediately certify its decision to the governing body or official issuing certificates of ~~nomination~~ *selection* or election and the governing body or official shall issue certificates of ~~nomination~~ *selection* or election to the person or persons entitled to the certificates by the court's decision. If judgment of ouster against a defendant is rendered, the ~~nomination~~ *selection to advance* or office must be declared vacant by the judgment, except as provided in 13-36-212, and must be filled by a new election or by appointment as may be provided by law regarding vacancies in the ~~nomination~~ *candidacy* or office."

**Section 93.** Section 13-36-209, MCA, is amended to read:

**"13-36-209. Forfeiture of ~~nomination~~ *election* or office for violation of law — when inappropriate.** Upon the trial of any action or proceeding under the provisions of this title to contest the right of any person to be declared ~~nominated~~ *selected to advance* or elected to any office or to annul or set aside ~~a nomination or~~ *a primary or general* election *result* or to remove a person from office, the ~~nomination or~~ *selection to advance or* election of the candidate is not *void* by reason of the offense or omission complained of ~~void~~ and the candidate may not be removed from or deprived of office if under the circumstances it seems to the court to be unjust that the candidate forfeit ~~a nomination~~ *the selection to advance* or office or be deprived of any office of which the candidate is the incumbent. The decision of the court must be based upon the following:

(1) it appears from the evidence that the offense complained of was not committed by the candidate or with the candidate's knowledge or consent or was committed without the candidate's sanction or connivance and that all reasonable means for preventing the commission of the offense at the election were taken by and on behalf of the candidate;

(2) the offense or offenses complained of were trivial, unimportant, and limited in character and in all other respects the candidate's participation in the election was free from offenses or illegal acts; or

(3) any act or omission of the candidate arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature and in any case did not arise from any lack of good faith."

**Section 94.** Section 13-36-210, MCA, is amended to read:

**"13-36-210. Punishment.** If, upon the trial of any action or proceeding under the provisions of this title to contest the right of any person to be declared to be ~~nominated to an office or~~ *selected to advance or* elected to an office or to annul and set aside the election or to remove any person from office, it appears that the person was guilty of any corrupt practice, illegal act, or undue influence ~~in or about the nomination~~ *regarding the selection to advance* or election, the person must be punished by being deprived of the ~~nomination~~ *selection to advance* or office and the vacancy must be filled in the manner provided by law. The only exceptions to this judgment are those provided in 13-36-209. The judgment does not prevent the candidate or officer from being proceeded against by indictment or criminal information for any act or acts."

**Section 95.** Section 13-36-211, MCA, is amended to read:

**"13-36-211. When ~~nomination or~~ *selection to advance or* election not to be vacated.** The ground of contest specified in 13-36-101(3) may not be construed to authorize ~~a nomination or~~ *the results of a primary or general* election to be set aside on account of illegal votes unless it appears:

(1) that the candidate ~~or nominee~~ whose right is contested had knowledge of or connived in the illegal votes; or

(2) that the number of illegal votes given to the ~~person whose right to the nomination or office~~ *candidate whose right* is contested, if taken from the person, would reduce the number of legal votes for the ~~person~~ *candidate* below the number of votes given to some other person for the same ~~nomination~~ *selection to advance* or office, after deducting the illegal votes that may be shown to have been given to the other person."

**Section 96.** Section 13-36-212, MCA, is amended to read:

**"13-36-212. Declaration of result of election after rejection of illegal votes.** If, in any case of a contest on the ~~ground~~ *grounds* of illegal votes, it appears that a person other than the one returned has the highest number of legal votes after the illegal votes have been eliminated, the court ~~must~~ *shall* declare ~~such~~ *the* person ~~nominated or~~ *selected to advance or* elected, as the case may be."

**Section 97.** Section 13-37-127, MCA, is amended to read:

**"13-37-127. Withholding of certificates of ~~nomination or~~ election.** (1) A certificate of election may not be granted to any candidate until the candidate or the candidate's treasurer has filed the reports and statements that must be filed pursuant to the provisions of this chapter. A candidate for an elective office may not assume the powers and duties of that office until the candidate has received a certificate of election as provided by law. A certificate of election may only be issued by the public official responsible for issuing a certificate or commission of election.

(2) In carrying out the mandate of this section, the commissioner must, by written statement, notify the public official responsible for issuing a certificate of ~~nomination~~ *selection* or election that a candidate or the candidate's treasurer

has complied with the provisions of this chapter as described in subsection (1) and that a certificate of ~~nomination~~ *selection* or election may be issued."

**Section 98.** Section 13-37-216, MCA, is amended to read:

**"13-37-216. Limitations on contributions — adjustment.** (1) (a) Subject to adjustment as provided for in subsection (4), aggregate contributions for each election in a campaign by a political committee or by an individual, other than the candidate, to a candidate are limited as follows:

(i) for candidates filed jointly for the office of governor and lieutenant governor, not to exceed $500;

(ii) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed $250;

(iii) for a candidate for any other public office, not to exceed $130.

(b) A contribution to a candidate includes contributions made to the candidate's committee and to any political committee organized on the candidate's behalf.

(2) (a) A political committee that is not independent of the candidate is considered to be organized on the candidate's behalf. For the purposes of this section, an independent committee means a committee that is not specifically organized on behalf of a particular candidate or that is not controlled either directly or indirectly by a candidate or candidate's committee and that does not act jointly with a candidate or candidate's committee in conjunction with the making of expenditures or accepting contributions.

(b) A leadership political committee maintained by a political officeholder is considered to be organized on the political officeholder's behalf.

(3) All political committees except those of political party organizations are subject to the provisions of subsections (1) and (2). For purposes of this subsection, "political party organization" means any political organization that was represented on the official ballot at the most recent ~~gubernatorial~~ *presidential* election. Political party organizations may form political committees that are subject to the following aggregate limitations, adjusted as provided for in subsection (4), from all political party committees:

(a) for candidates filed jointly for the offices of governor and lieutenant governor, not to exceed $18,000;

(b) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed $6,500;

(c) for a candidate for public service commissioner, not to exceed $2,600;

(d) for a candidate for the state senate, not to exceed $1,050;

(e) for a candidate for any other public office, not to exceed $650.

(4) (a) The commissioner shall adjust the limitations in subsections (1) and (3) by multiplying each limit by an inflation factor, which is determined by dividing the consumer price index for June of the year prior to the year in which a general election is held by the consumer price index for June 2002.

(b) The resulting figure must be rounded up or down to the nearest:

(i) $10 increment for the limits established in subsection (1); and

(ii) $50 increment for the limits established in subsection (3).

(c) The commissioner shall publish the revised limitations as a rule.

(5) A candidate may not accept any contributions, including in-kind contributions, in excess of the limits in this section.

(6) For purposes of this section, "election" means the general election or a primary election that involves two or more candidates for the same ~~nomination~~ *office*. If there is not a contested primary, there is only one election to which the contribution limits apply. If there is a contested primary, then there are two elections to which the contribution limits apply."

**Section 99.** Section 13-37-218, MCA, is amended to read:

**"13-37-218. Limitations on receipts from political committees.** A candidate for the state senate may receive no more than $2,150 in total combined monetary contributions from all political committees contributing to the candidate's campaign, and a candidate for the state house of representatives may receive no more than $1,300 in total combined monetary contributions from all political committees contributing to the candidate's campaign. The limitations in this section must be multiplied by an inflation factor, which is determined by dividing the consumer price index for June of the year prior to the year in which a general election is held by the consumer price index for June 2003. The resulting figure must be rounded up or down to the nearest $50 increment. The commissioner shall publish the revised limitations as a rule. In-kind contributions must be included in computing these limitation totals. The limitation provided in this section does not apply to contributions made by a political party ~~eligible for~~ *that held* a *presidential* primary ~~election under 13-10-601~~ *during the last presidential primary cycle*."

**Section 100.** Section 13-38-101, MCA, is amended to read:

**"13-38-101. Powers of parties.** Each political party may:

(1) make its own rules;

(2) provide for and select its own offices;

(3) call conventions and provide for the number and qualification of delegates;

(4) adopt platforms;

(5) provide for selection of delegates to national conventions;

(6) provide for the nomination of presidential electors;

(7) provide for the selection of national committee representatives;

(8) make nominations to fill vacancies occurring among ~~its~~ candidates ~~nominated~~ *in a general election who chose to state their party preference or association on their most recent declaration of candidacy* for offices to be filled by the state at large or by any district consisting of more than one county where the vacancies are caused by death, resignation, or removal from the electoral district;

(9) perform all other functions inherent in a party organization."

**Section 101.** Section 13-38-201, MCA, is amended to read:

**"13-38-201. Election of committee representatives at primary — vacancies.** (1) Except as provided in subsection (4), each political party shall elect at each primary election one person of each sex to serve as committee representatives for each election precinct. The committee representatives must be residents and registered voters of the precinct.

(2) An elector may be placed in nomination for precinct committee representative by a declaration of ~~nomination~~ *candidacy*, signed by the elector, notarized, and filed in the office of the county election administrator within the time for filing declarations ~~naming candidates for nomination at~~ *of candidacy for* the regular biennial primary election.

(3) Except as provided in subsection (4), the names of candidates for precinct committee representative of each political party must appear *in a separate section* on the ~~party ticket~~ *primary election ballot but* in the same manner as other candidates and are voted for in the same manner as other candidates.

(4) If the number of candidates nominated for a party's precinct committee representatives is less than or equal to the number of positions to be elected, the election administrator may give notice that a party's precinct committee election will not be held in that precinct.

(5) If a party precinct committee election is not held pursuant to subsection (4), the election administrator shall declare elected by acclamation the candidate who filed for the position or who filed a declaration of intent to be a write-in candidate. The election administrator shall issue a certificate of election to the designated party.

(6) Write-in votes for precinct committee representatives may be counted as specified in 13-15-206(5) only if the individual whose name is written in has filed a declaration of intent as a write-in candidate by the deadline prescribed in 13-10-211(1).

(7) Pursuant to 13-38-101, a vacancy in a precinct committee representative position must be filled by the party governing body as provided in its rules."

**Section 102. Repealer.** The following sections of the Montana Code Annotated are repealed:

13-10-302. Write-in votes for previously nominated candidates.

13-10-303. Nominations by more than one party.

13-10-305. Independent forfeits place on ballot.

13-10-311. Election judges' duties when preparing for count.

13-10-502. Signature requirements for petition.

13-10-503. Filing deadlines.

13-10-507. Independent candidates — association with political parties not allowed.

13-10-601. Parties eligible for primary election — petitions by minor parties.

13-10-602. Use of party name.

13-10-604. Nominations for minor parties.

13-38-204. Committees to fill vacancies among nominees under certain circumstances.

**Section 103. Codification instruction.** [Section 31] is intended to be codified as an integral part of Title 13, chapter 10, part 1, and the provisions of Title 13, chapter 10, part 1, apply to [section 31].

**Section 104. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 105. Coordination instruction.** If House Bill No. 120 is passed and approved and if [this act] is passed by the legislature and approved by the electorate and both contain a section amending 5-2-402, then section 5-2-402 must be amended as follows:

**"5-2-402. Appointment by board of county commissioners — county central committee role — timeframes.** (1) Except as provided in subsection (5) or as otherwise provided by law, whenever a vacancy occurs in the

legislature, the vacancy must be filled by appointment by the board of county commissioners or, in the event of a multicounty district, the boards of county commissioners of the counties comprising the district sitting as one appointing board.

(2) (a) Whenever a vacancy is within a single county, the board of county commissioners shall make the appointment as described in 5-2-403, 5-2-404, or 5-2-406.

(b) Whenever a vacancy is within a multicounty district, the boards of county commissioners shall sit as one appointing board. The selection of an individual to fill the vacancy must be as follows:

(i) The presiding officer of the board of county commissioners of the county in which the person resided whose vacancy is to be filled shall call a meeting for the purpose of appointing the member of the legislature and shall preside at the meeting.

(ii) Each commissioner's vote is determined by the following formula: 100 multiplied by (A divided by B) multiplied by (1 divided by C), where:

(A) A is the total votes cast in the respective county for the person vacating the legislative seat or, if the vacating person was not elected, the votes cast for the last person to be elected for the current term;

(B) B is the total votes cast for that person in the legislative district; and

(C) C is the number of authorized commissioners on the board of the commissioner whose vote is being determined.

(iii) The person selected to fill the vacancy is the one who receives the highest number above 50 that results from the calculation in subsection (2)(b)(ii). If none of the candidates receives a number higher than 50 from that calculation, the selection board shall cast its votes again in the same manner for the persons receiving the two highest numbers. If neither vote results in a candidate receiving a number higher than 50 from the calculation provided in subsection (2)(b)(ii), then 5-2-404 applies.

(c) If a vacancy occurs in a holdover senate seat after holdover senators have been assigned to new districts under each reapportionment, the formula in subsection (2)(b)(ii) must be applied using the votes cast for the senatorial candidates at the last election in which votes were cast for a senate candidate. Only the number of votes cast by electors residing in the new senate district ~~for senate candidates of the party to which the person vacating the seat belonged~~ may be counted. The secretary of state shall provide an estimate of the number of votes cast ~~for each party~~ by county or portion of a county. The selection process is the same as provided in subsection (2)(b)(iii).

(3) The appointment process to fill a vacant legislative seat under this section is as follows:

(a) Within 7 days of being notified of a vacancy as described in 2-16-501, the secretary of state shall notify the board of county commissioners. ~~and~~ *If the vacating legislator marked a party preference on the legislator's most recent declaration of candidacy filed with the secretary of state or election administrator, the secretary of state shall notify the relevant state party that is responsible for notifying* the county central committee of the county where the vacating legislator is a resident, if the legislative seat is within one county, or the boards of county commissioners and the corresponding county central committees if the legislative seat is in a multicounty district. If the legislator ~~is an~~ *did not mark a party preference, marked "independent", or marked a party preference for a party that does not have a county central committee as the party*

*preference on the legislator's most recent declaration of candidacy filed with the secretary of state or election administrator,* ~~independent or belongs to a party for which there is no county central committee,~~ the notification of county commissioners suffices.

(b) The county central committee or committees, upon receipt of notification of a vacancy, have 45 days to propose a list of prospective appointees, pursuant to 5-2-403(1). The county central committee or the county central committees, acting together, shall forward the list of names to the appointing board within the 45-day period.

(c) The appointing board shall make and confirm an appointment and notify the secretary of state within 15 days:

(i) after receiving the list of prospective appointees from the county central committee or committees;

(ii) after 45 days have expired after the notification of vacancy if the county central committee or committees have not provided a list of prospective appointees; or

(iii) after notification of a vacancy if the legislator vacating the seat is an independent.

(4) If the legislature is in session, the notification process in subsection (3)(a) must be followed within 5 days. The process described in subsection (3)(b) must take place in 5 days. The process described in subsection (3)(c) must take place in 5 days.

(5) Notwithstanding subsection (6), if a vacancy occurs prior to a primary election, 13-10-326 applies. If a vacancy occurs after a primary and prior to a general election, 13-10-327 applies.

(6) If the legislature is called into special session within 85 days of a general election, a person must be appointed to fill a legislative vacancy pursuant to subsections (1) through (4)."

**Section 106. Coordination instruction.** If [this act] is passed by the legislature and approved by the electorate and if House Bill No. 120 is passed and approved:

(1) the reference to "declaration for nomination" in 13-10-201 must be changed to "declaration of candidacy"; and

(2) the reference to "declaration for nomination" in 13-14-113 must be changed to "declaration of candidacy".

**Section 107. Coordination instruction.** If [this act] is passed by the legislature and approved by the electorate and if Senate Bill No. 375 is passed and approved, then the section that amends 13-37-216 in [this act] is void and the reference to "gubernatorial" in the definition of "political party organization" in section 13-1-101 in Senate Bill No. 375 must be changed to "presidential".

**Section 108. Effective date.** [This act] is effective upon approval by the electorate.

**Section 109. Applicability.** [This act] applies to elections held on by after January 1, 2015.

**Section 110. Submission to electorate.** [This act] shall be submitted to the qualified electors of Montana at the general election to be held in November 2014 by printing on the ballot the full title of [this act] and the following:

☐ YES on Legislative Referendum No. ___

☐ NO on Legislative Referendum No. ___

# CHAPTER NO. 270

[SB 405]

AN ACT PROTECTING THE INTEGRITY OF MONTANA ELECTIONS BY ENDING LATE VOTER REGISTRATION ON THE FRIDAY BEFORE ELECTION DAY AND ELIMINATING ELECTION DAY REGISTRATION; ENSURING COMPLIANCE WITH THE NATIONAL VOTER REGISTRATION ACT; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA AT THE GENERAL ELECTION TO BE HELD IN NOVEMBER 2014; AMENDING SECTIONS 13-2-301, 13-2-304, 13-19-207, AND 61-5-107, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 13-2-301, MCA, is amended to read:

**"13-2-301. Close of regular registration — notice — changes.** (1) The election administrator shall:

(a) close regular registrations for 30 days before any election; and

(b) publish a notice specifying the day regular registrations will close and the availability of the late registration option provided for in 13-2-304 in a newspaper of general circulation in the county at least three times in the 4 weeks preceding the close of registration or broadcast a notice on radio or television as provided in 2-3-105 through 2-3-107, using the method the election administrator believes is best suited to reach the largest number of potential electors. The provisions of this subsection (1)(b) are fulfilled upon the third publication or broadcast of the notice.

(2) Information to be included in the notice must be prescribed by the secretary of state.

(3) An application for voter registration properly executed and postmarked on or before the day regular registration is closed must be accepted as a regular registration for 3 days after regular registration is closed under subsection (1)(a).

(4) An individual who submits a completed registration form to the election administrator before the deadlines provided in this section is allowed to correct a mistake on the completed registration form until 5 p.m. on the 10th day following the close of regular registration, and the qualified elector is then eligible to vote in the election.

(5) An elector who misses the deadlines provided for in this section may register to vote or change the elector's voter information and vote in the election~~,~~ ~~except as otherwise~~ *as* provided in 13-2-304."

**Section 2.** Section 13-2-304, MCA, is amended to read:

**"13-2-304. Late registration — late changes — nonapplicability for school elections.** (1) Except as provided in subsections (2) and (3), the following provisions apply:

(a) An elector may register or change the elector's voter registration information after the close of regular registration in 13-2-301 and vote in the election if the election administrator in the county where the elector resides receives and verifies the elector's voter registration information prior to ~~the close of the polls on election day.~~

~~(b) Late registration is closed from noon to~~ 5 p.m. on the ~~day~~ *Friday* before the election.

~~(c)~~*(b)* Except as provided in 13-2-514(2)(a), an elector who registers or changes the elector's voter information pursuant to this section may vote in the election only if the elector obtains the ballot from and returns it to the location designated by the county election administrator.

(2) If an elector has already been issued a ballot for the election, the elector may change the elector's voter registration information only if the original voted ballot has not been received at the county election office and if the original ballot that was issued is marked by the issuing county as void in the statewide voter registration database prior to the change.

(3) The provisions of subsection (1) do not apply with respect to an elector's registration to vote in a school election held pursuant to Title 20."

**Section 3.** Section 13-19-207, MCA, is amended to read:

**"13-19-207. When materials to be mailed.** (1) Except as provided in subsection (2), for any election conducted by mail, ballots must be mailed no sooner than the 25th day and no later than the 15th day before election day.

(2) (a) All ballots mailed to electors on the active list and provisionally registered list must be mailed the same day.

(b) At any time before noon on the day before election day, a ballot may be mailed or, upon request, provided in person at the election administrator's office to:

(i) an elector on the inactive list after the elector reactivates the elector's registration as provided in 13-2-222; or

(ii) an individual who registers under the late registration option provided for in 13-2-304.

(c) An elector on the inactive list shall vote at the election administrator's office on election day if the elector reactivates the elector's registration after noon on the day before election day.

~~(d) An elector who registers pursuant to 13-2-304 on election day or on the day before election day must receive the ballot and vote it at the election administrator's office.~~"

**Section 4.** Section 61-5-107, MCA, is amended to read:

**"61-5-107. Application for license, instruction permit, or motorcycle endorsement.** (1) Each application for an instruction permit, driver's license, commercial driver's license, or motorcycle endorsement must be made upon a form furnished by the department. Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state *and in compliance with the National Voter Registration Act of 1993, Public Law 103-31, 42 U.S.C. 1973gg, et seq.,* must be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Each application must include the full legal name, date of birth, sex, residence address of the applicant [and the applicant's social security number], must include a brief description of the applicant, and must provide the following additional information:

(a) the name of each jurisdiction in which the applicant has previously been licensed to drive any type of motor vehicle during the 10-year period immediately preceding the date of the application;

(b) a certification from the applicant that the applicant is not currently subject to a suspension, revocation, cancellation, disqualification, or withdrawal of a previously issued driver's license or any driving privileges in another jurisdiction and that the applicant does not have a driver's license from another jurisdiction;

(c) a brief description of any physical or mental disability, limitation, or condition that impairs or may impair the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway;

(d) a brief description of any adaptive equipment or operational restrictions that the applicant relies upon or intends to rely upon to attain the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway, including the nature of the equipment or restrictions; and

(e) if the applicant is a foreign national whose presence in the United States is temporarily authorized under federal law, the expiration date of the official document issued to the applicant by the bureau of citizenship and immigration services of the department of homeland security authorizing the applicant's presence in the United States.

[(3) The department shall keep the applicant's social security number from this source confidential, except that the number may be used for purposes of subtitle VI of Title 49 of the U.S.C. or as otherwise permitted by state law administered by the department and may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(4) (a) When an application is received from an applicant who is not ineligible for licensure under 61-5-105 and who was previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from each jurisdiction in which the applicant was licensed in the preceding 10-year period. The driving record may be transmitted manually or by electronic medium.

(b) When received, the driving records must be appended to the driver's record created and maintained in this state. The department may rely on information contained in driving records received under this section to determine the appropriate action to be taken against the applicant upon subsequent receipt of a report of a conviction or other conduct requiring suspension or revocation of a driver's license under state law.

(5) An individual who is under 26 years of age but at least 15 years of age and who is required to register in compliance with the federal Military Selective Service Act, 50 App. U.S.C. 453, must be provided an opportunity to fulfill those registration requirements in conjunction with an application for an instruction permit, driver's license, commercial driver's license, or state identification card. If under 18 years of age but at least 15 years of age, an individual must be provided an opportunity to be registered by the selective service system upon attaining 18 years of age. Any registration information supplied on the application must be transmitted by the department to the selective service system. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)"

**Section 5. Effective date.** [This act] is effective upon approval by the electorate.

**Section 6. Submission to electorate.** [This act] shall be submitted to the qualified electors of Montana at the general election to be held in November 2014 by printing on the ballot the full title of [this act] and the following:

☐ YES on Legislative Referendum No. ___

☐ NO on Legislative Referendum No. ___

**Section 7. Coordination instruction.** If House Bill No. 30 is passed and approved, then [this act] is void.

# CHAPTER NO. 271

[HB 104]

AN ACT CREATING CRIMINAL OFFENSES INVOLVING THE DEATH OF A FETUS OF ANOTHER AND PROVIDING EXCEPTIONS; AND AMENDING SECTIONS 45-5-102 AND 45-5-103, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 45-5-102, MCA, is amended to read:

**"45-5-102. Deliberate homicide.** (1) A person commits the offense of deliberate homicide if:

(a) the person purposely or knowingly causes the death of another human being; ~~or~~

(b) the person attempts to commit, commits, or is legally accountable for the attempt or commission of robbery, sexual intercourse without consent, arson, burglary, kidnapping, aggravated kidnapping, felonious escape, assault with a weapon, aggravated assault, or any other forcible felony and in the course of the forcible felony or flight thereafter, the person or any person legally accountable for the crime causes the death of another human being*; or*

*(c) the person purposely or knowingly causes the death of a fetus of another with knowledge that the woman is pregnant*.

(2) A person convicted of the offense of deliberate homicide shall be punished by death as provided in 46-18-301 through 46-18-310, unless the person is less than 18 years of age at the time of the commission of the offense, by life imprisonment, or by imprisonment in the state prison for a term of not less than 10 years or more than 100 years, except as provided in 46-18-219 and 46-18-222."

**Section 2.** Section 45-5-103, MCA, is amended to read:

**"45-5-103. Mitigated deliberate homicide.** (1) A person commits the offense of mitigated deliberate homicide when the person purposely or knowingly causes the death of another human being *or purposely or knowingly causes the death of a fetus of another with knowledge that the woman is pregnant* but does so under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of the explanation or excuse must be determined from the viewpoint of a reasonable person in the actor's situation.

(2) Mitigated deliberate homicide is a lesser included offense of deliberate homicide as defined in 45-5-102(1)(a), but is not a lesser included offense of deliberate homicide as defined in 45-5-102(1)(b).

(3) Mitigating circumstances that reduce deliberate homicide to mitigated deliberate homicide are not an element of the reduced crime that the state is required to prove or an affirmative defense that the defendant is required to prove. Neither party has the burden of proof as to mitigating circumstances, but either party may present evidence of mitigation.

(4) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years and

may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222."

**Section 3. Definition.** As used in 45-5-102, 45-5-103, and [section 4], "fetus" means an organism of the species homo sapiens from 8 weeks of development until complete expulsion or extraction from a woman's body.

**Section 4. Harm to fetus of another — exceptions.** A prosecution for a violation of 45-5-102 or 45-5-103 with regard to the death of a fetus of another may not be brought against:

(1) a person for conduct relating to an abortion for which the consent of the pregnant woman or a person authorized by law to act on her behalf has been obtained or for which the consent is implied by law;

(2) a person for any medical treatment of the pregnant woman or her fetus; or

(3) a woman with respect to her fetus.

**Section 5. Other convictions not barred.** A prosecution for or conviction of an offense under 45-5-102 or 45-5-103 is not a bar to conviction of or punishment for any other crime committed by the defendant as part of the same conduct.

**Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 7. Codification instruction.** [Sections 3 through 5] are intended to be codified as an integral part of Title 45, chapter 5, and the provisions of Title 45, chapter 5, apply to [sections 3 through 5].

Approved April 22, 2013

## CHAPTER NO. 272

[HB 336]

AN ACT GENERALLY REVISING THE HIGHWAY PATROL OFFICERS' RETIREMENT SYSTEM; DECREASING THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT FOR NEW MEMBERS; REQUIRING NEW MEMBERS TO WAIT 3 YEARS BEFORE RECEIVING THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT; INCREASING THE YEARS OF MEMBERSHIP SERVICE NEEDED FOR A NEW MEMBER TO PURCHASE SERVICE CREDIT AND TO RECEIVE A RETIREMENT BENEFIT; INCREASING EMPLOYEE CONTRIBUTIONS FOR EXISTING MEMBERS AND NEW HIRES; INCREASING THE STATE EMPLOYER CONTRIBUTION; INCREASING THE BENEFIT MULTIPLIER FOR ALL MEMBERS; RESTRICTING THE USES OF THE SPECIAL STATE REVENUE FUND TO FUND THE HIGHWAY PATROL OFFICERS' SALARIES; AMENDING SECTIONS 19-2-303, 19-6-301, 19-6-402, 19-6-404, 19-6-502, 19-6-503, 19-6-601, 19-6-707, 19-6-710, 19-6-711, 19-6-801, 19-6-803, AND 19-6-804, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution also requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced,

or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 and 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Highway Patrol Officers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for current members of the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to the current system members in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, because reasonable increases in employer contributions and future employee contributions and reasonable reductions in benefits for future members alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future members and reduced benefits for future members are necessary to return the system to a position of actuarially sound funding; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning all public employee retirement systems to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that several of the systems, including the Highway Patrol Officers' Retirement System remain actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy and taxpayers, a modest supplemental contribution rate increase applied to current Highway Patrol Officers' Retirement System members, phased in over a 4-year period, in conjunction with additional employer and state contributions, is reasonable and necessary pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the Highway Patrol Officers' Retirement System is funded in an actuarially sound manner; and

WHEREAS, the defined benefit Highway Patrol Officers' Retirement System is integral to the successful recruitment and retention of qualified Montana highway patrol officers.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Guaranteed annual benefit adjustment for employees hired after July 1, 2013.** (1) Subject to subsection (2), for employees hired on or after July 1, 2013, on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If the recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the

adjustments amount to more than a 1.5% annualized increase, then the benefit increase provided for under this section must be 0%.

(3) Except as provided for in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member first became an active member on or after July 1, 2013.

(4) The board shall adopt rules to administer the provisions of this section.

**Section 2.** Section 19-2-303, MCA, is amended to read:

**"19-2-303. Definitions.** Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumptions adopted by the board.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined benefit retirement plan over the present value of future normal costs in that retirement plan.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member of a defined benefit plan to purchase various types of optional service credit as allowed by the applicable retirement plan.

(8) "Annuity" means:

(a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are not subject to periodic or one-time increases; or

(b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

(9) "Banked holiday time" means the hours reported for work performed on a holiday that the employee may use for equivalent time off or that may be paid to the employee as specified by the employer's policy.

(10) "Benefit" means:

(a) the service retirement benefit, early retirement benefit, or disability retirement or survivorship benefit payment provided by a defined benefit retirement plan; or

(b) a payment or distribution under the defined contribution retirement plan, including a disability payment under 19-3-2141, for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124.

(11) "Board" means the public employees' retirement board provided for in 2-15-1009.

(12) "Contingent annuitant" means:

(a) under option 2 or 3 provided for in 19-3-1501, one natural person designated to receive a continuing monthly benefit after the death of a retired member; or

(b) under option 4 provided for in 19-3-1501, a natural person, charitable organization, estate, or trust that may receive a continuing monthly benefit after the death of a retired member.

(13) "Covered employment" means employment in a covered position.

(14) "Covered position" means a position in which the employee must be a member of the retirement system except as otherwise provided by law.

(15) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

(16) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and that is not a defined benefit plan.

(17) "Department" means the department of administration.

(18) "Designated beneficiary" means the person, charitable organization, estate, or trust for the benefit of a natural person designated by a member or payment recipient to receive any survivorship benefits, lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(19) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

(20) "Disability" or "disabled" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(21) "Distributee" means:

(a) a member;

(b) a member's surviving spouse;

(c) a member's spouse or former spouse who is the alternate payee under a family law order as defined in 19-2-907; or

(d) effective January 1, 2007, a member's nonspouse beneficiary who is a designated beneficiary as defined by section 401(a)(9)(E) of the Internal Revenue Code, 26 U.S.C. 401(a)(9)(E).

(22) "Early retirement benefit" means the retirement benefit payable to a member following early retirement and is the actuarial equivalent of the accrued portion of the member's service retirement benefit.

(23) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

(a) an individual retirement account described in section 408(a) of the Internal Revenue Code, 26 U.S.C. 408(a);

(b) an individual retirement annuity described in section 408(b) of the Internal Revenue Code, 26 U.S.C. 408(b);

(c) an annuity plan described in section 403(a) of the Internal Revenue Code, 26 U.S.C. 403(a);

(d) a qualified trust described in section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);

(e) effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b);

(f) effective January 1, 2002, a plan eligible under section 457(b) of the Internal Revenue Code, 26 U.S.C. 457(b), that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from a plan under this title; or

(g) effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code, 26 U.S.C. 408A.

(24) "Eligible rollover distribution":

(a) means any distribution of all or any portion of the balance from a retirement plan to the credit of the distributee, as provided in 19-2-1011;

(b) effective January 1, 2002, includes a distribution to a surviving spouse or to a spouse or former spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p).

(25) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying retirement contributions pursuant to 7-11-105.

(26) "Employer" means a governmental agency participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as responsible for paying retirement contributions pursuant to 7-11-105.

(27) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

(a) the position exists to perform the element;

(b) there are a limited number of employees to perform the element; or

(c) the element is highly specialized.

(28) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

(29) "Inactive member" means a member who terminates service and does not retire or take a refund of the member's accumulated contributions.

(30) "Internal Revenue Code" has the meaning provided in 15-30-2101.

(31) "Member" means either:

(a) a person with accumulated contributions and service credited with a defined benefit retirement plan or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or

(b) a person with a retirement account in the defined contribution plan.

(32) "Membership service" means the periods of service that are used to determine eligibility for retirement or other benefits.

(33) (a) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a defined benefit retirement plan during any year in the future.

(b) Normal cost does not include any portion of the supplemental costs of a retirement plan.

(34) "Normal retirement age" means the age at which a member is eligible to immediately receive a retirement benefit based on the member's age, length of service, or both, as specified under the member's retirement system, without disability and without an actuarial or similar reduction in the benefit.

(35) "Pension" means benefit payments for life derived from contributions to a retirement plan made from state- or employer-controlled funds.

(36) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system or plan in public trust.

(37) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered by the defined contribution plan members that is allocated to the public employees' retirement system's defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member selection of the defined contribution plan.

(38) "Regular contributions" means contributions required from members under a retirement plan.

(39) "Regular interest" means interest at rates set from time to time by the board.

(40) "Retirement" or "retired" means the status of a member who has:

(a) terminated from service; and

(b) received and accepted a retirement benefit from a retirement plan.

(41) "Retirement account" means an individual account within the defined contribution retirement plan for the deposit of employer and member contributions and other assets for the exclusive benefit of a member of the defined contribution plan or the member's beneficiary.

(42) "Retirement benefit" means:

(a) in the case of a defined benefit plan, the periodic benefit payable as a result of service retirement, early retirement, or disability retirement under a defined benefit plan of a retirement system. With respect to a defined benefit plan, the term does not mean an annuity.

(b) in the case of the defined contribution plan, a benefit as defined in subsection (10)(b).

(43) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan under one of the public employee retirement systems enumerated in 19-2-302.

(44) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

(45) "Service" means employment of an employee in a position covered by a retirement system.

(46) "Service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to

calculate retirement benefits or survivorship benefits under a defined benefit retirement plan.

(47) "Service retirement benefit" means the retirement benefit that the member may receive at normal retirement age.

(48) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

(49) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.

(50) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.

(51) "Termination of employment", "termination from employment", "terminated employment", "terminated from employment", "terminate employment", or "terminates employment" means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both; and

(b) the member is no longer receiving compensation for covered employment, other than any outstanding lump-sum payment for compensatory leave, sick leave, or annual leave.

(52) "Termination of service", "termination from service", "terminated from service", "terminated service", "terminating service", or "terminates service" means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both for at least 30 days;

(b) no written or verbal agreement exists between employee and employer that the employee will return to covered employment in the future;

(c) the member is no longer receiving compensation for covered employment; and

(d) the member has been paid all compensation for compensatory leave, sick leave, or annual leave to which the member was entitled. For the purposes of this subsection (52), compensation does not mean compensation as a result of a legal action, court order, or settlement to which the board was not a party.

(53) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

(54) "Vested account" means an individual account within a defined contribution plan that is for the exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions and the income on all contributions in each of the following accounts:

(a) the member's contribution account;

(b) the vested portion of the employer's contribution account; and

(c) the member's account for other contributions.

(55) "Vested member" or "vested" means:

(a) with respect to a defined benefit plan*, except as provided in subsection (55)(b)*, a member or the status of a member who has at least 5 years of membership service; ~~or~~

*(b) with respect to a member of the highway patrol officers' retirement system established in Title 19, chapter 6, who was hired on or after [the effective date of this act], a member or the status of the member who has at least 10 years of membership service; or*

~~(b)~~*(c)* with respect to the defined contribution plan, a member or the status of a member who meets the minimum membership service requirement of 19-3-2116.

(56) "Written application" or "written election" means a written instrument, prescribed by the board or required by law, properly signed and filed with the board, that contains all required information, including documentation that the board considers necessary.

(57) "Written instrument" includes an electronic record containing an electronic signature, as defined in 30-18-102."

**Section 3.** Section 19-6-301, MCA, is amended to read:

**"19-6-301. Membership — inactive vested members — inactive nonvested members.** (1) All members of the Montana highway patrol, including the supervisor and assistant supervisors, must be members of the retirement system.

(2) (a) An inactive member *hired before July 1, 2013,* with at least 5 years of membership service is an inactive vested member and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.

*(b) An inactive member hired on or after July 1, 2013, with at least 10 years of membership service is an inactive vested member and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.*

~~(b)~~*(c)* If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer's contributions.

(3) (a) An inactive member *hired before July 1, 2013,* with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement system.

*(b) An inactive member hired on or after July 1, 2013, with less than 10 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement system.*

~~(b)~~*(c)* An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

**Section 4.** Section 19-6-402, MCA, is amended to read:

**"19-6-402. Member's contribution.** (1) (a) A member not covered under 19-6-710 shall contribute ~~9%~~ *the following percentage* of the member's compensation~~.~~*:*

*(i) beginning July 1, 2013, through June 30, 2014, 10%;*

*(ii) beginning July 1, 2014, through June 30, 2015, 11%;*

*(iii) beginning July 1, 2015, through June 30, 2016, 12%; and*

*(iv) beginning July 1, 2016, 13%.*

(b) A member covered under 19-6-710*, 19-6-711, or [section 1]* shall contribute ~~9.05%~~ *the following percentage* of the member's compensation.*:*

*(i) beginning July 1, 2013, through June 30, 2014, 10.05%;*

*(ii) beginning July 1, 2014, through June 30, 2015, 11.05%;*

*(iii) beginning July 1, 2015, through June 30, 2016, 12.05%; and*

*(iv) beginning July 1, 2016, 13.05%.*

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and compensation as used to define the member's highest average compensation in 19-6-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

**Section 5.** Section 19-6-404, MCA, is amended to read:

**"19-6-404. State employer contribution — statutory appropriation.** The state shall pay as employer contributions ~~36.33%~~ *38.33%* of compensation paid to all of the employer's employees, except those properly excluded from membership, from the following sources:

(1) an amount equal to ~~26.15%~~ *28.15%* of the total compensation of the members, which is payable, as appropriated by the legislature, from the same source that is used to pay compensation to the members; and

(2) an amount equal to 10.18% of the total compensation of the members, which is statutorily appropriated, as provided in 17-7-502, from the general fund to the pension trust fund."

**Section 6.** Section 19-6-502, MCA, is amended to read:

**"19-6-502. Service retirement benefit.** After termination from service and upon application for service retirement, a member must receive a service retirement benefit equal to ~~2.5%~~ *2.6%* of the member's highest average compensation for each year of service credit."

**Section 7.** Section 19-6-503, MCA, is amended to read:

**"19-6-503. Early retirement benefit for member discontinued from service other than for cause.** *(1)* If a member *hired before July 1, 2013,* is discontinued from service other than for cause after having completed 5 years of membership service but before reaching normal retirement age, the member must, upon filing a written application with the board, be paid an early service retirement benefit that is of actuarial equivalent value to a service retirement based on a retirement age of 60.

*(2) If a member hired on or after July 1, 2013, is discontinued from service other than for cause after having completed 10 years of membership service but*

*before reaching normal retirement age, the member must, upon filing a written application with the board, be paid an early service retirement benefit that is of actuarial equivalent value to a service retirement based on a retirement age of 60.*"

**Section 8.** Section 19-6-601, MCA, is amended to read:

**"19-6-601. Disability retirement benefit.** (1) A member who becomes disabled must be granted a disability retirement benefit that is the actuarial equivalent of the service retirement benefit under 19-6-502 standing to the member's credit at the time of the member's disability retirement.

(2) A member who becomes disabled as a direct result of the member's service in the line of duty:

(a) before completing 20 years of membership service must receive a disability retirement benefit equal to one-half the member's highest average compensation; or

(b) after completing 20 years or more of membership service must receive a disability retirement benefit equal to ~~2.5%~~ *2.6%* of the member's highest average compensation for each year of service credit.

(3) Upon the death of a member receiving a disability retirement benefit under this section, the member's surviving spouse or dependent child is eligible for benefits as provided in 19-6-505."

**Section 9.** Section 19-6-707, MCA, is amended to read:

**"19-6-707. Minimum monthly benefit.** (1) Subject to the limitations contained in subsection (2), the following retired members, or their survivors, who are not covered by 19-6-710*,* ~~or~~ 19-6-711*, or [section 1]* are eligible to receive a monthly benefit of not less than 2% multiplied by the member's service credits multiplied by the current base compensation received by a probationary highway patrol officer:

(a) a retired member who is 55 years of age or older, except as provided in subsection (3), or the member's survivor, who is receiving a service retirement benefit;

(b) a retired member, or the member's survivor, who is receiving a disability retirement benefit; and

(c) a recipient of a survivorship benefit.

(2) (a) The maximum monthly benefit paid under subsection (1) may not exceed 60% of the current base compensation of a probationary highway patrol officer.

(b) The annual increase in a monthly benefit under subsection (1) may not exceed 5% of the current monthly benefit paid to a retired member or the member's survivor.

(3) A retired member otherwise qualified under subsection (1)(a) who is employed in a position covered by a retirement system under Title 19 is ineligible to receive the minimum monthly benefit provided for in this section until the member's service in the covered position is terminated."

**Section 10.** Section 19-6-710, MCA, is amended to read:

**"19-6-710. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), *for members hired before July 1, 2013,* on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the

adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998, and requires an active member to pay an increased contribution rate from July 1, 1997, forward. A retired member or the member's survivor who is receiving a monthly benefit before July 1, 1997, shall also file the voluntary, irrevocable election no later than January 1, 1998, to be covered under this section.

(4) The board shall adopt rules to administer the provisions of this section."

**Section 11.** Section 19-6-711, MCA, is amended to read:

**"19-6-711. Election — guaranteed annual benefit adjustment.** (1) Subject to subsection (2), *for members hired before July 1, 2013,* on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election:

(A) must be filed with the board prior to December 1, 2001; and

(B) requires an active member to pay an increased or revised contribution rate from January 1, 2002, forward.

(4) The board shall adopt rules to administer the provisions of this section.

(5) The decision of a member who elected to participate under 19-6-710 remains valid. The decision of a member who elected not to participate under 19-6-710 may be reversed under this section."

**Section 12.** Section 19-6-801, MCA, is amended to read:

**"19-6-801. Application to purchase military service.** (1) (a) Except as provided in subsection (1)(b) and subject to 19-6-805, an eligible member may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's active service in the armed forces of the United States.

(b) A member is not eligible to purchase active military service credit and membership service under subsection (1)(a) if the member:

(i) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

(ii) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(iii) is eligible to receive credit for that service in any other retirement system or plan.

(2) (a) Except as provided in subsection ~~(2)(b)~~ *(3)* and subject to *subsection (2)(b) and* 19-6-805, a member ~~with at least 5 years of membership service~~ may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's reserve military service in the armed forces of the United States.

*(b) A member must have at least the following years of membership service to apply to purchase service credit under subsection (2)(a):*

*(i) for a member hired before July 1, 2013, 5 years; and*

*(ii) for a member hired on or after July 1, 2013, 10 years.*

~~(b)~~*(3)* A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.

~~(3)~~*(4)* To purchase service credit and membership service under this section:

(a) a member with at least 15 years of service credit who is not covered by 19-6-710 shall contribute the amount determined by the board to be due based on the member's compensation and regular contribution rate in the member's 16th year for the 1st year purchased and, for each subsequent year purchased, an amount based on the member's compensation and contribution rate in each of as many years succeeding the member's 16th year as are required to complete the purchase, with regular interest from the date the member becomes eligible for this benefit to the date the purchase is complete. The combined total of active and reserve military service credit and membership service that a member may purchase may be no more than the member's service credit in excess of 15 years or 5 years, whichever is less.

(b) *(i)* a member with at least 5 years of membership service who is covered by 19-6-710 shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation*;*

*(ii) a member with at least 10 years of membership service who is covered by [section 1] shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation*."

**Section 13.** Section 19-6-803, MCA, is amended to read:

**"19-6-803. Application to purchase law enforcement service performed in another state.** (1) *(a)* Subject to *subsection (1)(b) and* 19-6-805,

a member ~~with at least 5 years of membership service~~ may, at any time before retirement, file a written application with the board to purchase 1 year of out-of-state law enforcement employment for each year of service credit, unless the member is eligible to receive a retirement benefit in another system or plan for that same service.

*(b) A member must have at least the following years of membership service to apply to purchase service credit under this section:*

*(i) for a member hired before July 1, 2013, 5 years; and*

*(ii) for a member hired on or after July 1, 2013, 10 years.*

(2) To purchase this service credit, a member shall pay the actuarial cost of the service credit in the retirement system, as determined by the board, based on:

(a) the member's compensation for the 12 months immediately preceding the date of the member's election to purchase the service credit under the retirement system; and

(b) the actuarial rate in effect at the time of purchase of service credit.

(3) Service credit purchased under this section may not be used to qualify a member to purchase military service credit under 19-6-801.

(4) Service credit purchased under this section may not be used in calculating a member's retirement benefit unless the last 5 years of service credit were earned under the retirement system. If, upon retirement, a member's purchased service credit may not be used in calculating the member's retirement benefit, the member must receive a refund of the amount paid by the member to purchase the service credit, plus regular interest on that amount."

**Section 14.** Section 19-6-804, MCA, is amended to read:

**"19-6-804. Application to purchase additional service.** (1) *(a)* Subject to *subsection (1)(b) and* 19-6-805, a member ~~with at least 5 years of membership service~~ may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service that the member has in the retirement system.

*(b) A member must have at least the following years of membership service to apply to purchase additional service credit under this section:*

*(i) for a member hired before July 1, 2013, 5 years; and*

*(ii) for a member hired on or after July 1, 2013, 10 years.*

(2) To purchase service credit under this section, a member shall pay the actuarial cost of the service credit, based on the system's most recent actuarial valuation as determined by the board.

(3) Service credit purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for service retirement."

**Section 15.** Section 44-1-504, MCA, is amended to read:

**"44-1-504. Special revenue account to partially fund highway patrol officers' salaries.** (1) There is an account in the state special revenue fund provided for in 17-2-102.

(2) The money in the account is for the department of justice to fund, pursuant to 2-18-303(5):

(a) the base salary and associated operating costs for highway patrol officer positions; and

(b) biennial salary increases for highway patrol officers.

*(3) For the purposes of this section, the term "associated operating costs" does not include the state employer contribution provided for in 19-6-404.*"

**Section 16. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 19, chapter 6, part 7, and the provisions of Title 19, chapter 6, part 7, apply to [section 1].

**Section 17. Effective date.** [This act] is effective July 1, 2013.

Approved April 22, 2013

# CHAPTER NO. 273

[SB 182]

AN ACT GENERALLY REVISING MONTANA AUTOMOBILE DEALER FRANCHISE LAW; CLARIFYING WHICH PARTIES ARE ENTITLED TO PROTEST ADDITIONAL FRANCHISE LOCATIONS; CLARIFYING THAT A DESIRE FOR FEWER FRANCHISE LOCATIONS IS NOT GOOD CAUSE FOR TERMINATION OF A FRANCHISE; ALLOWING FRANCHISEES TO PURCHASE CERTAIN GOODS AND SERVICES UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 61-4-206, 61-4-207, AND 61-4-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-4-206, MCA, is amended to read:

**"61-4-206. Objections — hearing.** (1) *(a)* ~~A~~ *Except as provided in subsection (1)(b), a* person who receives or is entitled to receive a copy of a notice provided for in 61-4-205(4) may object to the approval of the proposed action by filing a written objection with the department within 15 days from the date the notice was received by the person entitled to receive the notice. If an objection is not filed within 15 days from the date the notice was received, the proposed action must be approved.

*(b) A franchisee of the same line-make established in the same community as the proposed additional franchise of the same line-make may not object under subsection (1)(a) if the proposed additional franchise was first terminated by a franchisor and the franchise was subsequently awarded back by a legal or administrative proceeding to the franchisee from whom the franchise was terminated.*

(2) If a timely objection has been filed, the department shall appoint a hearings officer to preside over and conduct a contested case hearing under the provisions of Title 2, chapter 4, part 6. Within 30 days of the order of appointment, the hearings officer shall enter an order fixing the time for a scheduling conference for the contested case and shall send to the parties by certified mail with return receipt requested a copy of the scheduling conference order and the notice provided for in 61-4-205(4).

(3) Upon hearing or upon objection to the establishment of a new motor vehicle dealership, the franchisor has the burden of proof to establish that good cause exists to terminate, not continue, or not establish the franchise.

(4) The rules of evidence for a hearing provided for in subsection (2) are the same as those found in Title 2, chapter 4. The department shall reasonably apportion all costs related to the contested case hearing between the parties.

(5) The department may issue subpoenas, administer oaths, and compel the attendance of witnesses and production of books, papers, documents, and all

other evidence. The department may apply to the district court of the county in which the hearing is held for a court order enforcing this section. The hearing must be conducted pursuant to Title 2, chapter 4.

(6) A transcript of the testimony of each witness taken at the hearing must be made and preserved. Within 60 days after the hearing, the department shall make written findings of fact and conclusions and enter a final order.

(7) Any party to the hearing before the department may appeal pursuant to Title 2, chapter 4.

(8) The franchise agreement must continue in effect until the adjudication by the department on the verified complaint and the exhaustion of all appellate remedies available to the franchisee. The franchisor and the franchisee shall abide by the terms of the franchise and the laws of Montana during the appeals process."

**Section 2.** Section 61-4-207, MCA, is amended to read:

**"61-4-207. Determination of good cause.** (1) In determining whether good cause has been established for terminating or not continuing a franchise, the department shall take into consideration the existing circumstances, including but not limited to:

(a) the franchisee's sales in relation to the market;

(b) investment necessarily made and obligations incurred by the franchisee in the performance of the franchisee's part of the franchise;

(c) permanency of the investment;

(d) whether it is injurious to the public welfare for the business of the franchisee to be discontinued;

(e) whether the franchisee has adequate new motor vehicle facilities, equipment, parts, and qualified management, sales, and service personnel to reasonably provide consumer care for the new motor vehicles sold at retail by the franchisee and any other new motor vehicle of the same line-make;

(f) whether the franchisee refuses to honor warranties of the franchisor to be performed by the franchisee if the franchisor reimburses the franchisee for warranty work performed by the franchisee pursuant to this part;

(g) except as provided in subsection (2), actions by the franchisee that result in a material breach of the written and uniformly applied requirements of the franchise that are determined by the department to be reasonable and material; and

(h) the enforceability of the franchise from a public policy standpoint, including issues of the reasonableness of the franchise's terms and the parties' relative bargaining power.

(2) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, the following do not constitute good cause for the termination or noncontinuance of a franchise:

(a) a change in ownership of the franchisee's dealership;

(b) the fact that the franchisee refused to purchase or accept delivery of a new motor vehicle, part, accessory, or any other commodity or service not ordered by the franchisee;

(c) the failure of a franchisee to change location of the dealership or to make substantial alterations to the use or number of franchises or the dealership premises or facilities; or

(d) the desire of a franchisor or a franchisor's representative*:*

*(i)* for market penetration*; or*

*(ii) to reduce the number of the franchisor's or franchisor's representative's franchises or dealer locations*.

(3) In determining whether good cause has been established for entering into an additional franchise for the same line-make, the department shall take into consideration the existing circumstances, including but not limited to:

(a) amount of business transacted by other franchisees of the same line-make in that community;

(b) investment necessarily made and obligations incurred by other franchisees of the same line-make in that community in the performance of their part of their franchises; and

(c) whether the franchisees of the same line-make in that community are providing adequate consumer care, including satisfactory new motor vehicle dealer sales and service facilities, equipment, parts supply, and qualified management, sales, and service personnel, for the new motor vehicle products of the line-make."

**Section 3.** Section 61-4-208, MCA, is amended to read:

**"61-4-208. Prohibited acts — *rights of franchisees.*** (1) A manufacturer ~~of new motor vehicles~~, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of the persons or entities listed may not:

(a) coerce, attempt to coerce, or require a new motor vehicle dealer or transferee of a new motor vehicle dealer to:

(i) accept delivery of a new motor vehicle, a part, or an accessory for a new motor vehicle or any other commodity that has not been ordered by the new motor vehicle dealer or transferee of a new motor vehicle dealer;

(ii) participate in or contribute to any local, regional, or national advertising fund or to participate in or to contribute to contests, giveaways, or other sales devices;

(iii) change location of the dealership or to make substantial alterations to the use or number of franchises or the dealership premises or facilities;

(iv) either establish or maintain exclusive facilities, personnel, or display space or to abandon an existing franchise relationship with another manufacturer in order to keep or enter into a franchise agreement or to participate in any program discount, credit, rebate, or sales incentive;

*(v) subject to subsection (2)(b) and notwithstanding the terms of a franchise agreement or other agreement providing otherwise, purchase goods or services from a vendor identified, selected, or designated by a manufacturer, a factory branch, a distributor, a distributor branch, an importer, or an affiliate of the persons or entities listed without allowing the franchisee, after consultation with the franchisor, to obtain goods or services of like kind, quality, and design from a vendor that the franchisee chooses;*

~~(v)~~*(vi)* require, coerce, or attempt to coerce a new motor vehicle dealer or transferee of a new motor vehicle dealer to refrain from participation in the management of, investment in, or acquisition of any other line-make of new motor vehicle or related products, as long as the new motor vehicle dealer or transferee of a new motor vehicle dealer maintains a reasonable line of credit for each franchise and the new motor vehicle dealer or transferee of a new motor vehicle dealer remains in substantial compliance with reasonable facilities requirements. The reasonable facilities requirements may not include any

requirement that a new motor vehicle dealer or transferee of a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space.

~~(vi)~~*(vii)* refrain from participation in the management of, investment in, or acquisition of any other line of new motor vehicle or related products if the new motor vehicle dealer or transferee of a new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles and remains in compliance with any reasonable capital standards and facility requirements of the manufacturer; or

~~(vii)~~*(viii)* enter into an agreement with a manufacturer, factory branch, distributor, distributor branch, *importer,* or *any* representative of ~~the listed~~ *any of these* persons or entities or do any other act unfair to the new motor vehicle dealer or transferee of a new motor vehicle dealer by:

(A) threatening to cancel or not renew a franchise existing between the manufacturer, factory branch, distributor, distributor branch, *importer,* or *any* representative of ~~the listed~~ *any of these* persons or entities and the new motor vehicle dealer or transferee of a new motor vehicle dealer; or

(B) threatening to withhold, delay, or disrupt the receipt of new motor vehicles or any motor vehicle parts or supplies ordered by the new motor vehicle dealer or transferee of a new motor vehicle dealer from the manufacturer, factory branch, distributor, distributor branch, importer, or *any* representative or agent of ~~the listed~~ *any of these persons or* entities;

(b) delay, refuse, or fail to deliver new motor vehicles in a reasonable time in a reasonable quantity relative to the new motor vehicle dealer's or transferee of a new motor vehicle dealer's facilities and sales potential after accepting an order from a new motor vehicle dealer or transferee of a new motor vehicle dealer if the new motor vehicles are publicly advertised as being available for immediate delivery;

(c) impose unreasonable restrictions on the assertion of legal or equitable rights on the new motor vehicle dealer or transferee of a new motor vehicle dealer or franchise of a new motor vehicle dealer or transferee of a new motor vehicle dealer regarding transfer; sale; right to renew; termination; discipline; noncompetition covenants; site control, whether by sublease, collateral pledge of lease, or otherwise; or compliance with subjective standards; or

(d) notwithstanding the terms, provisions, or conditions of any agreement or franchise, use or consider the new motor vehicle dealer's or transferee of a new motor vehicle dealer's performance relating to the sale of new motor vehicles or ability to satisfy any minimum sales or market share quota or responsibility relating to the sale of new motor vehicles, parts, or service contracts in determining:

(i) eligibility to purchase program, certified, or other used motor vehicles;

(ii) the volume, type, or model of program, certified, or other used motor vehicles that the new motor vehicle dealer or transferee of a new motor vehicle dealer is eligible to purchase;

(iii) the price or prices of any program, certified, or other used motor vehicles that the new motor vehicle dealer or transferee of a new motor vehicle dealer is eligible to purchase; or

(iv) the availability or amount of any discount, credit, rebate, or sales incentive that the new motor vehicle dealer or transferee of a new motor vehicle dealer is eligible to receive for the purchase of any program, certified, or other used motor vehicles.

(2) *(a)* There is no violation of subsection (1)(a)(iii) or (1)(b) if a failure on the part of the manufacturer, factory branch, distributor, ~~or~~ distributor branch*, or importer* is beyond the control of the listed persons or entities.

*(b) (i) Subsection (1)(a)(v) does not apply to goods or services specifically eligible for reimbursement of over one-half the cost of the goods or services pursuant to a franchisor or distributor program or incentive granted to the franchisee on reasonable, written terms.*

*(ii) For the purposes of subsection (1)(a) and this subsection (2)(b), "goods" do not include:*

*(A) moveable displays, brochures, or promotional materials containing material subject to the intellectual property rights of a franchisor or parts to be used in repairs under warranty obligations of a franchisor; or*

*(B) special tools or training required by the franchisor.*

(3) (a) Except as provided in subsection (3)(b) or (3)(c), a manufacturer ~~of new motor vehicles~~, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may not own or operate, directly or indirectly, a motor vehicle dealership in Montana that is for sale or has been for sale under a franchise agreement with a new motor vehicle dealer in Montana.

(b) If there is no independent person available to own and operate a motor vehicle dealership in a manner that is consistent with the public interest, a manufacturer ~~of new motor vehicles~~, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may own and operate a motor vehicle dealership for a temporary period, not to exceed 1 year, during the transition from one owner of the dealership to another. Approval of the sale may not be unreasonably withheld by the manufacturer.

(c) A manufacturer ~~of new motor vehicles~~, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may own an interest in a motor vehicle dealership but may not operate the dealership unless a manufacturer ~~of new motor vehicles~~, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities has a bona fide business relationship with an independent person who is not a franchisor or a franchisor's agent or affiliate, who has made an investment that is subject to loss in the dealership, and who reasonably expects to acquire full ownership of the dealership on reasonable terms and conditions."

**Section 4. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved April 22, 2013

# CHAPTER NO. 274

[SB 290]

AN ACT PROVIDING A PROCESS FOR NOTIFICATION OF NEARBY MUNICIPAL PROPERTY OWNERS WHEN A CHANGE IN USE IN CERTAIN COUNTY ZONING DISTRICTS OCCURS; AND REQUIRING THE COUNTY TO HOLD A PUBLIC HEARING UNDER CERTAIN CIRCUMSTANCES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Wholly surrounded county property — change of use — hearing.** (1) If a county parcel for which zoning regulations have been adopted is wholly surrounded by municipal property and a change of an allowed use in the county zoning district occurs, the county governing body shall notify the municipality and all owners of municipal property within 300 feet of the county property of the change of use.

(2) Upon request of either the municipality or at least 10% of the property owners in the municipality who have received the notice, the county governing body shall hold a hearing on the change of use.

(3) If the county governing body determines, based on testimony provided at the hearing, that the regulations in the county district are no longer as compatible as possible with the municipal zoning ordinances as provided in 76-2-203(3), the county governing body may initiate a revision to the zoning district or amendments to the regulations as provided in this part.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 76, chapter 2, part 2, and the provisions of Title 76, chapter 2, part 2, apply to [section 1].

Approved April 22, 2013

# CHAPTER NO. 275

[HB 61]

AN ACT TO ADD GAMBLING DEPENDENCE FOR PURPOSES OF ADDICTION COUNSELOR LICENSURE LAWS; AND AMENDING SECTION 37-35-102, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 37-35-102, MCA, is amended to read:

**"37-35-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Accredited college or university" means a college or university accredited by a regional or national accrediting association for institutions of higher learning.

(2) "Addiction" means the condition or state in which an individual is physiologically or psychologically dependent upon alcohol or other drugs. The term includes chemical dependency as defined in 53-24-103.

(3) "Department" means the department of labor and industry provided for in 2-15-1701.

(4) "Licensed addiction counselor" means a person who has the knowledge and skill necessary to provide the therapeutic process of addiction *and gambling dependence impulse control disorder* counseling and who is licensed under the provisions of this chapter."

Approved April 24, 2013

# CHAPTER NO. 276

[HB 86]

AN ACT CREATING THE STRENGTHENING CAREER AND TECHNOLOGY STUDENT ORGANIZATIONS PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. State-level strengthening career and technology student organizations.** (1) There is a state-level strengthening career and technology student organizations program.

(2) The purposes of the program are to:

(a) strengthen Montana's career and technology student organizations by increasing graduation rates, enhancing student leadership opportunities, developing workforce skills, and facilitating transitions to postsecondary education and employment for all participating students;

(b) ensure alignment of activities of local career and technology student organizations with nationally affiliated programs and activities; and

(c) provide a base of funding for the statewide coordination of state-approved career and technology student organizations.

(3) To be eligible for funding under this section, each state-approved career and technology student organization must be affiliated with a respective national career and technology student organization and be appropriately incorporated as a Montana nonprofit organization in compliance with state law and regulations regarding operations and financial reporting by May 1, 2013.

(4) The superintendent of public instruction shall distribute funds appropriated for grants to state-approved career and technology student organizations by November 1. Each grant recipient must receive a base amount of funding to support the position of state director for the organization.

(5) The superintendent of public instruction shall supervise and coordinate the program by establishing procedures and criteria for review and approval of grants to state-approved career and technology student organizations.

(6) Proposals submitted to the superintendent of public instruction by career and technology student organizations must contain:

(a) a program description, including measurable objectives;

(b) evidence of hiring a state director and a plan for expanding student leadership skills;

(c) evidence of appropriate activities that will serve to achieve the program objectives; and

(d) a method to evaluate the effectiveness of the program.

(7) Career and technology student organizations may request assistance from the staff of the superintendent of public instruction in formulating program proposals.

(8) Additional or remaining funds appropriated for the purposes of this section may be allocated to state-approved career and technology student organizations pursuant to policies adopted under 20-7-301.

(9) As used in this section, "career and technology student organization" means an organization for students enrolled in a state-approved career and technology program that engages in career and technology education activities as an integral part of the instructional program.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 20, chapter 7, part 3, and the provisions of Title 20, chapter 7, part 3, apply to [section 1].

**Section 3. Effective date.** [This act] is effective July 1, 2013.

Approved April 24, 2013

# CHAPTER NO. 277

[HB 116]

AN ACT GENERALLY REVISING THE MONTANA DEFERRED DEPOSIT LOAN ACT; EXTENDING THE TIME TO REQUEST A HEARING; ADDING PENALTIES INCLUDING FORFEITURE OF LOAN PRINCIPAL FOR LOANS MADE BY UNLICENSED PERSONS; ELIMINATING THE CAP ON CIVIL PENALTIES FOR A SINGLE ADMINISTRATIVE ACTION; REVISING LICENSING AND REPORTING REQUIREMENTS; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO PARTICIPATE IN A NATIONWIDE LICENSING SYSTEM FOR PURPOSES OF LICENSING DEFERRED DEPOSIT LOAN LICENSEES; GRANTING RULEMAKING AUTHORITY; AMENDING SECTIONS 31-1-705, 31-1-706, 31-1-707, 31-1-712, 31-1-713, AND 31-1-714, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 31-1-705, MCA, is amended to read:

**"31-1-705. License — application requirements — business locations.** (1) A person may not engage in or offer to engage in the business of making deferred deposit loans unless licensed by the department. A license may be granted to a person located within the state or to a person located outside of the state who uses the internet, facsimiles, or third persons to conduct transactions with consumers in this state.

(2) An applicant for a license to engage in the business of making deferred deposit loans shall pay to the department a license application fee of $500. *The department may direct that applicants remit fees to the department through a nationwide licensing system.*

(3) The application for licensure must be ~~in writing, under oath, and~~ in the form *and submitted in the manner* ~~prescribed by~~ *that* the department *directs*. ~~The application must contain:~~

~~(a) the name of the applicant;~~

~~(b) the date of formation if a business entity;~~

~~(c) the physical address of each deferred deposit loan office to be operated by the applicant;~~

~~(d) the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees, and principal officers; and~~

~~(e) any other pertinent information that the department may require.~~

(4) ~~A license may not be issued for longer than 1 year. The license year must coincide with the calendar year, and the license fee for any period less than 6 months is $250.~~ *The license year is the calendar year, and all licenses expire on December 31 of each year.*

(5) Each licensee shall post a bond in the amount of $10,000 for each location *at or from which deferred deposit loan transactions are conducted with consumers in this state*. The bond must continue in effect for 2 years after the licensee ceases operation in the state. The bond must be available to pay damages *authorized under this part* ~~and penalties~~ to consumers harmed by any violation of this part *and to pay civil penalties, restitution, and costs ordered by the department pursuant to 31-1-712 for any violation of this part*.

(6) More than one place of business may not be maintained under the same license~~, but the department may issue more than one license to the same~~

~~licensee upon compliance with the provisions of this section governing issuance of a single license~~. *A person shall obtain a license for the person's principal place of business and a separate branch license for each additional place of business or location at or from which deferred deposit loan transactions are conducted with consumers in this state.*"

**Section 2.** Section 31-1-706, MCA, is amended to read:

**"31-1-706. License renewal fee.** (1) A person licensed under 31-1-705 shall pay~~, on or before December 1 of each year, a~~ *an annual* license renewal fee of $500 for each license that the person holds under this part.

(2) ~~Failure to pay any yearly license renewal fee required by this section within the time prescribed will result in the automatic revocation of the license subject to renewal.~~ *The department may direct that fees due the department under subsection (1) be remitted to the department through a nationwide licensing system.*"

**Section 3.** Section 31-1-707, MCA, is amended to read:

**"31-1-707. Denial of license and license renewal.** (1) (a) Except as provided in subsection (1)(b), the department shall deny any new license or refuse to renew any license if:

(i) the applicant does not meet the qualifications stated in this part or in rules adopted pursuant to this part;

(ii) the department finds that the criminal history of any employee of the applicant at the time of application or renewal demonstrates any conviction involving fraud or financial dishonesty or if the department's findings show civil judgments involving fraudulent or dishonest financial dealings;

(iii) the financial responsibility, experience, character, and general fitness of the applicant do not warrant the belief that the business will be operated lawfully and fairly and within the provisions of this part;

(iv) the applicant does not have unencumbered assets of at least $25,000 for each location to be operated by the applicant;

(v) the applicant has not provided a sworn statement that the applicant will not in the future, directly or indirectly, use a criminal process to collect the payment of deferred deposit loans or any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default;

(vi) other information that the department considers necessary has not been provided; or

(vii) the applicant makes any material misstatement of fact or any material omission of fact in the application.

(b) A denial is not required pursuant to subsection (1)(a)(ii) if the department finds that the applicant dismissed the employee promptly upon learning of the employee's conviction involving fraud or financial dishonesty or of civil judgments involving fraudulent or dishonest financial dealings by the employee.

(2) The department shall provide written notice to the applicant of the denial or refusal, setting forth in the notice the grounds upon which the denial or refusal is based.

(3) The applicant has the right to a hearing under the Montana Administrative Procedure Act on any denial or refusal to issue a license. The request for a hearing must be made within ~~10~~ *14* days of the date of receipt of the written notice of denial or refusal.

(4) An applicant whose application for licensure or renewal has been denied or refused may not reapply for 1 year following the denial or refusal."

**Section 4.** Section 31-1-712, MCA, is amended to read:

**"31-1-712. License revocation or suspension — restitution — penalty.** (1) The department shall provide a ~~10-day~~ *14-day* written notice ~~of a proposed violation~~ that includes a statement of the alleged violation and provision for a hearing or an opportunity for hearing, as provided in the Montana Administrative Procedure Act. The notice must be based on a finding that any person, licensee, or officer, agent, employee, or representative, whether licensed or unlicensed, of the person or licensee has violated any of the provisions of this part, has failed to comply with the rules, regulations, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, has furnished false information to the department, or has operated without a required license. The department may impose a civil penalty not to exceed $1,000 for each violation ~~and not to exceed $5,000 for each administrative action~~ and may issue an order revoking or suspending the right of the person or licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee or to engage in the business of making deferred deposit loans. In addition, the department may order restitution to borrowers and reimbursement for the department's cost in bringing the administrative action.

*(2) In addition to the penalties in subsection (1), any deferred deposit loan made by an unlicensed person is void, and the unlicensed person may not directly or indirectly collect, receive, or retain any loan principal, interest, fees, or other charges related to the loan.*

~~(2)~~*(3)* All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or, in the case of an unlicensed business, to the last-known address of record.

~~(3)~~*(4)* A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

~~(4)~~*(5)* The department may reinstate any suspended or revoked license if there is not a fact or condition existing at the time of reinstatement that would have justified the department's refusal to originally issue the license. If a license has been suspended or revoked for cause, an application may not be made for the issuance of a new license or the reinstatement of a suspended or revoked license for a period of 6 months from the date of suspension or revocation.

~~(5)~~*(6)* All civil penalties collected pursuant to this section must be deposited in the state general fund."

**Section 5.** Section 31-1-713, MCA, is amended to read:

**"31-1-713. Complaint procedure.** (1) The department shall maintain*, either directly or indirectly through a nationwide licensing system,* a list of licensees that is available to *and accessible by* interested persons and ~~to~~ the general public. The department shall also establish by rule a procedure under which an aggrieved consumer or any member of the public may file a complaint against a licensee or an unlicensed person who violates any provision of this part.

(2) The department may hold hearings, subject to the contested case provisions of Title 2, chapter 4, part 6, upon the request of a party to the complaint, make findings of fact or conclusions of law, issue cease and desist

orders, refer the matter to the appropriate law enforcement agency for prosecution for a violation of this part, seek injunctive or other relief in district court, or suspend or revoke a license granted under this part."

**Section 6.** Section 31-1-714, MCA, is amended to read:

**"31-1-714. Information and annual reports.** (1) Each licensee shall keep and use books, accounts, and records that will enable the department to determine if the licensee is complying with the provisions of this part and maintain any other records required by the department. The department is authorized to examine the records at any reasonable time. The records must be kept for 2 years following the last entry on a loan and must be kept according to generally accepted accounting procedures that include an examiner being able to review the recordkeeping and reconcile each deferred deposit loan with documentation maintained in the consumer's loan file records.

(2) Each licensee shall ~~file, on forms prescribed by the department,~~ *submit* an annual report with the department on ~~or before March 31 for the 12-month period in the preceding year ending as of December 31~~ *the date and in the form and manner that the department directs regarding the licensee's deferred deposit loan activity with consumers in this state during the preceding calendar year*. The report must ~~disclose in detail and under appropriate headings~~ *contain the following information*:

(a) the resources, assets, and liabilities of the licensee at the beginning and the end of the period;

(b) the income, expense, gain, loss, and balance sheets;

(c) the total number of deferred deposit loans made in the year ending as of December 31 of the previous year, including:

(i) the number of individual consumers with 12 or fewer new deferred deposit loans; and

(ii) the number of individual consumers with 13 or more new deferred deposit loans;

(d) the average deferred deposit loan amount, average annual interest percentage rate, and average deferred deposit loan term;

(e) the number of deferred deposit loans rescinded;

(f) the total number of deferred deposit loans outstanding as of December 31 of the previous year;

(g) the minimum and maximum amount of checks for which deposits were deferred in the year ending as of December 31 of the previous year;

(h) the total number and dollar amount of returned checks, the total number and dollar amount of checks recovered, and the total number and dollar amount of checks charged off during the year ending as of December 31 of the previous year;

(i) the total number and dollar amount of agreements involving electronic transactions or deductions, the total number and dollar amount of electronic deductions made by the licensee, and the total number and dollar amount of electronic deductions for insufficient funds charged off during the year ending as of December 31 of the previous year; and

(j) verification that the licensee has not used a criminal process or caused a criminal process to be used in the collection of any deferred deposit loans or used any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default during the year ending as of December 31 of the previous year.

(3) A report must be *executed by an individual representative of the licensee in the manner the department may direct, and the department may require that the report be executed in conformance with any protocols of a nationwide licensing system* ~~verified by the oath or affirmation of the owner, manager, or president of the deferred deposit lender~~.

(4) (a) If a licensee conducts another business or is affiliated with other licensees under this part or if any other situation exists under which allocations of expense are necessary, the licensee shall make the allocation according to appropriate and reasonable accounting principles as approved by the department.

(b) Information about any other business conducted on the same premises where deferred deposit loans are made must be provided as required by the department.

(5) Each licensee shall file a copy of the disclosure documents described in 31-1-721 with the department prior to the date of commencement of business at each location, at the time any changes are made to the documents, and annually upon renewal of the license. These documents must be available to interested parties and to the general public through the department."

**Section 7. Department authorized to participate in nationwide licensing system for purposes of licensing deferred deposit loan licensees — rulemaking.** (1) The department may participate in a nationwide licensing system for licensing purposes under this part and may require deferred deposit loan license applicants to apply for licensure in the manner that the department may direct on applications approved by the nationwide licensing system.

(2) The department may establish rules that are necessary to comply with the nationwide licensing system protocols and procedures pertaining to fees, renewal dates, amending or surrendering a license, and any other activity necessary for participation in the nationwide licensing system.

(3) The department's portion of the licensing fees collected through the nationwide licensing system must be deposited into the department's account in the state special revenue fund for use in the administration of this part.

**Section 8. Codification instruction.** [Section 7] is intended to be codified as an integral part of Title 31, chapter 1, part 7, and the provisions of Title 31, chapter 1, part 7, apply to [section 7].

**Section 9. Effective date.** [This act] is effective on passage and approval.

Approved April 24, 2013

# CHAPTER NO. 278

[HB 118]

AN ACT REPEALING THE MONTANA TITLE LOAN ACT; AMENDING SECTIONS 31-1-106, 31-1-111, 31-1-112, 31-1-401, AND 32-5-103, MCA; REPEALING SECTIONS 31-1-801, 31-1-802, 31-1-803, 31-1-804, 31-1-805, 31-1-810, 31-1-811, 31-1-812, 31-1-813, 31-1-815, 31-1-816, 31-1-817, 31-1-818, 31-1-819, 31-1-820, 31-1-821, 31-1-822, 31-1-825, 31-1-826, 31-1-827, 31-1-828, 31-1-829, 31-1-841, 31-1-842, AND 32-5-102, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 31-1-106, MCA, is amended to read:

**"31-1-106. Legal interest.** (1) Except as otherwise provided by the Uniform Commercial Code, 31-1-111, and 31-1-112, ~~or 31-1-817,~~ unless there is an express contract in writing fixing a different rate or a law or ordinance or resolution of a public body fixing a different rate on its obligations, interest is payable on all money at the rate of 10% a year after it becomes due on:

(a) any instrument of writing, except a judgment;

(b) an account stated;

(c) money lent or due on any settlement of accounts from the date on which the balance is ascertained; and

(d) money received for the use of another person and detained from that person.

(2) In the computation of interest for a period of less than 1 year, 365 days constitute a year."

**Section 2.** Section 31-1-111, MCA, is amended to read:

**"31-1-111. Definition of regulated lender.** The term "regulated lender", as used in 31-1-112 and 31-1-116, means:

(1) a bank, building and loan association, savings and loan association, trust company, credit union, credit association, consumer loan licensee, deferred deposit loan licensee, ~~title loan licensee,~~ residential mortgage lender licensee, development corporation, bank holding company, or mutual or stock insurance company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by:

(a) an agency of the state of Montana; or

(b) an agency of the federal government;

(2) a subsidiary of an entity described in subsection (1);

(3) a Montana state agency or a federal agency that is authorized to lend money;

(4) a corporation or other entity established by congress or the state of Montana that is owned, in whole or in part, by the United States or the state of Montana and that is authorized to lend money."

**Section 3.** Section 31-1-112, MCA, is amended to read:

**"31-1-112. Interest rate limitation exemption — regulated lenders — merchant finance.** (1) A regulated lender, except for a deferred deposit loan licensee~~, title loan licensee,~~ or consumer loan licensee, is exempt from all limitations on the rate of interest that it may charge and is exempt from the operation and effect of all usury statutes.

(2) A finance operation that finances transactions between merchants, as defined in 30-2-104, is also exempt from usury limits."

**Section 4.** Section 31-1-401, MCA, is amended to read:

**"31-1-401. Interest pawnbrokers may receive — civil enforcement — prohibited activities.** (1) A person may not carry on the business of pawnbroker or junk dealer by receiving goods pawned or in pledge for loans at any rate of interest above 10% a year without first obtaining a license. A pawnbroker or junk dealer or the pawnbroker's or junk dealer's employees or agents may not charge a fee of more than 25% of the amount of the loan for a 30-day period. The fee for extending a pawn agreement for 30 days may not exceed 25% of the amount of the loan. For purposes of this section, a fee includes

all costs or fees charged, including but not limited to interest, commission, discount, storage, care of property, and purchase option.

(2) The taking, receiving, reserving, or charging of a fee greater than that allowed under subsection (1) is considered a forfeiture of a sum double the amount of the fee for storage or caring that was agreed to be paid.

(3) (a) When a rate or charge greater than that provided for in subsection (1) has been paid, the person by whom it has been paid may recover from the pawnbroker or junk dealer reasonable attorney fees and an amount double the amount of the fee paid.

(b) An action under this subsection (3) must be brought within 2 years after the payment of the fee. Before a suit may be brought, the party bringing suit shall make written demand for return of the fee paid.

(4) Unless licensed as a consumer loan licensee~~,~~ *or a* deferred deposit loan licensee, ~~or title loan licensee,~~ a pawnbroker or junk dealer may not:

(a) cash or advance money for a postdated or deferred presentment check in exchange for a fee or finance charge;

(b) use a check, authorization for electronic access, or other method of access to a deposit account, savings account, or other financial or asset account as a condition of or security for an extension of credit;

(c) receive the title to a motor vehicle for the purpose of a pawn transaction or in pledge for a loan; or

(d) engage in any device or subterfuge intended to evade the requirements of this chapter, including assisting a borrower to obtain a loan at a rate of interest prohibited by Montana law, making loans disguised as personal property sales and leaseback transactions, or disguising loan proceeds as cash rebates for the pretextual installment sale of goods or services.

(5) In addition to other penalties provided by law, a violation of subsection (4) is a violation of Title 30, chapter 14, part 1."

**Section 5.** Section 32-5-102, MCA, is amended to read:

**"32-5-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Balloon payment" means any repayment option in which the borrower is required to repay the entire amount of any outstanding balance as of a specific date or at the end of a specified term and the aggregate amount of the required minimum periodic payments would not fully amortize the outstanding balance by the specific date or at the end of the loan term.

(2) (a) "Consumer loan" means credit offered or extended to an individual primarily for personal, family, or household purposes, including loans for personal, family, or household purposes that are not primarily secured by a mortgage, deed of trust, trust indenture, or other security interest in real estate.

(b) Consumer loans do not include:

(i) deferred deposit loans provided for in Title 31, chapter 1, part 7;

~~(ii) title loans provided for in Title 31, chapter 1, part 8;~~ or

~~(iii)~~*(ii)* residential mortgage loans as defined in 32-9-103.

(3) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(4) "Interest" means the compensation allowed by law or fixed by the parties for the use or forbearance or detention of money and includes loan origination fees, points, and prepaid finance charges, as defined in 12 CFR 226.2.

(5) "License" means a license provided for by this chapter.

(6) "Licensee" means the person holding a license.

(7) "Person" means individuals, partnerships, associations, corporations, and all legal entities."

**Section 6.** Section 32-5-103, MCA, is amended to read:

**"32-5-103. Engaging in business of making consumer loans restricted.** (1) Except as provided in subsection (5), a person may not engage in the business of making consumer loans in any amount and contract for, charge, or receive directly or indirectly on or in connection with any loan any compensation, whether for interest, fees, other consideration, or expense, except as provided in and authorized by this chapter. The provisions of this chapter do not apply to any exempted person.

(2) A licensee may sell its business and assets to a bank, building and loan association, savings and loan association, trust company, credit union, credit association, development credit corporation, other licensee, or bank holding company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by an agency of the state of Montana or an agency of the federal government. All contracts for loans and all other contracts entered into by the licensee pursuant to the provisions of this chapter that are sold and transferred to an acquiring organization continue to be governed by the provisions of this chapter.

(3) The provisions of subsection (1) apply to any person who seeks to evade its applications by any device, subterfuge, or pretense.

(4) Any loan made or collected in violation of subsection (1) by a person other than a licensee or a person exempt under subsection (5) is void, and the person does not have the right to collect, receive, or retain any principal, interest, fees, or other charges.

(5) A consumer loan licensee or a person who seeks a regulated lender exemption under 31-1-112 as a consumer loan licensee shall fully comply with this chapter. A regulated lender as defined in 31-1-111, other than a consumer loan licensee or a person who makes fewer than four consumer loans a year with the person's own funds and does not represent that the person is a licensee, who complies with the provisions of Title 31, chapter 1, part 1, is not required to comply with this chapter. A deferred deposit lender, as defined in 31-1-703, who complies with the provisions of Title 31, chapter 1, part 7, is not required to comply with this chapter. ~~A title lender, as defined in 31-1-803, who complies with the provisions of Title 31, chapter 1, part 8, is not required to comply with this chapter.~~"

**Section 7. Repealer.** The following sections of the Montana Code Annotated are repealed:

31-1-801. Short title.

31-1-802. Purpose — rules — fees.

31-1-803. Definitions.

31-1-804. Licensure of title lenders

31-1-805. Qualifications for licensure.

31-1-810. Examinations — fees.

31-1-811. License revocation or suspension — unlicensed activity — restitution — penalty.

31-1-812. Complaint procedure.

31-1-813. Investigations by department — subpoenas — oaths — examination of witnesses and evidence.

31-1-815. Information and annual reports.
31-1-816. Title loan requirements — liability of borrower — right of rescission — arbitration.
31-1-817. Interest rates — fees charged.
31-1-818. Title loan agreements — required disclosures.
31-1-819. Required disclosure pamphlet.
31-1-820. Redemption of certificate of title — failure to take possession.
31-1-821. Records of title loan agreements.
31-1-822. Safekeeping of certificates of title — liability insurance — liability.
31-1-825. Prohibited acts.
31-1-826. Civil remedies.
31-1-827. Criminal penalties.
31-1-828. Denial of license and license renewal.
31-1-829. Violation of specified federal laws — rulemaking authority.
31-1-841. Cease and desist orders.
31-1-842. Injunctions — receivers.

**Section 8. Effective date.** [This act] is effective December 31, 2013.

Approved April 24, 2013

# CHAPTER NO. 279

[HB 258]

AN ACT REVISING CIRCUMSTANCES UNDER WHICH A LOCAL GOVERNMENT IS CONSIDERED TO HAVE COMPLIED WITH CERTAIN REQUIREMENTS FOR PUBLICATION OF NOTICE; AMENDING SECTIONS 7-1-2121 AND 7-1-4127, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-1-2121, MCA, is amended to read:

**"7-1-2121. Publication and content of notice — proof of publication.** Unless otherwise specifically provided, whenever a local government unit other than a municipality is required to give notice by publication, the following applies:

(1) Publication must be in a newspaper meeting the qualifications of subsections (2) and (3), except that in a county where a newspaper does not meet these qualifications, publication must be made in a qualified newspaper in an adjacent county. If there is no qualified newspaper in an adjacent county, publication must be made by posting the notice in three public places in the county, designated by resolution of the governing body.

(2) (a) The newspaper must:

(i) be of general circulation;

(ii) be published at least once a week;

(iii) be published in the county where the hearing or other action will take place; and

(iv) have, prior to July 1 of each year, submitted to the clerk and recorder a sworn statement that includes:

(A) circulation for the prior 12 months;

(B) a statement of net distribution;

(C) itemization of the circulation that is paid and that is free; and

(D) the method of distribution.

(b) A newspaper of general circulation does not include a newsletter or other document produced or published by the local government unit.

(3) In the case of a contract award, the newspaper must have been published continuously in the county for the 12 months preceding the awarding of the contract.

(4) If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.

(5) The notice must be published twice, with at least 6 days separating each publication.

(6) The published notice must contain:

(a) the date, time, and place of the hearing or other action;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring notice by publication.

(7) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 through 2-3-107.

(8) Proof of the publication or posting of any notice may be made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the person posting the notice.

*(9) If the newspaper fails to publish a second notice, the local government unit must be considered to have met the requirements of this section as long as the local government unit submitted the required information prior to the submission deadline and the notice was posted in three public places in the county that were designated by resolution and, if the county has an active website, was posted on the county's website at least 6 days prior to the hearing or other action for which notice was required.*"

**Section 2.** Section 7-1-4127, MCA, is amended to read:

**"7-1-4127. Publication of notice — content — proof.** (1) When a municipality is required to publish notice, publication must be in a newspaper, except that in a municipality with a population of 500 or less or in which a newspaper is not published, publication may be made by posting in three public places in the municipality that have been designated by ordinance.

(2) The newspaper must:

(a) be of general circulation;

(b) be published at least once a week;

(c) be published in the county where the municipality is located; and

(d) have, prior to July 1 of each year, submitted to the city clerk a sworn statement that includes:

(i) circulation for the prior 12 months;

(ii) a statement of net distribution;

(iii) itemization of paid circulation and circulation that is free; and

(iv) the method of distribution.

(3) A newspaper of general circulation does not include a newsletter or other document produced or published by the municipality.

(4) In the case of a contract award, the newspaper must have been published continuously in the county for the 12 months preceding the awarding of the contract.

(5) In a county where a newspaper does not meet the qualifications in subsection (2), publication must be made in a qualified newspaper in an adjacent county.

(6) If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.

(7) The notice must be published twice, with at least 6 days separating each publication.

(8) The published notice must contain:

(a) the date, time, and place of the hearing or other action;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring notice by publication.

(9) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 through 2-3-107.

(10) Proof of the publication or posting of any notice may be made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the person posting the notice.

*(11) If the newspaper fails to publish a second notice, the municipality must be considered to have met the requirements of this section as long as the municipality submitted the required information prior to the submission deadline and the notice was posted in three public places in the municipality that were designated by ordinance and, if the municipality has an active website, was posted on the municipality's website at least 6 days prior to the hearing or other action for which notice was required.*"

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved April 24, 2013

# CHAPTER NO. 280

[HB 286]

AN ACT EXPANDING THE ELIGIBILITY FOR TUITION AND FEE WAIVERS TO INCLUDE RESIDENTS OF MONTANA WHO ARE ENROLLED MEMBERS OF A STATE-RECOGNIZED OR FEDERALLY RECOGNIZED INDIAN TRIBE LOCATED WITHIN THE BOUNDARIES OF THE STATE OF MONTANA; AMENDING SECTION 20-25-421, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-25-421, MCA, is amended to read:

**"20-25-421. Charges for tuition — waivers.** (1) The regents may prescribe tuition rates, matriculation charges, and incidental fees for students in institutions under their jurisdiction.

(2) The regents may:

(a) waive nonresident tuition for selected and approved nonresident students, not to exceed at any unit 2% of the full-time equivalent enrollment at that unit during the preceding year; however, when necessary, tuition may be waived in excess of 2% of unit enrollment for nonresident students who enroll under provisions of any WICHE-sponsored state reciprocal agreements that provide for the payment, when required, of the student support fee by the reciprocal state;

(b) waive resident tuition for students at least 62 years of age;

(c) waive tuition and fees for:

(i) persons ~~of one-fourth Indian blood or more~~ *who have one-fourth Indian blood or more or are enrolled members of a state-recognized or federally recognized Indian tribe located within the boundaries of the state of Montana and* who have been bona fide residents of Montana for at least 1 year prior to enrollment in the Montana university system;

(ii) persons designated by the department of corrections pursuant to 52-5-112 or 53-1-214;

(iii) residents of Montana who served with the armed forces of the United States in any of its wars and who were honorably discharged from military service;

(iv) children of residents of Montana who served with the armed forces of the United States in any of its wars and who were killed in action or died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States;

(v) the spouses or children of residents of Montana who have been declared to be prisoners of war or missing in action; or

(vi) the spouse or children of a Montana national guard member who was killed or died as a result of injury, disease, or other disability incurred in the line of duty while serving on state active duty;

(d) waive tuition charges for qualified survivors of Montana firefighters or peace officers killed in the course and scope of employment. For purposes of this subsection, a qualified survivor is a person who meets the entrance requirements at the state university or college of the person's choice and is the surviving spouse or child of any of the following who were killed in the course and scope of employment:

(i) a paid or volunteer member of a municipal or rural fire department;

(ii) a law enforcement officer as defined in 7-32-201; or

(iii) a full-time highway patrol officer.

(3) If funds are available after the waivers provided for in subsection (2), the regents may waive tuition for up to 5,000 credits each academic year."

**Section 2. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

**Section 3. Effective date.** [This act] is effective July 1, 2013.

Approved April 24, 2013

# CHAPTER NO. 281

[HB 313]

AN ACT REVISING SCHOOL TRUANCY LAWS; CLARIFYING CONSEQUENCES TO A TRUANT CHILD AND THE CHILD'S PARENT OR GUARDIAN; CLARIFYING THAT A HABITUALLY TRUANT CHILD MAY BE REFERRED TO YOUTH COURT; AMENDING SECTIONS 20-5-104, 20-5-105, 20-5-106, AND 41-5-103, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-5-104, MCA, is amended to read:

**"20-5-104. Attendance officer.** In order to enforce the compulsory attendance provisions of this title, each district shall have at least one person serving as an attendance officer according to the following requirements:

(1) districts of the first ~~and second~~ class *and districts of the second class with a dropout rate higher than the statewide average dropout rate as calculated by the office of public instruction* shall ~~employ and~~ appoint one or more *of the district's staff as* attendance officers;

(2) districts of the *second class with a dropout rate at or below the statewide average dropout rate as calculated by the office of public instruction and districts of the* third class may ~~employ and~~ appoint ~~an~~ *one or more of the district's staff as* attendance ~~officer or may appoint a constable or other peace officer as an attendance officer~~ *officers*; or

(3) the county superintendent ~~shall~~ *must* be the attendance officer in *second-class or* third-class districts that do not appoint an attendance officer."

**Section 2.** Section 20-5-105, MCA, is amended to read:

**"20-5-105. Attendance officer — powers and duties.** The attendance officer of a district:

(1) must*, subject to district policy,* be vested with police powers, the authority to serve warrants, and the authority to enter places of employment of children in order to enforce the compulsory attendance provisions of this title;

(2) ~~shall~~ *may, subject to district policy,* take into custody any child subject to compulsory attendance who is not excused under the provisions of this title and conduct the child to the school in which the child is or should be enrolled;

(3) ~~shall~~ *may, subject to district policy,* do whatever else is required to investigate and enforce the compulsory attendance provisions of this title and the pupil attendance policies of the trustees;

(4) ~~shall~~ *may, subject to district policy,* institute proceedings against any parent, guardian, or other person violating the compulsory attendance provisions of this title;

(5) ~~shall~~ *may, subject to district policy,* keep a record of transactions for the inspection and information of the trustees and *shall* make reports in the manner and to whomever the trustees designate; and

(6) ~~shall~~ *may, subject to district policy,* perform any other duties prescribed by the trustees to preserve the morals and secure good conduct of the pupils of the district."

**Section 3.** Section 20-5-106, MCA, is amended to read:

**"20-5-106. Truancy.** *(1) For the purposes of this part "truant" or "truancy" means the persistent nonattendance without excuse, as defined by district policy,*

*for all or any part of a school day equivalent to the length of one class period of a child required to attend a school under 20-5-103.*

~~(1)~~*(2)* ~~Whenever the~~ *If an* attendance officer discovers a child *is* truant ~~from school or a child subject to compulsory attendance who is not enrolled in a school providing the required instruction and has not been excused under the provisions of this title, the officer shall~~*, the attendance officer may make a reasonable effort to* notify ~~in writing~~ the parent, guardian, or other person responsible for the care of the child that the continued truancy ~~or nonenrollment~~ of the child ~~will~~ *may* result in the ~~person's~~ prosecution *of the parent, guardian, or other person responsible for the care of the child* under the provisions of this section. If the child is ~~not enrolled and in attendance at a school or excused from school within 2 days after the receipt of the notice,~~ *discovered to be truant after the attendance officer has made a reasonable effort to notify the parent, guardian, or other person responsible for the care of the child,* the attendance officer ~~shall file a complaint against the person in a court of competent jurisdiction~~ *may require that the parent, guardian, or other person responsible for the care of the child and the child meet with an individual designated by the school district to formulate a truancy plan to address and resolve the truancy. If the parent, guardian, or other person responsible for the care of the child fails to meet with the designated individual or fails to uphold the responsibilities under the provisions of the truancy plan, the attendance officer may refer the matter to the prosecuting attorney in a court of competent jurisdiction for a determination regarding whether to prosecute the parent, guardian, or other person responsible for the care of the child*.

~~(2)~~*(3) (a)* If convicted, the person shall be fined not ~~less than $5 or~~ more than ~~$20.~~ *$100, ordered to perform up to 20 hours of community service,* ~~In the alternative, the person may be required~~ *or required* to give bond in the penal sum of $100, with sureties, conditioned ~~upon~~ *on* the person's agreement ~~to cause the enrollment of the child within 2 days in a school providing the courses of instruction required by this title and to cause the child to attend that school~~ *to cooperate with the district in implementing the truancy plan provided for in subsection (2)* for the remainder of the current school term.

*(b)* If a person ~~refuses to pay a fine and costs or to give a bond as ordered by the court,~~ *fails to comply with an order of the court issued under subsection (3)(a),* the person ~~shall~~ *may* be imprisoned in the county jail for a term of not ~~less than 10 days or~~ more than ~~30~~ *3* days.

*(4) (a) If the child is discovered by the attendance officer to be truant on 9 or more days or 54 or more parts of a day in 1 school year, the child may be referred to youth court as habitually truant under Title 41, chapter 5.*

*(b) Following a referral to youth court under subsection (4)(a), an attendance officer shall inform the youth court of any subsequent truancies by the child, and the youth court may find the child to be a youth in need of intervention pursuant to 41-5-103 and make any of the dispositions provided in 41-5-1512.*"

**Section 4.** Section 41-5-103, MCA, is amended to read:

**"41-5-103. Definitions.** As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Assessment officer" means a person who is authorized by the court to provide initial intake and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.

(4) "Commit" means to transfer legal custody of a youth to the department or to the youth court.

(5) "Correctional facility" means a public or private, physically secure residential facility under contract with the department and operated solely for the purpose of housing adjudicated delinquent youth.

(6) "Cost containment pool" means funds allocated by the department under 41-5-132 for distribution by the cost containment review panel.

(7) "Cost containment review panel" means the panel established in 41-5-131.

(8) "Court", when used without further qualification, means the youth court of the district court.

(9) "Criminally convicted youth" means a youth who has been convicted in a district court pursuant to 41-5-206.

(10) (a) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given.

(b) The term does not include a person who has only physical custody.

(11) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:

(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

(b) who has been placed on probation as a delinquent youth and who has violated any condition of probation.

(12) "Department" means the department of corrections provided for in 2-15-2301.

(13) (a) "Department records" means information or data, either in written or electronic form, maintained by the department pertaining to youth who are committed under 41-5-1513(1)(b) or who are under parole supervision.

(b) Department records do not include information provided by the department to the department of public health and human services' management information system or information maintained by the youth court through the office of court administrator.

(14) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for:

(a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case;

(b) contempt of court or violation of a valid court order; or

(c) violation of a youth parole agreement.

(15) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

(16) "Emergency placement" means placement of a youth in a youth care facility for less than 45 days to protect the youth when there is no alternative placement available.

(17) "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom a youth ordinarily lives.

(18) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through 41-5-1525.

(19) (a) "Formal youth court records" means information or data, either in written or electronic form, on file with the clerk of district court pertaining to a youth under the jurisdiction of the youth court and includes petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, and predispositional studies.

(b) The term does not include information provided by the youth court to the department of public health and human services' management information system.

(20) "Foster home" means a private residence licensed by the department of public health and human services for placement of a youth.

(21) "Guardian" means an adult:

(a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the youth; and

(b) whose status is created and defined by law.

(22) "Habitual truancy" means recorded *unexcused* absences of ~~10~~ *9* ~~days~~ or more *days or 54 or more parts of a day, whichever is less, in 1 school year* ~~of unexcused absences in a semester or absences without prior written approval of a parent or a guardian~~.

(23) (a) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility.

(b) The term does not include a jail.

(24) (a) "Informal youth court records" means information or data, either in written or electronic form, maintained by youth court probation offices pertaining to a youth under the jurisdiction of the youth court and includes reports of preliminary inquiries, youth assessment materials, medical records, school records, and supervision records of probationers.

(b) The term does not include information provided by the youth court to the department of public health and human services' management information system.

(25) (a) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest.

(b) The term does not include a colocated juvenile detention facility that complies with 28 CFR, part 31.

(26) "Judge", when used without further qualification, means the judge of the youth court.

(27) "Juvenile home arrest officer" means a court-appointed officer administering or supervising juveniles in a program for home arrest, as provided for in Title 46, chapter 18, part 10.

(28) "Law enforcement records" means information or data, either in written or electronic form, maintained by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this chapter.

(29) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise the individual's rights and duties as guardian unless otherwise authorized by the court entering the order.

(30) "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or spouse.

(31) (a) "Out-of-home placement" means placement of a youth in a program, facility, or home, other than a custodial parent's home, for purposes other than preadjudicatory detention.

(b) The term does not include shelter care or emergency placement of less than 45 days.

(32) (a) "Parent" means the natural or adoptive parent.

(b) The term does not include:

(i) a person whose parental rights have been judicially terminated; or

(ii) the putative father of an illegitimate youth unless the putative father's paternity is established by an adjudication or by other clear and convincing proof.

(33) "Probable cause hearing" means the hearing provided for in 41-5-332.

(34) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

(35) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to a consent adjustment, consent decree, or other youth court order.

(36) "Running away from home" means that a youth has been reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth.

(37) "Secure detention facility" means a public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

(38) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

(39) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(40) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-347.

(41) "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending a probable

cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment center, or shelter care facility.

(42) "State youth correctional facility" means the Pine Hills youth correctional facility in Miles City or the Riverside youth correctional facility in Boulder.

(43) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardians.

(44) "Victim" means:

(a) a person who suffers property, physical, or emotional injury as a result of an offense committed by a youth that would be a criminal offense if committed by an adult;

(b) an adult relative of the victim, as defined in subsection (44)(a), if the victim is a minor; and

(c) an adult relative of a homicide victim.

(45) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(46) "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1203.

(47) "Youth assessment center" means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth's family in addressing the youth's behavior.

(48) "Youth care facility" has the meaning provided in 52-2-602.

(49) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth or a youth in need of intervention and includes the youth court judge, juvenile probation officers, and assessment officers.

(50) "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of youth that is:

(a) (i) operated, administered, and staffed separately and independently of a jail; or

(ii) a colocated secure detention facility that complies with 28 CFR, part 31; and

(b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order.

(51) "Youth in need of intervention" means a youth who is adjudicated as a youth and who:

(a) commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense, including but not limited to a youth who:

(i) violates any Montana municipal or state law regarding alcoholic beverages; or

(ii) continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

(b) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention."

**Section 5. Effective date.** [This act] is effective July 1, 2013.

**Section 6. Applicability.** [This act] applies to school years beginning after July 1, 2013.

Approved April 24, 2013

# CHAPTER NO. 282

[HB 320]

AN ACT RENAMING THE OPTIONAL RETIREMENT PROGRAM; AND AMENDING SECTIONS 19-2-511, 19-3-112, 19-3-2101, 19-3-2106, 19-3-2112, 19-3-2113, 19-20-208, 19-20-302, 19-20-426, 19-20-621, 19-20-731, 19-21-101, 19-21-102, 19-21-211, AND 19-21-212, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 19-2-511, MCA, is amended to read:

**"19-2-511. Limitation of liability.** (1) The board shall exercise its fiduciary authority in the same manner that would be used by a prudent person acting in the same capacity who is familiar with the circumstances and in an enterprise of a similar character with similar aims.

(2) Plan fiduciaries are not liable for any loss to a participant's or beneficiary's account under a defined contribution plan or ~~an optional~~ *the university system* retirement program established pursuant to 19-21-101 that results from the participant's or beneficiary's exercise of control.

(3) Plan fiduciaries are not responsible for the acts or omissions of any employer or reporting agency or of any vendor providing services to the defined contribution plan or ~~optional~~ *the university system* retirement program. Nothing in this subsection limits the liability of any vendor for services required by contract.

(4) Plan fiduciaries are not liable for their reliance on the express provisions of the defined contribution plan or ~~optional~~ *the university system* retirement program.

(5) Plan fiduciaries are not liable for investment losses incurred in the defined contribution plan or ~~optional~~ *the university system* retirement program as a result of incorrect reporting by an employer or other reporting agency."

**Section 2.** Section 19-3-112, MCA, is amended to read:

**"19-3-112. Education fund established — allocation of employer contributions — educational program requirements.** (1) (a) The board shall establish an education fund to be used to educate and inform system members in a manner consistent with the provisions of this section.

(b) For the ongoing educational services and communication services established pursuant to this section, from the employer contributions made pursuant to 19-3-316, 0.04% of the compensation paid to all of the employer's employees who are members of the system must be allocated to the education fund established in subsection (1)(a). The board shall from time to time review the sufficiency of this amount and recommend to the legislature the adjustments that it considers appropriate.

(2) (a) The educational services must provide system members with impartial and balanced information about plan choices, benefits, and features.

The services must be provided in a variety of formats. Plan comparisons must, to the greatest extent possible, be based upon historical rates of return on investments or benefits available in each retirement plan.

(b) If educational services are conducted by a contractor, the board shall monitor the performance of the contract to ensure that the services are conducted in accordance with the contract, applicable law, and the rules of the board. A contractor hired to provide the educational program provided for in subsection (3) may not be the same entity contracted to provide other services for the defined contribution plan or the ~~optional~~ *university system* retirement program.

(3) The board shall offer an ongoing transfer educational program to provide new system members with information necessary to make informed plan choice decisions. The program must include but is not limited to information on:

(a) determining the amount of money available to transfer to the defined contribution plan;

(b) the features of and differences between the defined benefit plan and the defined contribution plan, both generally and specifically, as those differences may affect the member;

(c) the expected benefit available if the member were to retire under each of the retirement plans, based on appropriate alternative sets of assumptions;

(d) the rate of return from investments in the defined contribution plan that must be achieved to equal or exceed the expected monthly benefit payable to the member under the defined benefit plan, assuming the same time period in each plan;

(e) the historical rates of return for the investment alternatives available in the defined contribution plan;

(f) determining retirement income needs and comparing determined retirement income needs to each plan's possible or expected benefit;

(g) use of supplemental retirement savings programs to enhance retirement income;

(h) the plan choices available to employees of the university system pursuant to 19-3-2112 and the comparative benefits of each available plan; and

(i) payout options available in each of the retirement plans.

(4) Ongoing educational services and communication services must be provided after members have made their initial retirement plan choice. These services must continually provide members with information about their chosen plan, alternatives within their chosen plan, and decisions necessary for retirement preparation. The services must include but not be limited to information concerning:

(a) rights and conditions of membership;

(b) benefit features within the plan, options, and the effects of certain decisions;

(c) planning for retirement, including coordination of contributions and benefits with supplemental retirement savings programs;

(d) significant plan changes; and

(e) contribution rates and plan funding status.

(5) The board shall also establish a communication program to provide plan information to participating employers and the employer's personnel and payroll officers and to explain their respective responsibilities in conjunction with the retirement plans.

(6) This section does not prohibit a contracted plan vendor or vendors from providing system members with information and tools necessary to understand the available investment alternatives and to appropriately manage their selected retirement plan."

**Section 3.** Section 19-3-2101, MCA, is amended to read:

**"19-3-2101. Definitions.** Unless the context requires otherwise, as used in this part, the following definitions apply:

(1) "Member" means a person with a retirement account in the defined contribution plan.

~~(2) "Optional retirement program" means the retirement plan established by the board of regents under chapter 21 of this title.~~

~~(3)~~*(2)* "Plan" or "defined contribution plan" means the defined contribution retirement plan.

*(3) "University system retirement program" means the retirement plan established by the board of regents under Title 19, chapter 21.*"

**Section 4.** Section 19-3-2106, MCA, is amended to read:

**"19-3-2106. Limited contract right.** The statutory provisions governing the defined contribution plan and the ~~optional~~ *university system* retirement program are subject to amendment by the legislature. Employees choosing the defined contribution plan or the ~~optional~~ *university system* retirement program pursuant to this part do not have a contract right to the specific terms and conditions specified in statute on the date the employee's choice becomes effective."

**Section 5.** Section 19-3-2112, MCA, is amended to read:

**"19-3-2112. Plan choices for members employed by university system — amount available to transfer — effect on rights.** (1) If a member who is employed by the Montana university system is eligible to make an election under this part to transfer to the defined contribution plan, the employee may, instead of electing the defined contribution plan, elect to transfer membership to the university ~~system's optional~~ *system* retirement program provided for under *Title 19,* chapter 21 ~~of this title~~.

(2) Except as otherwise provided in this part, an election to transfer membership to the ~~optional~~ *university system* retirement program must be made in accordance with the following provisions:

(a) (i) A member employed by the university system who is an active member of the defined benefit plan on the effective date of the defined contribution plan may, within the 12-month period provided for in subsection (2)(b), elect to transfer to and become a member of the ~~optional~~ *university system* retirement program regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(ii) A member who was an inactive member of the defined benefit plan on the effective date of the defined contribution plan and who is hired or rehired into covered employment with the university system after that date may, within the 12-month period provided for in subsection (2)(b), elect to transfer to and become a member of the ~~optional~~ *university system* retirement program regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(iii) A member who is initially hired into covered employment with the university system on or after the effective date of the defined contribution plan may, within the 12-month period provided for in subsection (2)(b), elect to become a member of the ~~optional~~ *university system* retirement program

regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(b) Elections made pursuant to this section must be made on a form prescribed by the board and must be made within 12 months from the month that the employer properly reports the new or rehired member to the board.

(c) A member failing to make an election prescribed by this section remains a member of the defined benefit plan.

(d) An election under this section, including the default election pursuant to subsection (2)(c), is a one-time irrevocable election. Subject to 19-3-2113, this subsection (2)(d) does not prohibit a new election after an employee has terminated membership in the ~~optional~~ *university system* retirement program and returned to employment in a position covered under the system.

(e) A member in either the defined benefit plan or the ~~optional~~ *university system* retirement program who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.

(f) Except as provided in subsection (2)(g), a university employee in a position covered under the system may not simultaneously be a member of more than one retirement plan under *Title 19,* chapters 3 and 21 ~~of this title~~, but must be a member of the defined benefit plan, the defined contribution plan, or the ~~optional~~ *university system* retirement program as provided by applicable provisions of this title. The same period of service may not be credited in more than one retirement system or plan.

(g) A university system employee who is or has been a member of the ~~optional~~ *university system* retirement program and returns to or accepts covered employment other than with the university system may make an election pursuant to 19-3-2111. That election is valid only for covered employment other than with the university system.

(h) The provisions of this part do not prohibit the board from adopting rules to allow an eligible employee to elect the ~~optional~~ *university system* retirement program from the first day of covered employment.

(i) A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the ~~optional~~ *university system* retirement program unless the order is modified to apply under the ~~optional~~ *university system* retirement program.

(j) (i) A member of the defined benefit plan who is purchasing service credit through installment payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer membership to the ~~optional~~ *university system* retirement program unless the member completes or terminates the contract for purchase of service credit.

(ii) A member who files an election to transfer membership may make a lump-sum payment for up to the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of section 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to 19-2-708, must be made with after-tax dollars.

(iii) If a member who files an election to transfer fails to complete or terminate the contract for purchase of service credit by the end of the member's 12-month election window, the board shall terminate the service purchase contract and credit the member with the prorated amount of service credit purchased under the contract.

(3) For an employee electing to transfer membership to the ~~optional~~ *university system* retirement program, the board shall transfer to the ~~optional~~ *university system* retirement program the amount that the employee would have been able to transfer to the defined contribution plan under 19-3-2114.

(4) An election to become a member of the ~~optional~~ *university system* retirement program pursuant to this section is a waiver of all rights and benefits under the public employees' retirement system."

**Section 6.** Section 19-3-2113, MCA, is amended to read:

**"19-3-2113. Reinstatement of plan membership — purchase of prior service credit in defined benefit plan.** (1) (a) A member who terminates membership in the defined benefit plan, the defined contribution plan, or the ~~optional~~ *university system* retirement program after making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment in less than 24 months is a member of the plan that the member last selected and is not eligible for a new plan choice election.

(b) A member who terminated membership in the defined benefit plan, the defined contribution plan, or the ~~optional~~ *university system* retirement program after making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment after 24 months or more is eligible to make a plan choice election as though initially hired as provided for in 19-3-2111(1)(b).

(2) (a) An employee who returns to covered employment after terminating membership in the defined benefit plan, who is eligible to make a plan choice, and who elects to join the defined benefit plan pursuant to 19-3-2111 or 19-3-2112 may reinstate prior membership service and service credit as provided in 19-2-603.

(b) An employee who returns to covered employment after terminating membership in the defined contribution plan or the ~~optional~~ *university system* retirement program, who is eligible to make a plan choice, and who elects to join the defined benefit plan pursuant to 19-3-2111 or 19-3-2112 may purchase prior membership service and service credit by paying to the board the full actuarial cost of the service credit as of the latest actuarial valuation of the defined benefit plan. The member may not purchase membership service and service credit under this section in excess of the member's length of service in the defined contribution plan or the ~~optional~~ *university system* retirement program."

**Section 7.** Section 19-20-208, MCA, is amended to read:

**"19-20-208. Duties and liability of employer.** (1) Each employer shall:

(a) pick up the contribution of each employed member at the rate prescribed by 19-20-602 and transmit the contribution each month to the executive director of the retirement board;

(b) transmit to the executive director of the retirement board the employer's contribution prescribed by 19-20-605, at the time that the employee contributions are transmitted;

(c) keep records and, as required by the retirement board, furnish information to the board that is required in the discharge of the board's duties;

(d) upon the employment of a person who is required to become a member of the retirement system, inform the person of the rights and obligations relating to the retirement system;

(e) each month, report the name, social security number, time worked, and gross earnings of each retired member of the system who has been employed in a position that is reportable to the retirement system pursuant to 19-20-731;

(f) whenever applicable, inform an employee of the right to elect to participate in the ~~optional~~ *university system* retirement program under Title 19, chapter 21;

(g) at the request of the retirement board, certify the names of all persons who are eligible for membership or who are members of the retirement system;

(h) notify the retirement board of the employment of a person eligible for membership and forward the person's membership application to the board; and

(i) if the employer has converted to earned compensation amounts excluded from earned compensation, for each retiring member, certify to the board the amounts reported to the system in each of the 5 years preceding the member's retirement.

(2) An employer that fails to timely or accurately report the employment of, time worked by, or compensation paid to a retired member as required under subsection (1)(e) is jointly and severally liable with the retired member for repayment to the retirement system of retirement benefits paid to which the member was not entitled, plus interest."

**Section 8.** Section 19-20-302, MCA, is amended to read:

**"19-20-302. Active membership.** (1) Unless otherwise provided by this chapter, the following persons employed by an employer must be active members of the retirement system:

(a) a person who is a teacher, principal, or district superintendent as defined in 20-1-101;

(b) a person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system and who has not elected or is not required to participate in the ~~optional~~ *university system* retirement program under Title 19, chapter 21;

(c) a person employed as a speech-language pathologist, school nurse, professionally qualified person as defined in 20-7-901, paraprofessional who provides instructional support, dean of students, or school psychologist;

(d) a person employed in a teaching or an educational services capacity by the office of a county superintendent, an education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(e) a person who is an administrative officer or a member of the instructional staff of the board of public education;

(f) the superintendent of public instruction or a person employed as a teacher or in an educational services capacity by the office of public instruction;

(g) except as provided in subsection (2), a person elected to the office of county superintendent of schools;

(h) a person who is an administrative officer or a member of the instructional or scientific staff of a community college; and

(i) a person employed in a nonclerical position and who is reported on an employer's annual data collection report submitted to the office of public instruction.

(2) A retired member elected to the office of county superintendent of schools or appointed to complete the term of an elected county superintendent of schools after July 1, 1995, is not eligible for optional membership in the public employees' retirement system under the provisions of 19-3-412 and shall, within 30 days of taking office, file an irrevocable written election to become or to not become an active member of the teachers' retirement system. The retirement

system membership of an elected county superintendent of schools as of June 30, 1995, must remain unchanged for as long as the person continues to serve in the capacity of county superintendent of schools.

(3) In order to be eligible for active membership, a person described in subsection (1) or (2) must:

(a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for the person's creditable service totally paid by an employer.

(4) (a) A substitute teacher or a part-time teacher's aide:

(i) shall file an irrevocable written election determining whether to become an active member of the retirement system on the first day of employment; or

(ii) is required to become an active member of the retirement system after completing 210 hours of employment in any fiscal year if the substitute teacher or part-time teacher's aide has not elected membership under subsection (4)(a)(i).

(b) Once a part-time teacher's aide becomes a member, the aide is required to remain an active member as long as the aide is employed in that capacity. Once a substitute teacher becomes a member, the substitute teacher is required to remain a member as long as the teacher is available for employment in that capacity.

(c) The employer shall give written notification to a substitute teacher or part-time teacher's aide on the first day of employment of the option to elect membership under subsection (4)(a)(i).

(d) If a substitute teacher or part-time teacher's aide declines to elect membership during the election period, the teacher or part-time teacher's aide shall file a written statement with the employer waiving membership and the employer shall retain the statement.

(5) A school district clerk or business official may not become a member of the teachers' retirement system. A school district clerk or business official who is a member of the system on July 1, 2001, is required to remain an active member of the system while employed in that capacity, and any postretirement earnings from employment as a school district clerk or school business official are subject to the limit on earnings provided in 19-20-731.

(6) At any time that a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine the person's eligibility for membership. All persons in similar circumstances must be treated alike.

(7) As used in this section, "part-time teacher's aide" means an individual who works less than 7 hours a day assisting a certified teacher in a classroom.

(8) (a) An active member of the system concurrently employed in a position identified in subsection (1)(b) may not elect to participate in the ~~optional~~ *university system* retirement program under Title 19, chapter 21.

(b) An employee of the Montana university system who is a participant in the ~~optional~~ *university system* retirement program under Title 19, chapter 21, and who is concurrently employed in a position identified in subsections (1)(a) or (1)(c) through (1)(i) is ineligible to be an active member of this system."

**Section 9.** Section 19-20-426, MCA, is amended to read:

**"19-20-426. Creditable service for employment under ~~optional~~ *university system* retirement program.** (1) (a) A member who has at least 5

years of membership service, who has completed 1 full year of active membership subsequent to the member's participation in the ~~optional~~ *university system* retirement program pursuant to 19-21-201, and who contributes to the retirement system as provided in subsection (2) may receive up to 5 years of creditable service in the retirement system for service covered under the ~~optional~~ *university system* retirement program.

(b) Employment to be credited must be of an instructional nature, as an administrative officer, or as a member of the scientific staff with an individual contract under the authority of the board of regents.

(c) A member may not receive credit for service as a student employed by the institution.

(2) For each year of service to be credited under this section, the member shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The contributions and interest may be made in a lump-sum payment or in installments as agreed between the person and the retirement board.

(4) The provisions of 19-20-405 apply to creditable service purchased under this section."

**Section 10.** Section 19-20-621, MCA, is amended to read:

**"19-20-621. Montana university system ~~optional~~ retirement program supplemental contributions.** (1) Each employer within the university system with employees participating in the ~~optional~~ *university system* retirement program under Title 19, chapter 21, shall contribute to the teachers' retirement system a supplemental employer contribution sufficient to amortize, by July 1, 2033, the past service liability of the teachers' retirement system for the university system members.

(2) The ~~optional~~ *university system* retirement program supplemental employer contribution as a percentage of the total compensation of all employees participating in the program is:

(a) 4.04% beginning July 1, 2001, through June 30, 2007; and

(b) 4.72% beginning July 1, 2007.

(3) The board shall periodically review the supplemental employer contribution rate and recommend adjustments to the legislature as needed to maintain the amortization of the university system's past service liability by July 1, 2033."

**Section 11.** Section 19-20-731, MCA, is amended to read:

**"19-20-731. Postretirement employment limitations — cancellation and recalculation of benefits — reporting obligation of retired member.** (1) (a) Except as [provided in 19-20-732 or as] otherwise provided in this section, a retired member may be employed by an employer in a position that is reportable to the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:

(i) one-third of the sum of the member's average final compensation; or

(ii) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(b) The maximum compensation that a retired member may earn under subsection (1)(a) without an adjustment of retirement benefits includes all amounts paid to or on behalf of the retired member and the value of all benefits provided to or on behalf of the retired member by the employer, including any amounts deferred for payment to a later year, excluding:

(i) health insurance premiums directly paid by the employer on the retired member's behalf for health care coverage provided by the employer;

(ii) the value of housing provided by the employer to the retired member;

(iii) the amount of employment-related travel expenses reimbursed to the retired member by the employer;

(iv) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and

(v) payroll taxes paid by the employer on behalf of the retired member.

(2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a)(i) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.

(3) [Except as provided in 19-20-732,] the retirement benefit of a retired member:

(a) employed and earning more than allowed by subsections (1) and (2) must be temporarily reduced by $1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be suspended if the retired member's earnings over the maximum allowed exceed the gross monthly benefit amount.

(b) employed in one or more part-time positions under one or more contracts providing for an aggregate payment of a total amount that is more than the maximum allowed must be suspended effective on the date on which the retired member returns to employment.

(4) For purposes of this section, the term "employed in a position that is reportable to the retirement system" includes any work performed or service provided by a retired member to or on behalf of an employer, including but not limited to work performed or service provided through a professional employer arrangement, an employee leasing arrangement, as a temporary service contractor, or as an independent contractor.

(5) For purposes of this section, the employment status and maximum compensation of a retired member who is employed in more than one position or under more than one contract, whether with one employer or more than one employer, is the aggregate full-time equivalency and compensation derived from all positions reportable to the retirement system in which the retired member is employed.

(6) Within 30 days of the date of the execution of an agreement for the employment of a retired member or of the first date on which the retired member provides services if no agreement is entered into, the retired member shall provide written notice of the postretirement employment to the retirement system.

(7) For purposes of this section, if a retired member is employed by an employer in a position that is reportable to the retirement system and the retired member is concurrently working for the employer in another position that is not reportable to the system, the position that is not reportable is considered to be part of the position that is reportable to the retirement system. All earnings of the retired member that are generated by these positions are reportable to the retirement system.

(8) The retirement allowance of any retired member who is employed in a position and who elects to participate in the ~~optional~~ *university system*

retirement program under Title 19, chapter 21, must be suspended until the member is no longer employed in the position and is no longer participating in the ~~optional~~ *university system* retirement program. (Bracketed language terminates June 30, 2015—sec. 5, Ch. 129, L. 2009.)"

**Section 12.** Section 19-21-101, MCA, is amended to read:

**"19-21-101. Authority to establish ~~optional~~ *university system* retirement program.** The board of regents may establish ~~an optional~~ *a university system* retirement program, as provided in this chapter, for the administrative officers and members of the instructional and scientific staff of the Montana university system. The program may be an independent plan or part of a larger plan with respect to some or all of the benefits provided. The benefits under the program must be provided through individual annuity contracts, either fixed or variable, or a combination of contracts, issued to and owned by the participants in the program. The program must comply with applicable sections of the Internal Revenue Code."

**Section 13.** Section 19-21-102, MCA, is amended to read:

**"19-21-102. Definitions.** Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) "Program" means the ~~optional~~ *university system* retirement program established pursuant to this chapter.

(2) "Public employees' retirement system" means the retirement system established in 19-3-103.

(3) "Teachers' retirement system" or "system" means the teachers' retirement system provided for in Title 19, chapter 20."

**Section 14.** Section 19-21-211, MCA, is amended to read:

**"19-21-211. Payment of benefits.** A retirement, death, or other benefit may not be paid by the state or the board of regents under the ~~optional~~ *university system* retirement program. Benefits are payable to a participant and the participant's beneficiaries only by the designated company or companies in accordance with the terms of the contracts."

**Section 15.** Section 19-21-212, MCA, is amended to read:

**"19-21-212. Exemption from taxation, legal process, and assessments.** Except for execution or withholding for the payment of child support or for the payment of spousal support for a spouse or former spouse who is the custodial parent of the child, contracts, benefits, and contributions under the ~~optional~~ *university system* retirement program and the earnings on the contributions are:

(1) except for a retirement allowance received in excess of the amount determined pursuant to 15-30-2110(2)(c), exempt from any state, county, or municipal tax;

(2) not subject to execution, garnishment, attachment, or other process;

(3) not covered or assessable by an insurance guaranty association; and

(4) unassignable except as specifically provided in the contracts."

**Section 16. Instructions to code commissioner.** Whenever the phrase "optional retirement program" appears in the Montana Code Annotated or in legislation enacted during the 63rd legislative session, the code commissioner shall change the phrase to "university system retirement program".

Approved April 24, 2013

# CHAPTER NO. 283

[HB 433]

AN ACT REVISING LAWS RELATED TO REGISTRATION OF SEXUAL OR VIOLENT OFFENDERS; PROVIDING THAT OFFENDERS MUST REGISTER WHEN THEY ARE LOCATED IN A COUNTY THAT IS NOT THEIR COUNTY OF RESIDENCE FOR MORE THAN 10 DAYS; REQUIRING OFFENDERS TO REGISTER IN ANY COUNTY WHERE THEY REMAIN FOR 24 HOURS UNTIL THEY RETURN TO THEIR COUNTY OF RESIDENCE; AMENDING SECTION 46-23-505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 46-23-505, MCA, is amended to read:

**"46-23-505. Notice of change of name or residence or student, employment, or transient status — duty to inform — forwarding of information.** (1) If an offender required to register under this part has a change of name or residence or a change in student, employment, or transient status, the offender shall within 3 business days of the change appear in person and give notification of the change to the registration agency with whom the offender last registered or, if the offender was initially registered under 46-23-504(1)(b), to the registration agency for the county or municipality from which the offender is moving. The registration agency shall require the offender to appear before the registration agency for a new photograph every year.

(2) If an offender required to register under this part is a transient, the offender shall provide written notification to the registration agency with which the offender last registered or, if the offender initially registered pursuant to 46-23-504(1)(b), shall provide notice within 3 business days to the registration agency in the county or municipality in which the offender resides.

(3) Within 3 business days after receipt of the information concerning the new name or residence or a change in the student, employment, or transient status, the registration agency shall forward the information to the department of justice, which shall forward a copy of the information and photograph to:

(a) in the event of a change in residence, the registration agency for the county to which the offender moves and, if the offender lives in a municipality, the registration agency for that municipality to which the offender moves;

(b) in the event of a change of name or of student, employment, or transient status, the registration agency of the appropriate county or municipality.

*(4) If an offender who is required to register under this part is physically absent from the offender's county of residence for more than 10 consecutive days, the offender shall register in the county where the offender is physically located on the 11th day even if the offender claims to maintain a residence, as defined in 46-23-502, in that county. The offender shall register again in the offender's county of residence when the offender returns to that county.*

*(5) If an offender is required to register under subsection (4), the offender shall register in any subsequent county where the offender is present for more than 24 hours until the offender registers again in the offender's county of residence.*"

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 24, 2013

# CHAPTER NO. 284

[HB 560]

AN ACT REVISING THE LAWS REGARDING THE LEGISLATIVE BRANCH COMPUTER SYSTEM PLANNING COUNCIL; CHANGING THE NAME OF THE PLANNING COUNCIL; PROVIDING FOR AN ENTERPRISE ARCHITECTURE PROGRAM, TECHNOLOGY STANDARDS, AND PRINCIPLES; AMENDING SECTIONS 2-15-1021, 2-17-518, 5-11-401, 5-11-402, 5-11-403, 5-11-404, 5-11-405, 5-11-406, AND 5-11-407, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-15-1021, MCA, is amended to read:

**"2-15-1021. Information technology board — membership — qualifications — vacancies — compensation.** (1) There is an information technology board. The board consists of 19 members who are appointed as follows:

(a) the director of the department of administration, who serves as presiding officer of the board;

(b) the chief information officer provided for in 2-17-511;

(c) the director of the office of budget and program planning;

(d) six members who are directors of state agencies and who are appointed by the governor;

(e) two members representing local government, appointed by the governor;

(f) one member representing the public service commission, appointed by the public service commission;

(g) one member representing the private sector, appointed by the governor;

(h) one member of the house of representatives, appointed by the speaker of the house of representatives;

(i) one member of the senate, appointed by the president of the senate;

(j) one member representing the legislative branch, appointed by the legislative branch ~~computer system~~ *information technology* planning council;

(k) one member representing the judicial branch, appointed by the chief justice of the supreme court;

(l) one member representing the university system, appointed by the board of regents; and

(m) one member representing K-12 education, appointed by the superintendent of public instruction.

(2) Appointments must be made without regard to political affiliation and must be made solely for the wise management of the information technology resources used by the state.

(3) A vacancy occurring on the board must be filled by the appointing authority in the same manner as the original appointment.

(4) The board shall function in an advisory capacity as defined in 2-15-102.

(5) Members of the board must be reimbursed and compensated in the same manner as members of quasi-judicial boards under 2-15-124(7), except that legislative members are reimbursed and compensated as provided in 5-2-302."

**Section 2.** Section 2-17-518, MCA, is amended to read:

**"2-17-518. Rulemaking authority.** (1) The department shall adopt rules to implement this part, including the following:

(a) rules to guide the review and approval process for state agency software and management systems that provide similar functions for multiple state agencies, which must include but are not limited to:

(i) identifying the software and management systems that must be approved;

(ii) establishing the information that state agencies are required to provide to the department; and

(iii) establishing guidelines for the department's approval decision;

(b) rules to guide the review and approval process for state agency acquisition of information technology resources, which must include but are not limited to processes and requirements for:

(i) agency submissions to gain approval for acquiring information technology resources;

(ii) approving specifications for information technology resources; and

(iii) approving contracts for information technology resources; and

(c) rules for granting exceptions from the requirements of this part, which must include but are not limited to:

(i) a process for applying for an exception; and

(ii) guidelines for determining the department's approval decision.

(2) The department may adopt rules to guide the development of state agency information technology plans. The rules may include:

(a) agency plan review procedures;

(b) agency plan content requirements;

(c) guidelines for the department's approval decision; and

(d) dispute resolution processes and procedures.

(3) Adequate rules for the use of any information technology resources must be adopted by the~~:~~

~~(a)~~ supreme court for judicial branch agencies~~; and~~.

~~(b)~~*(4) The* legislative council *shall adopt enterprise principles and technical standards within an enterprise architecture program* as a part of the legislative branch ~~computer system~~ *information technology* plan, as provided for in 5-11-405, *that will fulfill the intent of adequate rules for use of information technology resources* for the consolidated legislative branch, as provided for in 5-2-504."

**Section 3.** Section 5-11-401, MCA, is amended to read:

**"5-11-401. Purpose.** It is the purpose of this part to establish a mechanism for ~~computer system~~ information technology planning encompassing broad policy needs, long-term direction for ~~computer~~ information systems use, and the effective implementation of a detailed plan for the legislative branch. It is the purpose of the plan to ~~assure~~ *ensure* coordination of information system decisions so that the overall effectiveness of the senate, the house of representatives, and legislative agencies may be improved. It is the further purpose of the plan to enhance the coordination of legislative branch systems with executive branch systems ~~wherever~~ *whenever* possible."

**Section 4.** Section 5-11-402, MCA, is amended to read:

**"5-11-402. Legislative branch ~~computer system~~ *information technology* planning council.** There is a legislative branch ~~computer system~~ information technology planning council composed of:

(1) the secretary of the senate*;*

*(2)* ~~or another~~ *one* representative of the senate designated by the president;

~~(2)~~*(3)* the chief clerk of the house of representatives*;*

*(4)* ~~or another~~ *one* representative of the house designated by the speaker;

~~(3) the sergeants-at-arms in the two houses or another representative of each house designated by the presiding officer of that house;~~

~~(4)~~*(5)* the executive director of the legislative services division, who shall chair the planning council;

~~(5)~~*(6)* the legislative auditor;

~~(6)~~*(7)* the legislative fiscal analyst;

~~(7)~~*(8)* the consumer counsel;

*(9) the chief information officer of the legislative branch;* and

~~(8)~~*(10)* a person designated by the director of the department of administration to represent the information technology responsibilities of the department, who shall serve as a nonvoting member of the planning council."

**Section 5.** Section 5-11-403, MCA, is amended to read:

**"5-11-403. Duties of legislative branch ~~computer system~~ *information technology* planning council.** ~~(1)~~ The legislative branch ~~computer system~~ *information technology* planning council shall develop and maintain a legislative branch ~~computer system~~ *information technology* plan. In developing and maintaining this plan, the planning council shall:

*(1) approve and validate the branch enterprise architecture program that includes principles to maintain alignment with evolving business and technology needs;*

~~(a)~~*(2)* continuously review ~~or have reviewed~~ *analyses of* existing *and alternate* information systems ~~that are~~ *to identify* candidates for automation*, modernization,* ~~or~~ enhancement, ~~as well as review existing automated systems that may be improved or integrated~~ *improvement, or integration* with new applications *to support evolving legislative branch needs or functions*;

~~(b)~~*(3)* ~~develop and maintain~~ *include in the plan* a description of functions ~~or~~ *and* services in the legislative branch and its agencies that would~~, through~~ *benefit from the* application or improvement of ~~computer~~ *information* technology~~,~~ *to* provide better service to members of the legislature, legislative agencies, and the public;

~~(c)~~*(4)* ~~develop and maintain a ranking of needs, taking into consideration the relative effectiveness and probable cost of alternative systems~~ *prioritize information technology initiatives, taking into consideration expected effectiveness, probable cost, and alignment with the enterprise architecture principles*; ~~and~~

~~(d)~~*(5)* ~~develop and maintain recommended system standards for the legislative branch and standard or custom software and hardware solutions~~ *adopt technology standards within the enterprise architecture program that are* appropriate to the *business* needs and *technical* environment of the legislative branch and its agencies*; and*

*(6) consider information technology support of security, disaster recovery, and continuity of government*.

~~(2) To the extent possible:~~

~~(a) future applications should be explicitly identified in the plan;~~

~~(b) current applications should allow a high degree of flexibility so that future applications are not limited; and~~

~~(c) both current and future applications should be coordinated and compatible with the standards and goals of the executive branch as expressed in the state strategic information technology plan provided for in 2-17-521, as well as the legislative branch standards developed in accordance with the requirement in subsection (1)(d).~~"

**Section 6.** Section 5-11-404, MCA, is amended to read:

**"5-11-404. Technical support.** (1) The executive director of the legislative services division shall provide technical staff support to the legislative branch ~~computer system~~ *information technology* planning council. In performing this duty, the legislative services division shall assist the planning council by:

*(a) developing and maintaining an enterprise architecture program to include:*

*(i) enterprise architecture principles and technology standards that are aligned with business needs;*

*(ii) decisionmaking processes that guide the application of the principles; and*

*(iii) a repository of business and technical information to support sound decisions;*

~~(a)~~*(b)* developing ~~or having developed~~ analyses of existing and alternate systems *to identify candidates for automation, modernization, or enhancement*;

~~(b) providing technical solutions and advice related to the standards set by the planning council;~~

(c) assisting in assessing benefits and costs of ~~optional~~ *alternate* solutions;

(d) apprising the planning council of developments and ~~directions~~ *trends* in the *technology* industry;

(e) maintaining a liaison with and informing the planning council of plans and directions within the executive branch;

(f) ~~assisting in the selection~~ *selecting* and purchasing ~~of~~ supplies and equipment *that support the enterprise architecture principles adopted by the planning council*;

*(g) providing information and advice regarding information technology support of security, disaster recovery, and continuity of government;* and

~~(g)~~*(h)* providing other assistance as may be requested.

(2) The executive director shall encourage participation of appropriate personnel of the senate, the house of representatives, and other legislative entities in the provision of technical support."

**Section 7.** Section 5-11-405, MCA, is amended to read:

**"5-11-405. Legislative branch ~~computer system~~ *information technology* plan — adoption.** The legislative branch ~~computer system~~ *information technology* plan *is a biennial plan that reflects the budget proposals for the next biennium that* must be approved and adopted by the legislative council."

**Section 8.** Section 5-11-406, MCA, is amended to read:

**"5-11-406. Legislative branch systems — conformity to standards.** ~~Computer hardware and software~~ *Information technology* systems installed by the senate, the house of representatives, and legislative branch agencies must conform to standards established ~~in~~ *by* the legislative branch ~~computer system plan~~ *for the enterprise architecture* in effect at the time the purchasing decision is made."

**Section 9.** Section 5-11-407, MCA, is amended to read:

**"5-11-407. Legislative branch reserve account.** (1) There is a legislative branch reserve account in the state special revenue fund. Money may be deposited in the account through an allocation of money to the account or as provided in 17-7-304.

(2) (a) The money in the account is statutorily appropriated, as provided in 17-7-502, to the legislative services division to be used only for major legislative branch information technology projects, including the purchase of hardware, software, and consulting services for *and training related to* new initiatives and replacement and upgrading of existing systems.

(b) The money in the account may be expended only with the approval of the legislative council. The legislative branch ~~computer system~~ *information technology* planning council may make recommendations to the legislative council for the use of the money in the account.

(3) The money in the account must be invested pursuant to Title 17, chapter 6. The income and earnings on the account must be deposited in the account."

**Section 10. Effective date.** [This act] is effective July 1, 2013.

Approved April 24, 2013

# CHAPTER NO. 285

[HB 605]

AN ACT PROVIDING A PROCESS FOR ANNEXATION OF PROPERTY INTO A RESORT AREA DISTRICT; REQUIRING A PROPOSAL FOR ANNEXATION AND A REVIEW FEE TO BE SUBMITTED TO THE DEPARTMENT OF COMMERCE FOR DESIGNATION AS A RESORT AREA; REQUIRING AN ELECTION IN THE AREA PROPOSED TO BE ANNEXED; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Annexation of property into resort area district.** (1) Property may be annexed into a resort area district as provided in this section.

(2) The board may recommend that property contiguous to an existing resort area district be annexed into the resort area district.

(3) If the board recommends annexation, the board shall submit its recommendation to the board of county commissioners, along with a description or map of the existing district and a description or map of the area proposed to be annexed.

(4) (a) Upon receipt of the board's recommendation, the board of county commissioners shall submit the description or map of the existing district and the description or map of the area proposed to be annexed into the resort area district to the department of commerce, along with a review fee of $250 and any other information required by the department as necessary to determine whether the existing district with the proposed annexation qualifies as a resort area under 7-6-1501.

(b) The department of commerce shall determine whether the existing district with the proposed annexation qualifies as a resort area under 7-6-1501 and shall notify the board of county commissioners of its determination. If the existing district with the proposed annexation does not qualify as a resort area, the board of county commissioners may take no further action on the proposed annexation for a period of at least 1 year. If the existing district with the

proposed annexation does qualify as a resort area, the board of county commissioners shall give notice of an election to be held in the area proposed to be annexed.

(5) The board of county commissioners shall give notice of the election to be held in the area proposed to be annexed. The election must be held in conjunction with a regular or primary election and must be conducted as provided in 7-6-1537.

(6) A person is not entitled to vote at an election on the proposed annexation unless the person possesses all of the qualifications required of electors under the general election laws of this state and is a resident of the area proposed to be annexed.

(7) If a majority of the votes cast on the question of annexation of the property into the resort area district are in favor of the annexation, the board of county commissioners shall enter into its minutes an order, by resolution, annexing the property into the district and shall cause to be created a map of the district that includes the annexed area. Immediately following the adoption of the resolution, the board of county commissioners shall file with the secretary of state and the county clerk and recorder a copy of the resolution and the map.

(8) The secretary of state shall issue a certificate of incorporation as provided in 7-6-1540.

(9) The resort area district board that governed the district before annexation shall continue to operate and the members shall continue to serve the members' terms. Upon occurrence of a vacancy or the expiration of a member's term, residents of the area that has been annexed are eligible for election or appointment to the board under the provisions of 7-6-1543 through 7-6-1546.

(10) If the area proposed to be annexed includes property in more than one county, the boards of county commissioners of each county must comply with the provisions of this section.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 7, chapter 6, part 15, and the provisions of Title 7, chapter 6, part 15, apply to [section 1].

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved April 24, 2013

# CHAPTER NO. 286

[SB 20]

AN ACT PROVIDING FOR REGISTRATION OF MULTILEVEL DISTRIBUTION COMPANIES; ESTABLISHING WHAT CONSTITUTES FRAUDULENT OR PROHIBITED PRACTICES FOR MULTILEVEL DISTRIBUTION COMPANIES; DEFINING "DIRECT SELLING ASSOCIATION"; REVISING THE DEFINITION OF "MULTILEVEL DISTRIBUTION COMPANY"; DEFINING "TRANSACTING BUSINESS"; CLARIFYING WHICH FUNDS MUST BE PLACED IN THE SECURITIES RESTITUTION ASSISTANCE FUND; AMENDING SECTIONS 30-10-301, 30-10-303, 30-10-324, AND 30-10-1004, MCA; REPEALING SECTION 30-10-326, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Registration requirements for multilevel distribution companies.** (1) It is unlawful for a person to transact business in this state as a multilevel distribution company unless the person is:

(a) registered under this section; or

(b) a member of the direct selling association.

(2) A multilevel distribution company may apply for registration by filing an application in the form prescribed by the commissioner. An application must be submitted to the department by certified mail.

(3) The commissioner shall issue an order making a registration effective when the registration requirements are met. An effective registration of a multilevel distribution company may not be withdrawn or terminated without the express written consent of the commissioner.

(4) Registration of a multilevel distribution company:

(a) is effective until December 31 following the registration; and

(b) may be renewed pursuant to subsection (5).

(5) Registration of a multilevel distribution company may be renewed by filing, prior to the expiration of the registration, an application containing information that the commissioner may require to indicate any material change in the information contained in the original application or any material change in a renewal application for registration. The renewal application must be submitted to the department by certified mail.

(6) The commissioner may by order deny, suspend, or revoke registration of any multilevel distribution company if the commissioner finds that the order is in the public interest and that the applicant or registrant or person directly or indirectly controlling the applicant or registrant:

(a) has filed an application for registration under this section that, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement that was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of this part;

(c) is permanently or temporarily enjoined by any court of competent jurisdiction from transacting business as a multilevel distribution company;

(d) is the subject of an order of the commissioner denying, suspending, or revoking registration as a multilevel distribution company;

(e) has engaged in dishonest or unethical business practices;

(f) is insolvent, either in the sense that the person's liabilities exceed the person's assets or in the sense that the person cannot meet obligations as they mature, but the commissioner may not enter an order against a multilevel distribution company without a finding of insolvency as to the multilevel distribution company; or

(g) has not complied with a condition imposed by the commissioner under this section.

**Section 2.** Section 30-10-301, MCA, is amended to read:

**"30-10-301. Fraudulent and other prohibited practices.** (1) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, in, into, or from this state, to:

(a) employ any device, scheme, or artifice to defraud;

(b) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(c) engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.

(2) (a) It is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analysis or reports or otherwise:

(i) to employ any device, scheme, or artifice to defraud the other person;

(ii) to engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon the other person; or

(iii) without disclosing to the client in writing before the completion of the transaction the capacity in which the person is acting and obtaining the consent of the client to the transaction:

(A) acting as principal for the person's own account, to knowingly sell any security to or purchase any security from a client; or

(B) acting as agent for a person other than the client, to knowingly effect the sale or purchase of any security for the account of the client.

(b) The prohibitions of subsection (2)(a)(iii) do not apply to any transaction with a customer of a broker-dealer if the broker-dealer is not being compensated for rendering investment advice in relation to the transaction.

(3) In the solicitation of advisory clients, it is unlawful for a person to:

(a) make a false statement of a material fact; or

(b) omit a material fact necessary to make a statement not misleading in light of the circumstances under which it is made.

(4) Except as permitted by rule or order of the commissioner, it is unlawful for any investment adviser who is registered or required to be registered to enter into, extend, or renew any investment advisory contract unless it provides in writing that:

(a) the investment adviser may not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(b) an assignment of the contract may not be made by the investment adviser without the consent of the other party to the contract; and

(c) the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

(5) Subsection (4)(a) does not prohibit an investment advisory contract that provides for compensation based upon the total value of a fund averaged over a definite period or as of definite dates or taken as of a definite date. "Assignment", as used in subsection (4)(b), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, an assignment of an investment advisory contract is not considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser or from the admission to the investment adviser of one or more members who, after

admission, will be only a minority of the members and will have only a minority interest in the business.

(6) It is unlawful for an investment adviser to take or have custody of any securities or funds of any client if:

(a) the commissioner by rule prohibits custody; or

(b) in the absence of rule, the investment adviser fails to notify the commissioner that the investment adviser has or may have custody.

*(7) It is unlawful for a multilevel distribution company or a person who directly or indirectly controls a multilevel distribution company, in the course of transacting business in, into, or from this state, to:*

*(a) employ any device, scheme, or artifice to defraud;*

*(b) make a false statement of a material fact;*

*(c) omit a material fact necessary to make a statement not misleading in light of the circumstances under which it is made; or*

*(d) engage in any other act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.*"

**Section 3.** Section 30-10-303, MCA, is amended to read:

**"30-10-303. Unlawful representation concerning registration or exemption.** (1) The fact that an application for registration under 30-10-201(6) *or [section 1]*, a notice filing under 30-10-211, or a registration statement under 30-10-203, 30-10-204, or 30-10-205 has been filed or the fact that a person or security is effectively registered or a complete notice filing has been made does not constitute a finding by the commissioner that any document filed under parts 1 through 3 of this chapter is true, complete, and not misleading.

(2) The fact that an application for registration or a notice filing has been filed or a person or security is effectively registered or a complete notice filing has been made as provided in subsection (1) or the fact that an exemption or exception is available for a *person,* security, or ~~a~~ transaction does not mean that the commissioner has passed in any way upon the merits of, qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful to make or cause to be made to any prospective purchaser, customer, or client any representation inconsistent with this section."

**Section 4.** Section 30-10-324, MCA, is amended to read:

**"30-10-324. Definitions.** As used in *[section 1], 30-10-301,* 30-10-324*, and 30-10-325* ~~through 30-10-326~~, the following definitions apply:

(1) (a) "Compensation" means the receipt of money, a thing of value, or a financial benefit.

(b) Compensation does not include:

(i) payments to a participant based upon the sale of goods or services by the participant to third persons when the goods or services are purchased for actual use or consumption; or

(ii) payments to a participant based upon the sale of goods or services to the participant that are used or consumed by the participant.

(2) (a) "Consideration" means the payment of money, the purchase of goods or services, or the purchase of intangible property.

(b) Consideration does not include:

(i) the purchase of goods or services furnished at cost that are used in making sales and that are not for resale; or

(ii) a participant's time and effort expended in the pursuit of sales or in recruiting activities.

*(3) "Direct selling association" means the nonprofit entity incorporated in the state of Delaware and recognized by the department as the direct selling association.*

~~(3)~~*(4)* ~~(a)~~ "Multilevel distribution company" means a person that:

~~(i)~~*(a)* sells, distributes, or supplies goods or services through independent agents, contractors, or distributors at different levels of distribution;

~~(ii)~~*(b)* may recruit other participants in the company; and

~~(iii)~~*(c)* is eligible for commissions, cross-commissions, override commissions, bonuses, refunds, dividends, or other consideration that is or may be paid as a result of the sale of goods or services or the recruitment of or the performance or actions of other participants.

~~(b) The term does not include an insurance producer, real estate broker, or salesperson or an investment adviser, investment adviser representative, broker-dealer, or salesperson, as defined in 30-10-103, operating in compliance with this chapter.~~

~~(4)~~*(5)* "Participant" means a person involved in a sales plan or operation.

~~(5)~~*(6)* "Person" means an individual, corporation, partnership, limited liability company, or other business entity.

~~(6)~~*(7)* (a) "Pyramid promotional scheme" means a sales plan or operation in which a participant gives consideration for the opportunity to receive compensation derived primarily from obtaining the participation of other persons in the sales plan or operation rather than from the sale of goods or services by the participant or the other persons induced to participate in the sales plan or operation by the participant.

(b) A pyramid promotional scheme includes a Ponzi scheme, in which a person makes payments to investors from money obtained from later investors, rather than from any profits or other income of an underlying or purported underlying business venture.

(c) A pyramid promotional scheme does not include a sales plan or operation that:

(i) subject to the provisions of subsection ~~(6)(c)(v)~~ *(7)(c)(v)*, provides compensation to a participant based primarily upon the sale of goods or services by the participant, including goods or services used or consumed by the participant, and not primarily for obtaining the participation of other persons in the sales plan or operation and that provides compensation to the participant based upon the sale of goods or services by persons whose participation in the sales plan or operation has been obtained by the participant;

(ii) does not require a participant to purchase goods or services in an amount that unreasonably exceeds an amount that can be expected to be resold or consumed within a reasonable period of time;

(iii) is authorized to use a federally registered trademark or servicemark that identifies the company promoting the sales plan or operation, the goods or services sold, or the sales plan or operation;

(iv) (A) provides each person joining the sales plan or operation with a written agreement containing or a written statement describing the material terms of participating in the sales plan or operation;

(B) allows a person at least 15 days to cancel the person's participation in the sales plan or operation; and

(C) provides that if the person cancels participation within the time provided and returns any ~~required~~ items *given to the person to assist in marketing goods or services under the plan*, the person is entitled to a refund of any consideration given to participate in the sales plan or operation; and

(v) (A) upon the request of a participant deciding to terminate participation in the sales plan or operation, provides for the repurchase, at not less than 90% of the amount paid by the participant, of any currently marketable goods or services sold to the participant within 12 months of the request that have not been resold or consumed by the participant; and

(B) if disclosed to the participant at the time of purchase, provides that goods or services are not considered currently marketable if the goods have been consumed or the services rendered or if the goods or services are seasonal, discontinued, or special promotional items. Sales plan or operation promotional materials, sales aids, and sales kits are subject to the provisions of this subsection ~~(6)(e)(v)~~ *(7)(c)(v)* if they are a required purchase for the participant or if the participant has received or may receive a financial benefit from their purchase.

*(8) "Transacting business" means to directly or indirectly:*

*(a) offer, sell, distribute, or supply goods or services through independent agents, contractors, or distributors at different levels of distribution; or*

*(b) recruit or attempt to recruit participants in a multilevel distribution company.*"

**Section 5.** Section 30-10-1004, MCA, is amended to read:

**"30-10-1004. (Temporary) Creation of securities restitution assistance fund.** (1) There is an account in the state special revenue fund to the credit of the commissioner for use only for securities restitution assistance. This account may be referred to as the "securities restitution assistance fund" or "fund". The money in the fund is statutorily appropriated, as provided in 17-7-502, to the commissioner for the purposes provided in subsection (4) of this section.

(2) (a) The fund consists of amounts received by the commissioner from persons who have ~~committed securities violations~~ *violated any provision of parts 1 through 3 of this chapter* and from persons who have voluntarily contributed to the fund.

(b) Amounts received by the commissioner for deposit in the fund do not include administrative penalties or fines imposed under this chapter and as referenced under the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

(c) The amounts received for the fund may not be placed in the general fund.

(3) Amounts received by the commissioner for deposit in the fund must be promptly turned over to the state treasurer for deposit in the fund created under subsection (1).

(4) The fund may be used by the commissioner only to pay awards of restitution assistance under this part. (Terminates June 30, 2017—sec. 16, Ch. 58, L. 2011.)"

**Section 6. Repealer.** The following section of the Montana Code Annotated is repealed:

30-10-326. Notice of activity — consent to service.

**Section 7. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 30, chapter 10, part 2, and the provisions of Title 30, chapter 10, part 2, apply to [section 1].

**Section 8. Effective date.** [This act] is effective on passage and approval.

Approved April 24, 2013

# CHAPTER NO. 287

[SB 127]

AN ACT REVISING THE DEFINITION OF "MISCONDUCT" FOR UNEMPLOYMENT INSURANCE PURPOSES; AND AMENDING SECTION 39-51-201, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 39-51-201, MCA, is amended to read:

**"39-51-201. General definitions.** As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means:

(a) the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year;

(b) if the individual does not have sufficient wages to qualify for benefits under subsection (2)(a), the 4 most recently completed calendar quarters immediately preceding the first day of the individual's benefit year;

(c) in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the period applicable under the unemployment law of the paying state; or

(d) for an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States, the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefit year" means the 52-consecutive-week period beginning with the first day of the calendar week in which an individual files a valid claim for benefits, except that the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base period of a previously filed new claim. A subsequent benefit year may not be established in Montana until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the benefit year is the period applicable under the unemployment law of the paying state.

(4) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404.

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) (a) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work.

(b) The term does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(10) "Employing unit" means any individual or organization, including the state government and any of its political subdivisions or instrumentalities or an Indian tribe or tribal unit, partnership, association, trust, estate, joint-stock company, insurance company, limited liability company or limited liability partnership that has filed with the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person in whose employ one or more individuals perform or performed services within this state, except as provided under 39-51-204(1)(a) and (1)(p). All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether the individual was hired or paid directly by the employing unit or by the agent or employee, provided that the employing unit has actual or constructive knowledge of the work.

(11) "Employment office" means a free public employment office or branch of an office operated by this state or maintained as a part of a state-controlled system of public employment offices or other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(12) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions must be paid and from which all benefits provided under this chapter must be paid.

(13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a flagrant and wanton disregard of and for the rights, title, or interest of a fellow employee or the employer.

(14) "Hospital" means an institution that has been licensed, certified, or approved by the state as a hospital.

(15) "Independent contractor" means an individual working under an independent contractor exemption certificate provided for in 39-71-417.

(16) "Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b(e).

(17) (a) "Institution of higher education", for the purposes of this part, means an educational institution that:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which the institution awards a bachelor's or higher degree or provides a program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) All universities in this state are institutions of higher education for purposes of this part.

(18) "Licensed and practicing health care provider" means a health care provider who is primarily responsible for the treatment of a person seeking unemployment insurance benefits and who is:

(a) licensed to practice in this state as:

(i) a physician under Title 37, chapter 3;

(ii) a dentist under Title 37, chapter 4;

(iii) an advanced practice registered nurse under Title 37, chapter 8, and recognized as a nurse practitioner or certified nurse specialist by the board of nursing, established in 2-15-1734;

(iv) a physical therapist under Title 37, chapter 11;

(v) a chiropractor under Title 37, chapter 12;

(vi) a clinical psychologist under Title 37, chapter 17; or

(vii) a physician assistant under Title 37, chapter 20; or

(b) with respect to a person seeking unemployment insurance benefits who resides outside of this state, a health care provider licensed or certified as a member of one of the professions listed in subsection (18)(a) in the jurisdiction where the person seeking the benefit lives.

(19) (a) "Misconduct" includes but is not limited to the following conduct by an employee:

(i) willful or wanton disregard of the rights, title, and interests of a fellow employee or the employer, *including:*

*(A) insubordination showing a deliberate, willful, or purposeful refusal to follow the reasonable directions, processes, or instructions of the employer;*

*(B) repeated inexcusable tardiness following warnings by the employer;*

*(C) dishonesty related to employment, including but not limited to deliberate falsification of company records, theft, deliberate deception, or lying;*

*(D) false statements made as part of a job application process, including but not limited to deliberate falsification of the individual's criminal history, work record, or educational or licensure achievements;*

*(E) repeated and inexcusable absences, including absences for which the employee was able to give advance notice and failed to do so;*

*(F) deliberate acts that are illegal, provoke violence or violation of the law, or violate a collective bargaining agreement by which the employee is covered. However, an employee who engages in lawful union activity may not be disqualified because of misconduct under this subsection (19)(a)(i)(F).*

*(G) violations of a company rule if the rule is reasonable and if the claimant knew or should have known of the existence of the rule; or*

*(H) actions by the claimant who, while acting within the scope of employment, commits violations of law that significantly affect the claimant's job performance or that significantly harm the employer's ability to do business*;

(ii) deliberate violations or disregard *of established employer standards or* of standards of behavior that the employer has the right to expect of an employee;

(iii) carelessness or negligence that causes or is likely to cause serious bodily harm to the employer or a fellow employee; or

(iv) carelessness or negligence of a degree or that reoccurs to a degree to show an intentional or substantial disregard of the employer's interest.

(b) The term does not include:

(i) inefficiency, unsatisfactory conduct, or failure to perform well as the result of inability or incapacity;

(ii) inadvertent or ordinary negligence in isolated instances; or

(iii) good faith errors in judgment or discretion.

(20) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue Code, 26 U.S.C. 132.

(21) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada.

(22) "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

(23) "Tribal unit" means an Indian tribe and any tribal subdivision or subsidiary or any business enterprise that is wholly owned by that tribe.

(24) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter must be paid.

(25) (a) "Wages", unless specifically exempted under subsection (25)(b), means all remuneration payable for personal services, including the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash must be estimated and determined pursuant to rules prescribed by the department. The term includes but is not limited to:

(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;

(ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

(iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

(b) The term does not include:

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(B) sickness or accident disability under a workers' compensation policy;

(C) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family;

(ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules;

(iii) a no-additional-cost service;

(iv) wage subsidies received pursuant to the alternative trade adjustment assistance for older workers program, 19 U.S.C. 2318; or

(v) the amount paid as a salary, draw, or profit distribution to a sole proprietor, a working member of a partnership, or a member of a limited liability company that is treated as a partnership or sole proprietorship pursuant to 39-51-207 or to a partner in a limited partnership that has filed with the secretary of state when the salary, draw, or profit distribution is paid directly by the enterprise in which the payee has an ownership interest.

(26) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(27) "Weekly benefit amount" means the amount of benefits that an individual would be entitled to receive for 1 week of total unemployment."

Approved April 24, 2013

# CHAPTER NO. 288

[SB 154]

AN ACT REQUIRING A NEW ANNUAL SUSTAINABLE YIELD DETERMINATION FOR TIMBER HARVEST ON FORESTED STATE LANDS; REMOVING THE REQUIREMENTS FOR THE ANNUAL TIMBER SALE TARGET; AMENDING SECTIONS 77-5-222 AND 77-5-223, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 77-5-222, MCA, is amended to read:

**"77-5-222. Determination of annual sustainable yield.** (1)*(a)* ~~The~~ *On July 1, 2013, the* department, under the direction of the board, shall commission a new study by a qualified independent third party to determine, using scientific principles, the annual sustainable yield on forested state lands. The department shall direct the qualified independent third party to determine the yield pursuant to, but not exceeding, all state and federal laws.

*(b) A new study may be commissioned by the department, under the direction of the board, at any time during the 10-year period provided for in subsection (2).*

*(2) A determination of annual sustainable yield under subsection (1) must be reviewed and redetermined by the department, under the direction of the board, at least once every 10 years.*

~~(2) Until the new study required by subsection (1) is completed, the department is directed to set the annual timber sale target at 50 million board feet a year.~~"

**Section 2.** Section 77-5-223, MCA, is amended to read:

**"77-5-223. Annual sustainable yield as timber sale requirement — ~~review.~~** ~~(1)~~ The annual sustainable yield constitutes the annual timber sale requirement for the state timber sale program administered by the department. This annual requirement may be reduced proportionately by the amount of

sustained income to the beneficiaries generated by site-specific alternate land uses approved by the board *based on a determination under 77-5-222*.

~~(2) After it is determined under 77-5-222, the annual sustainable yield must be reviewed and redetermined by the department, under the direction of the board at least once every 10 years.~~"

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved April 24, 2013

# CHAPTER NO. 289

[SB 179]

AN ACT REVISING FILING REQUIREMENTS FOR PASS-THROUGH ENTITIES; REQUIRING PARTNERSHIPS WITH MORE THAN 100 MEMBERS TO FILE RETURNS AND REPORTS ELECTRONICALLY; PROVIDING FOR PENALTY PAYMENTS FOR FAILURE TO FILE; GRANTING RULEMAKING AUTHORITY; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Electronic partnership return required — waiver — rulemaking.** (1) Subject to subsection (4), each year, a partnership with more than 100 partners shall transmit to the department, in an electronic format approved by the department, all partnership returns, along with the corresponding U.S. department of treasury schedules K-1 and all other related forms and schedules that are required to be attached.

(2) If a partnership fails to file a partnership return electronically in the manner required in subsection (1), the partnership is considered to have failed to file the return and is subject to a penalty pursuant to 15-30-3302(5)(d).

(3) A partnership has more than 100 partners if, over the course of the partnership's tax year, the partnership had more than 100 partners, regardless of whether a partner was a partner for the entire year or whether the partnership had over 100 partners on any particular day in the year.

(4) The department may waive the electronic filing if the partnership demonstrates that software that satisfies the conditions of this section is not readily available or that a hardship will result if it is required to file electronically. A partnership requesting a waiver shall file a written request at least 30 days prior to the date the electronic filing is due.

(5) The department may adopt rules to administer and enforce the provisions of this section.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 30, part 33, and the provisions of Title 15, chapter 30, part 33, apply to [section 1].

**Section 3. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 4. Effective date.** [This act] is effective July 1, 2013.

**Section 5. Applicability.** [Section 1] applies to tax years beginning after [the effective date of this act].

Approved April 24, 2013

# CHAPTER NO. 290

[SB 242]

AN ACT ESTABLISHING A MONTANA AWARD OF VALOROUS SERVICE TO HONOR MONTANA'S FALLEN HEROES WHO WERE MEMBERS OF THE UNITED STATES ARMED FORCES AND WERE KILLED OR CLASSIFIED AS MISSING IN ACTION WHILE SERVING IN COMBAT OR MILITARY OPERATIONS; SPECIFYING ELIGIBILITY CRITERIA AND THE PROCESS FOR AWARDING THE MEDAL; AUTHORIZING THE DEPARTMENT OF MILITARY AFFAIRS TO ACCEPT AND SPEND PRIVATE DONATIONS TO FUND THE AWARD; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, whenever there are threats to our national security, the United States armed forces stand ready to protect our nation; and

WHEREAS, the United States armed forces also protect the lives and freedoms of individuals from other nations who cannot fight for themselves; and

WHEREAS, the United States armed forces are known for their skill, patriotism, compassion, and bravery in answering the call to serve in countries around the world; and

WHEREAS, the state of Montana has sent many of its own citizens to serve in the regular, national guard, and reserve forces of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard to protect us all against foreign and domestic threats to our national security; and

WHEREAS, many who have been called to serve have been killed in action, courageously sacrificing their lives to protect the lives of others; and

WHEREAS, the people of the state of Montana are grateful to these fallen heroes and wish to support and stand with surviving family members to honor and forever remember these brave servicemen and servicewomen who have given their lives so that others might live.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Montana award of valorous service to honor Montana's fallen heroes — administration by department of military affairs.** (1) There is a Montana award of valorous service. The award is to honor members of the United States armed forces who were legal residents of the state of Montana or were stationed in or deployed from Montana and who were, on or after December 7, 1941, killed in the line of duty or were classified as missing in action while:

(a) engaged in military operations against an enemy of the United States;

(b) serving with a friendly foreign military force engaged in an armed conflict in which the United States is not a belligerent party; or

(c) serving in a combat zone designated by presidential order.

(2) (a) The president of the senate shall request the drafting of and shall introduce during each regular legislative session a joint resolution naming each person to be a recipient of the Montana award of valorous service.

(b) If both houses of the legislature pass the joint resolution, the Montana award of valorous service must be presented by the governor, the president of the senate, and the speaker of the house of representatives to a surviving family member, as designated by the award recipient in the defense enrollment eligibility reporting system or by law, during a special joint floor session of the senate and the house of representatives. If the surviving family member of an

award recipient cannot be present to accept the award, the award may be mailed to the surviving family member.

(3) (a) The department of military affairs shall administer the provisions of this section, determine award recipients, including the appropriate surviving family member, and coordinate with the surviving family members and representatives who will be accepting the awards on behalf of the recipients.

(b) Surviving family members or service organizations shall notify the department of military affairs if the surviving family member believes a deceased relative is eligible or if a service organization is aware of possible award recipients.

(4) For purposes of this section, "United States armed forces" means the regular and reserve components of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, and the Merchant Marine.

**Section 2. Authorization of other funding source.** The department of military affairs is authorized to accept and expend up to $20,000 in funds from donations to purchase and mail medals to surviving family members.

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 1, chapter 1, part 5, and the provisions of Title 1, chapter 1, part 5, apply to [section 1].

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 24, 2013

# CHAPTER NO. 291

[SB 345]

AN ACT REVISING LAWS RELATED TO LIABILITY FOR FOREST OR RANGE FIRES; ESTABLISHING A LIMITATION ON REAL AND PERSONAL PROPERTY DAMAGES FOR FOREST OR RANGE FIRES CAUSED BY NEGLIGENT OR UNINTENTIONAL ACTS OR OMISSIONS; AMENDING SECTION 50-63-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Liability for forest or range fires.** (1) In a civil action against any person or legal entity that is not a state government entity or a political subdivision of state government, for a forest or range fire caused by a negligent or unintentional act or omission that is not willful or wanton, the real and personal property damage is limited to:

(a) the reasonable costs for controlling or extinguishing the forest or range fire;

(b) economic damages; and

(c) either:

(i) the diminution of fair market value of the real and personal property resulting from the fire; or

(ii) the actual and tangible restoration costs associated with restoring the damaged real and personal property to its undamaged state to the extent that those actual and tangible restoration costs are reasonable and practical.

(2) As used in this section:

(a) "economic damages" means objectively verifiable monetary loss, including but not limited to out-of-pocket expenses, loss of earnings, loss of use of property, and loss of business or employment opportunities;

(b) "fair market value" means the amount a willing buyer would pay a willing seller in an arm's-length transaction when both parties are fully informed about all of the advantages and disadvantages of the property and neither is acting under any compulsion to buy or sell, as determined by a certified appraiser who is qualified to appraise the property.

**Section 2.** Section 50-63-103, MCA, is amended to read:

**"50-63-103. Liability of offender for damages and costs.** A *Except as provided in [section 1], a* person who sets or leaves a fire that spreads and damages or destroys property of any kind not belonging to the person is liable for all damages caused by the fire, and an owner of property damaged or destroyed by the fire may maintain a civil suit for the purpose of recovering damages. A person who sets or leaves a fire that threatens to spread and damage or destroy property is liable for all costs and expenses incurred, including but not limited to expenses incurred in investigation of the fire and administration of fire suppression, by the state of Montana, by any forestry association, or by any person extinguishing or preventing the spread of the fire."

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 50, chapter 63, part 1, and the provisions of Title 50, chapter 63, part 1, apply to [section 1].

**Section 4. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 5. Effective date.** [This act] is effective on passage and approval.

**Section 6. Applicability.** [This act] applies to all actions and proceedings initiated after [the effective date of this act].

Approved April 24, 2013

# CHAPTER NO. 292

[HB 521]

AN ACT REQUIRING PARENTAL CONSENT PRIOR TO AN ABORTION FOR A MINOR; PROVIDING FOR JUDICIAL WAIVER OF THE CONSENT REQUIREMENT; PROVIDING PENALTIES; REPEALING PRIOR STATUTES RELATED TO PARENTAL NOTIFICATION; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AMENDING SECTIONS 41-1-405 AND 47-1-104, MCA; REPEALING SECTIONS 50-20-221, 50-20-222, 50-20-223, 50-20-224, 50-20-225, 50-20-228, 50-20-229, 50-20-232, AND 50-20-235, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 11] may be cited as the "Parental Consent for Abortion Act of 2013".

**Section 2. Legislative purpose and findings.** (1) The legislature finds that:

(a) immature minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences;

(b) the medical, emotional, and psychological consequences of abortion are sometimes serious and can be lasting, particularly when the patient is immature;

(c) the capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an abortion are not necessarily related;

(d) parents ordinarily possess information essential to a physician in the exercise of the physician's best medical judgment concerning the minor;

(e) parents who are aware that their minor daughter has had an abortion may better ensure that the daughter receives adequate medical care after the abortion; and

(f) parental consultation is usually desirable and in the best interests of the minor.

(2) The purpose of [sections 1 through 11] is to further the important and compelling state interests of:

(a) protecting minors against their own immaturity;

(b) fostering family unity and preserving the family as a viable social unit;

(c) protecting the constitutional rights of parents to rear children who are members of their household; and

(d) reducing teenage pregnancy and unnecessary abortion.

**Section 3. Definitions.** As used in [sections 1 through 11], unless the context requires otherwise, the following definitions apply:

(1) "Coerce" means to restrain or dominate the choice of a minor by force, threat of force, or deprivation of food and shelter.

(2) "Consent" means a notarized written statement obtained on a form and executed in the manner prescribed by [section 5] that is signed by a parent or legal guardian of a minor and that declares that the minor intends to seek an abortion and that the parent or legal guardian of the minor consents to the abortion.

(3) "Emancipated minor" means a person under 18 years of age who is or has been married or who has been granted an order of limited emancipation by a court as provided in 41-3-438.

(4) "Medical emergency" means a condition that, on the basis of the good faith clinical judgment of a physician or physician assistant, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of the woman's pregnancy to avert the woman's death or a condition for which a delay in treatment will create serious risk of substantial and irreversible impairment of a major bodily function.

(5) "Minor" means a pregnant female under 18 years of age who is not an emancipated minor.

(6) "Physical abuse" means any physical injury intentionally inflicted by a parent or legal guardian on a minor.

(7) "Physician" means a person licensed to practice medicine under Title 37, chapter 3.

(8) "Physician assistant" means a person licensed pursuant to Title 37, chapter 20, who provides medical services under the supervision of a physician.

(9) "Sexual abuse" has the meaning provided in 41-3-102.

**Section 4. Consent of parent or legal guardian required.** (1) Except as provided in [section 7], a physician or physician assistant may not perform an abortion on a minor unless the physician or physician assistant or the agent of the physician or physician assistant first obtains the notarized written consent of a parent or legal guardian of the minor.

(2) The consent of a parent or legal guardian of the minor is invalid unless it is obtained in the manner and on the form prescribed by [section 5].

**Section 5. Consent form — disclosure — requirements for validity.** (1) The department shall create a consent form to be used by physicians, physician assistants, or their agents in obtaining the consent of a parent or legal guardian as required under [section 4] or in obtaining the waiver of the consent of a parent or legal guardian as provided for in [section 7].

(2) The form must disclose but is not limited to the following:

(a) any information that a physician or physician assistant is required by law to provide to the minor and the rights of the minor;

(b) the rights of the parent or legal guardian;

(c) the surgical or medical procedures that may be performed on the minor;

(d) the risks and hazards related to the procedures planned for the minor, including but not limited to the risks and hazards associated with:

(i) any surgical, medical, or diagnostic procedure, including the potential for infection, blood clots in veins and lungs, hemorrhage, and allergic reactions;

(ii) a surgical abortion, including hemorrhage, uterine perforation or other damage to the uterus, sterility, injury to the bowel or bladder, a potential hysterectomy caused by a complication or injury during the procedure, and the possibility of additional procedures being required because of failure to remove all products of conception;

(iii) a medical or nonsurgical abortion, including hemorrhage, sterility, the continuation of the pregnancy, and the possibility of additional procedures being required because of failure to remove all products of conception; and

(iv) the particular procedure that is planned for the minor, including cramping of the uterus, pelvic pain, infection of the female reproductive organs, cervical laceration, incompetent cervix, and the requirement of emergency treatment for any complications.

(3) The form must include:

(a) a minor consent statement that the minor must sign. The minor consent statement must include but is not limited to the following points, each of which must be initialed by the minor:

(i) the minor understands that the physician or physician assistant is going to perform an abortion on the minor and that the abortion will end the minor's pregnancy;

(ii) the minor is not being coerced into having an abortion, the minor has the choice not to have the abortion, and the minor may withdraw consent at any time prior to the abortion;

(iii) the minor consents to the procedure;

(iv) the minor understands the risks and hazards associated with the surgical or medical procedures planned for the minor;

(v) the minor has been provided the opportunity to ask questions about the pregnancy, alternative forms of treatment, the risk of nontreatment, the procedures to be used, and the risks and hazards involved; and

(vi) the minor has sufficient information to give informed consent.

(b) a parental consent statement that a parent or legal guardian must sign. The parental consent statement must include but is not limited to the following points, each of which must be initialed by a parent or legal guardian:

(i) the parent or legal guardian understands that the physician or physician assistant who signed the physician declaration statement provided for in subsection (3)(c) is going to perform an abortion on the minor that will end the minor's pregnancy;

(ii) the parent or legal guardian had the opportunity to read the consent form or had the opportunity to have the consent form read to the parent or legal guardian;

(iii) the parent or legal guardian had the opportunity to ask questions of the physician or physician assistant or the agent of the physician or physician assistant regarding the information contained in the consent form and the surgical and medical procedures to be performed on the minor;

(iv) the parent or legal guardian has been provided sufficient information to give informed consent.

(c) a physician declaration that the physician or physician assistant must sign, declaring that:

(i) the physician or physician assistant or the agent of the physician or physician assistant explained the procedure and contents of the consent form to the minor and a parent or legal guardian of the minor and answered any questions; and

(ii) to the best of the physician's or physician assistant's knowledge, the minor and a parent or legal guardian of the minor have been adequately informed and have consented to the abortion; and

(d) a signature page for a parent or legal guardian of the minor that must be notarized and that includes an acknowledgment by the parent or legal guardian affirming that the parent or legal guardian is the minor's parent or legal guardian.

**Section 6. Proof of identification and relationship to minor — retention of records.** (1) A parent or legal guardian of a minor who is consenting to the performance of an abortion on the minor shall provide the attending physician or physician assistant or the agent of the physician or physician assistant with government-issued proof of identity and written documentation that establishes that the parent or legal guardian is the lawful parent or legal guardian of the minor.

(2) A physician or physician assistant shall retain the completed consent form and the documentation provided pursuant to subsection (1) in the minor's medical file for 5 years after the minor reaches 18 years of age, but in no event less than 7 years.

(3) A physician or physician assistant receiving documentation under this section shall execute for inclusion in the minor's medical record an affidavit stating: "I, (insert name of physician or physician assistant), certify that according to my best information and belief, a reasonable person under similar circumstances would rely on the information presented by both the minor and the minor's parent or legal guardian as sufficient evidence of identity and relationship."

**Section 7. Exceptions.** Consent is not required under [section 4] if:

(1) the attending physician or physician assistant certifies in the minor's medical record that a medical emergency exists and there is insufficient time to provide consent;

(2) consent is waived, in a notarized writing, by the person entitled to give consent; or

(3) consent is waived under [section 9].

**Section 8. Coercion prohibited.** A parent, a legal guardian, or any other person may not coerce a minor to have an abortion. If a minor is denied financial support by the minor's parents, legal guardian, or custodian because of the minor's refusal to have an abortion, the minor must be considered an emancipated minor for the purposes of eligibility for public assistance benefits. The public assistance benefits may not be used to obtain an abortion.

**Section 9. Procedure for judicial waiver of consent.** (1) The requirements and procedures under this section are available to minors whether or not they are residents of this state.

(2) A minor may petition the youth court for a waiver of the requirement for consent and may participate in the proceedings on the minor's own behalf. The petition must include a statement that the minor is pregnant and is not emancipated. The court may appoint a guardian ad litem for the minor. A guardian ad litem is required to maintain the confidentiality of the proceedings. The youth court shall advise the minor of the right to assigned counsel and shall order the office of state public defender, provided for in 47-1-201, to assign counsel upon request.

(3) Proceedings under this section are confidential and must ensure the anonymity of the minor. All proceedings under this section must be sealed. The minor may file the petition using a pseudonym or using the minor's initials. All documents related to the petition and the proceedings on the petition are confidential and are not available to the public. The proceedings on the petition must be given preference over other pending matters to the extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings of fact and conclusions of law and rule within 48 hours of the time that the petition is filed unless the time is extended at the request of the minor. If the court fails to rule within 48 hours and the time is not extended, the petition is granted and the requirement for consent is waived.

(4) If the court finds that the minor is competent to decide whether to have an abortion, the court shall issue an order authorizing the minor to consent to the performance or inducement of an abortion without the consent of a parent or legal guardian.

(5) The court shall issue an order authorizing the minor to consent to an abortion without the consent of a parent or legal guardian if the court finds that:

(a) there is evidence of physical abuse, sexual abuse, or emotional abuse of the minor by one or both parents, a legal guardian, or a custodian; or

(b) the consent of a parent or legal guardian is not in the best interests of the minor.

(6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss the petition.

(7) A court that conducts proceedings under this section shall issue written and specific findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence, findings, and conclusions be maintained.

(8) The supreme court may adopt rules providing an expedited confidential appeal by a minor if the youth court denies a petition. An order authorizing an abortion without the consent of a parent or legal guardian is not subject to appeal.

(9) Filing fees may not be required of a minor who petitions a court for a waiver of the requirement for consent or who appeals a denial of a petition.

**Section 10. Criminal and civil penalties.** (1) A person convicted of performing an abortion in violation of [section 4] shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. On a second or subsequent conviction, the person shall be fined an amount not less than $500 or more than $50,000 and be imprisoned in the state prison for a term of not less than 10 days or more than 5 years, or both.

(2) Failure to obtain the consent required under [section 4] is prima facie evidence in an appropriate civil action for a violation of a professional obligation. The evidence does not apply to issues other than failure to obtain the consent of a parent or legal guardian. A civil action may be based on a claim that the failure to obtain consent was the result of a violation of the appropriate legal standard of care. Failure to obtain consent is presumed to be actual malice pursuant to the provisions of 27-1-221. [Sections 1 through 11] do not limit the common-law rights of parents.

(3) A person who coerces a minor to have an abortion is guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. On a second or subsequent conviction, the person shall be fined an amount not less than $500 or more than $50,000 and be imprisoned in the state prison for a term of not less than 10 days or more than 5 years, or both.

(4) A person not authorized to grant consent under [section 4] who signs a consent form provided for in [section 5] is guilty of a misdemeanor.

**Section 11. Construction.** Nothing in [sections 1 through 11] may be construed as creating or recognizing a right to abortion. It is not the intention of [sections 1 through 11] to make lawful an abortion that is currently unlawful.

**Section 12.** Section 41-1-405, MCA, is amended to read:

**"41-1-405. Emergencies and special situations.** (1) A health professional may render or attempt to render emergency service or first aid, medical, surgical, dental, or psychiatric treatment, without compensation, to any injured person or any person regardless of age who is in need of immediate health care when, in good faith, the professional believes that the giving of aid is the only alternative to probable death or serious physical or mental damage.

(2) A health professional may render nonemergency services to minors for conditions that will endanger the health or life of the minor if services would be delayed by obtaining consent from spouse, parent, parents, or legal guardian.

(3) Consent may not be required of a minor who does not possess the mental capacity or who has a physical disability that renders the minor incapable of giving consent and who has no known relatives or legal guardians, if a physician determines that the health service should be given.

(4) Self-consent of minors does not apply to sterilization or abortion, except as provided in ~~Title 50, chapter 20, part 2~~ *[sections 1 through 11]*."

**Section 13.** Section 47-1-104, MCA, is amended to read:

**"47-1-104. Statewide system — structure and scope of services — assignment of counsel at public expense.** (1) There is a statewide public defender system, which is required to deliver public defender services in all courts in this state. The system is supervised by the commission and administered by the office.

(2) The commission shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The commission may establish a regional office to provide public defender services in each region, as provided in 47-1-215, establish a contracted services program to provide

services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

(3) When a court orders the office or the office of appellate defender to assign counsel, the appropriate office shall immediately assign a public defender qualified to provide the required services. The commission shall establish protocols to ensure that the offices make appropriate assignments in a timely manner.

(4) A court may order an office to assign counsel under this chapter in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child Welfare Act, as provided in 41-3-425;

(iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

(v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

(vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

(vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116;

(ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and

(x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.

(b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:

(i) as provided for in 41-3-425;

(ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;

(iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;

(iv) for a minor who petitions for a waiver of parental ~~notification~~ *consent* requirements under the ~~Parental Notice of Abortion Act~~ *Parental Consent for Abortion Act of 2013*, as provided in ~~50-20-232~~ *[section 9]*;

(v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; and

(c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of 47-1-216 to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest."

**Section 14. Repealer.** The following sections of the Montana Code Annotated are repealed:

50-20-221. Short title.

50-20-222. Legislative purpose and findings.

50-20-223. Definitions.

50-20-224. Notice of parent required.

50-20-225. Alternative notification.

50-20-228. Exceptions.

50-20-229. Coercion prohibited.

50-20-232. Procedure for judicial waiver of notice.

50-20-235. Criminal and civil penalties.

**Section 15. Codification instruction.** [Sections 1 through 11] are intended to be codified as an integral part of Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to [sections 1 through 11].

**Section 16. Coordination instruction.** If both House Bill No. 391 and [this act] are passed and approved, then [this act] is void.

**Section 17. Effective date.** If approved by the electorate, [this act] is effective January 1, 2015.

**Section 18. Submission to electorate.** [This act] shall be submitted to the qualified electors of Montana at the general election to be held in November 2014 by printing on the ballot the full title of [this act] and the following:

☐ YES on Legislative Referendum No. ____

☐ NO on Legislative Referendum No. ____

# CHAPTER NO. 293

[HB 3]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2013; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Time limits.** The appropriations contained in [section 2] are intended to provide necessary and ordinary expenditures for the fiscal year ending June 30, 2013. Except as provided in [section 2(2)], the unspent balance of any appropriation must revert to the appropriate fund.

**Section 2. Appropriations — authorization to expend money.** (1) The following money is appropriated, subject to the terms and conditions of [section 1]:

| Agency and Program | Amount | Fund |
|---|---|---|
| Office of Public Instruction | | |
| State Tuition Payments | $172,698 | General Fund |
| BASE Aid | $39,899,927 | General Fund |
| Block Grants | $3,683,002 | General Fund |
| Department of Justice | | |
| Major Litigation | $1,149,477 | General Fund |
| Exempt Staff Payouts | $43,037 | General Fund |
| | $60,611 | State Special Revenue |
| Public Safety Officer Standards and Training | $177,723 | General Fund |
| Governor's Office | | |
| Exempt Staff Payouts | $276,061 | General Fund |
| Department of Natural Resources and Conservation | | |
| Fire Suppression | $50,000,000 | General Fund |
| Department of Administration | | |
| Montana Lottery | $2,000,000 | Proprietary Fund |
| Risk Management and Tort Defense | $13,400,000 | General Fund |
| Office of Public Defender | | |
| Public Defender | $3,200,000 | General Fund |
| Appellate Defender | $200,000 | General Fund |
| Department of Corrections | | |
| Secure Facilities | $6,597,000 | General Fund |
| | $750,000 | State Special Revenue |
| Department of Military Affairs | | |
| Disaster and Emergency Services | $6,547,080 | Federal Special Revenue |

(2) By August 1, 2013, any supplemental funds appropriated to the department of natural resources and conservation for the purpose of fire

suppression that remain unencumbered after July 1, 2013, must be transferred by the state treasurer to the fire suppression account provided for in 76-13-150.

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved April 25, 2013

# CHAPTER NO. 294

[HB 4]

AN ACT APPROPRIATING MONEY THAT WOULD USUALLY BE APPROPRIATED BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2013; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE INTO STATE AND FEDERAL FISCAL YEARS 2014 AND 2015; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Time limits.** The appropriations contained in [section 2] are intended to provide necessary expenditures for the years for which the appropriations are made. The unspent balance of an appropriation reverts to the fund from which it was appropriated upon conclusion of the final fiscal year for which its expenditures are authorized by [sections 1 and 2].

**Section 2. Appropriations.** The following money is appropriated, subject to the terms and conditions of [sections 1 and 2]:

Agency and Program

Judiciary

District Court Operations

All remaining fiscal year 2013 federal budget amendment authority for the Office of Justice Programs veteran's treatment court, the Substance Abuse and Mental Health Services Administration veteran's treatment court, and the 9th Judicial District drug court implementation project is authorized to continue into federal fiscal year 2014.

All remaining fiscal year 2013 federal budget amendment authority for the Montana statewide drug court application is authorized to continue into state fiscal year 2015.

Governor's Office

Executive Office Program

All remaining fiscal year 2013 federal budget amendment authority for the small business credit initiative is authorized to continue into federal fiscal year 2015.

Secretary of State

Business and Government Services

All remaining fiscal year 2013 federal budget amendment authority for the help America vote grant, the election assistance for individuals with disabilities grant, the help America vote grant part II, and the electronic absentee system is authorized to continue into federal fiscal year 2015.

Office of Public Instruction

OPI Administration

All remaining fiscal year 2013 federal budget amendment authority for the striving readers project is authorized to continue into federal fiscal year 2014.

Distribution to Public Schools

All remaining fiscal year 2013 federal budget amendment authority for the striving readers project is authorized to continue into federal fiscal year 2014.

Department of Justice

Legal Services Division

| | | | |
|---|---|---|---|
| Victim compensation formula grant | FY 2013 | $73,238 | Federal |

All remaining fiscal year 2013 federal budget amendment authority for the information network training enforcement response collaborative efforts develop effectiveness project is authorized to continue into state fiscal year 2015.

All remaining federal fiscal year 2013 budget amendment authority for the victim compensation formula grant is authorized to continue into federal fiscal year 2015.

Office of Consumer Protection

All remaining fiscal year 2013 federal budget amendment authority for the prescription drug financial assistance program is authorized to continue into state fiscal year 2015.

All remaining fiscal year 2013 federal budget amendment authority for the mortgage settlement is authorized to continue into federal fiscal year 2015.

Motor Vehicle Division

All remaining fiscal year 2013 federal budget amendment authority for the commercial driver's licenses information system and the contracted program support staff driving Montana's commercial driver's license modernization implementation is authorized to continue into state fiscal year 2014.

All remaining fiscal year 2013 federal budget amendment authority for the commercial driver's license help desk improvement grant is authorized to continue into state fiscal year 2015.

Highway Patrol Division

All remaining fiscal year 2013 federal budget amendment authority for the 2012 high intensity drug trafficking areas grant is authorized to continue into state fiscal year 2014.

Division of Criminal Investigations

| | | | |
|---|---|---|---|
| Federal forfeiture | FY 2013 | $100,313 | Federal |
| Tactical diversion squad task force | FY 2013 | $17,203 | Federal |
| Organized crime drug enforcement task forces reservation runners | FY 2013 | $2,500 | Federal |
| Organized crime drug enforcement task forces Little Big Horn | FY 2013 | $1,500 | Federal |
| Organized crime drug enforcement task forces weed be gone | FY 2013 | $1,500 | Federal |
| Organized crime drug enforcement task forces road warriors | FY 2013 | $4,500 | Federal |
| State and local overtime initial allocation | FY 2013 | $15,000 | Federal |
| Big Sky safe streets task force | FY 2013 | $17,203 | Federal |

Forensic Science Division

All remaining fiscal year 2013 federal budget amendment authority for the 2012 DNA backlog reduction program is authorized to continue into state fiscal year 2014.

Public Service Regulation

Public Service Regulation Program

All remaining fiscal year 2013 federal budget amendment authority for the state electricity regulators assistance is authorized to continue into state fiscal year 2015.

Montana Arts Council

Promotion of the Arts Division

All remaining fiscal year 2013 federal budget amendment authority for the Montana artists in business grant is authorized to continue into state fiscal year 2014.

Montana Library Commission

Statewide Library Resources

| | | | |
|---|---|---|---|
| Library Services and Technology Act state grants | FY 2013 | $809,397 | Federal |

All remaining fiscal year 2013 federal budget amendment authority for the geographic information system and Library Services and Technology Act state grants is authorized to continue into federal fiscal year 2014.

Montana Historical Society

Research Center

| | | | |
|---|---|---|---|
| State and national archival partnership project | FY 2013 | $13,260 | Federal |

All remaining fiscal year 2013 budget amendment authority for the film "Montana. . . Land of the Big Sky" and the state and national archival partnership project is authorized to continue into state fiscal year 2014.

Publications

All remaining fiscal year 2013 federal budget amendment authority for the book project "Children of the Hill: The Meaning and Making of Childhood in Butte" is authorized to continue into state fiscal year 2014.

Education Program

All remaining fiscal year 2013 federal budget amendment authority for the national endowment for the humanities "The Richest Hills: Mining in the Far West, 1862-1920" project is authorized to continue into state fiscal year 2014.

Historic Preservation Program

| | | | |
|---|---|---|---|
| Cultural resource annotated bibliography system and the cultural resources information system database | FY 2013 | $5,000 | Federal |
| State historic preservation office file search fees | FY 2013 | $17,500 | Proprietary |

All remaining fiscal year 2013 federal budget amendment authority for the cultural resource annotated bibliography system and the cultural resources information system database is authorized to continue into state fiscal year 2014.

All remaining fiscal year 2013 federal budget amendment authority for the cultural resources annotated bibliography system and the cultural resources information system is authorized to continue into federal fiscal year 2014.

Department of Fish, Wildlife, and Parks

Fisheries Division

| | | | |
|---|---|---|---|
| Biological research, fisheries monitoring, and pallid sturgeon propagation | FY 2013 | $850 | Federal |

All remaining fiscal year 2013 federal budget amendment authority for the Hungry Horse dam mitigation and Sekokini Springs project, the mainstream amendments research, the Libby dam mitigation plan, the Middle and North Fork Flathead River weed management project, and the westslope cutthroat trout restoration and remediation work on the Lewis and Clark national forest is authorized to continue into state fiscal year 2014.

All remaining fiscal year 2013 federal budget amendment authority for conducting angler and boater surveys and inspections, the westslope cutthroat trout restoration program, cutthroat trout genetics work in the waters of Gallatin national forest, and biological research, fisheries monitoring, and pallid sturgeon propagation is authorized to continue into federal fiscal year 2014.

All remaining fiscal year 2013 federal budget amendment authority for the cutthroat population protection barrier construction project is authorized to continue into state fiscal year 2015.

All remaining fiscal year 2013 federal budget amendment authority for the swan aquatic invasive species prevention project, the candidate conservation agreement with assurances program for arctic grayling in the Big Hole Valley, genetics testing of westslope cutthroat and bull trout, the suppression of lake trout in Swan Lake, the restoration of genetically pure westslope cutthroat trout in Cherry Creek, native fish genetics in the Blackfoot Watershed, the implementation of the Montana state aquatic invasive species plan, the density of pallid sturgeon and food and web dynamics in the Missouri River, the aquatic invasive species prevention, the Red Rock Lakes grayling study, the painted rocks reservoir operations and maintenance, the Blackfoot River recreation management partnership, and the arctic grayling recovery project is authorized to continue into federal fiscal year 2015.

Enforcement Division

| | | | |
|---|---|---|---|
| State recreational boating safety grant program | FY 2013 | $485,200 | Federal |

All remaining fiscal year 2013 federal budget amendment authority for the TIP-MONT program is authorized to continue into state fiscal year 2014.

Wildlife Division

All remaining fiscal year 2013 federal budget amendment authority for statewide bird monitoring with an emphasis on priority and declining bird species, the pronghorn antelope study, and the elk productivity, survival, and recruitment study is authorized to continue into state fiscal year 2014.

All remaining fiscal year 2013 federal budget amendment authority for the grizzly bear management assistance in Northwestern Montana is authorized to continue into state fiscal year 2015.

All remaining fiscal year 2013 federal budget amendment authority for the grizzly bear management assistance in Montana, the bear conflict management in the Cabinet-Yaak region, the bear management specialist, the fiscal year 2012 legacy administration grant, the grizzly bear trend survey, and the elk surveys in the Bitterroot River basin is authorized to continue into federal fiscal year 2015.

Parks Division

| | | | |
|---|---|---|---|
| State recreational boating safety grant program | FY 2013 | $37,000 | Federal |

All remaining fiscal year 2013 federal budget amendment authority for the land and water conservation fund is authorized to continue into state fiscal year 2015.

All remaining fiscal year 2013 federal budget amendment authority for the Smith River corridor management project is authorized to continue into federal fiscal year 2015.

Capital Outlay

All remaining fiscal year 2013 federal budget amendment authority for the arctic grayling spawning habitat project, the Cherry Creek westslope cutthroat trout restoration project, and the operation and maintenance of the Canyon Ferry wildlife management area is authorized to continue into federal fiscal year 2015.

Management and Finance Division

All remaining fiscal year 2013 federal budget amendment authority for the Blackfoot River easement project and the great plains wind energy program is authorized to continue into state fiscal year 2014.

All remaining fiscal year 2013 federal budget amendment authority for the wildlife survey and inventory program is authorized to continue into state fiscal year 2015.

Fish and Wildlife Administration

| | | | |
|---|---|---|---|
| Comprehensive wildlife conservation plan | FY 2013 | $30,900 | Federal |

All remaining fiscal year 2013 federal budget amendment authority for the data integration and collaborative services for crucial areas assessments, the comprehensive wildlife conservation plan, and the species and habitat monitoring work along the Montana-Idaho border is authorized to continue into state fiscal year 2014.

All remaining fiscal year 2013 federal budget amendment authority for monitoring wildlife response to energy development is authorized to continue into federal fiscal year 2015.

Department of Environmental Quality

Central Management Program

All remaining fiscal year 2013 federal budget amendment authority for the fiscal year 2009 exchange network and the fiscal year 2012 exchange network is authorized to continue into federal fiscal year 2014.

Planning, Prevention, and Assistance Division

All remaining fiscal year 2013 federal budget amendment authority for the 106 supplemental monitoring initiative is authorized to continue into state fiscal year 2014.

Remediation Division

All remaining fiscal year 2013 federal budget amendment authority for the fiscal year 2010 abandoned mine lands reclamation grant is authorized to continue into state fiscal year 2015.

All remaining fiscal year 2013 federal budget amendment authority for the fiscal year 2011 abandoned mine lands reclamation grant and the fiscal year

2012 abandoned mine lands reclamation grant is authorized to continue into federal fiscal year 2015.

Permitting and Compliance Division

| | | | |
|---|---|---|---|
| Zortman/Landusky water treatment and reclamation | FY 2013 | $246,681 | Federal |

All remaining fiscal year 2013 federal budget amendment authority for air quality monitoring and the Zortman/Landusky water treatment and reclamation projects is authorized to continue into federal fiscal year 2015.

Department of Transportation

Construction Program

| | | | |
|---|---|---|---|
| Fiscal year 2013 emergency relief funds | FY 2013 | $29,706,769 | Federal |
| Yellowstone international airport interchange development | FY 2013 | $8,976,224 | Federal |

All remaining fiscal year 2013 federal budget amendment authority for the Pipe Creek road pavement preservation and guardrail project is authorized to continue into federal fiscal year 2014.

All remaining fiscal year 2013 federal budget amendment authority for the Yellowstone international airport interchange development is authorized to continue into state fiscal year 2015.

All remaining fiscal year 2013 federal budget amendment authority for the fiscal year 2013 emergency relief funds is authorized to continue into federal fiscal year 2015.

All remaining fiscal year 2013 federal budget authority authorized in section 85, Chapter 489, Laws of 2009, for highway funding is authorized to continue into federal fiscal year 2015.

Maintenance Program

All remaining fiscal year 2013 federal budget amendment authority for the north/west passage corridor is authorized to continue into state fiscal year 2015.

All remaining fiscal year 2013 federal budget amendment authority for the emergency relief funds is authorized to continue into federal fiscal year 2015.

Rail, Transit, and Planning

All remaining fiscal year 2013 federal budget amendment authority for the Pipe Creek road pavement preservation and guardrail project is authorized to continue into federal fiscal year 2014.

All remaining fiscal year 2013 federal budget amendment authority for the state judicial outreach liaisons is authorized to continue into state fiscal year 2015.

All remaining fiscal year 2013 federal budget amendment authority for the great northern corridor multistate planning and development study, the 2011 federal transit administration discretionary grants, the emergency relief funds, and the 2012 federal transit administration discretionary grants is authorized to continue into federal fiscal year 2015.

All remaining fiscal year 2013 federal budget authority authorized in section 85, Chapter 489, Laws of 2009, for the transit formula funding is authorized to continue into federal fiscal year 2015.

Department of Natural Resources and Conservation

Conservation and Resource Development Division

All remaining fiscal year 2013 federal budget authority authorized in section 85, Chapter 489, Laws of 2009, for the Montana water pollution state revolving fund and the Montana drinking water state revolving fund is authorized to continue into state fiscal year 2014.

All remaining fiscal year 2013 federal budget amendment authority for the fiscal year 2010 safe drinking water state revolving fund, the fiscal year 2010 clean water state revolving fund, the fiscal year 2012 safe drinking water state revolving fund, the fiscal year 2012 clean water state revolving fund, the fiscal year 2011 safe drinking water state revolving fund, the fiscal year 2013 clean water state revolving fund, and the fiscal year 2013 safe drinking water capitalization grant is authorized to continue into federal fiscal year 2015.

Water Resources Division

| | | | |
|---|---|---|---|
| Public notice for Crow water rights preliminary decree | FY 2013 | $21,800 | Federal |
| Community assistance program | FY 2013 | $16,000 | Federal |

All remaining fiscal year 2013 federal budget amendment authority for the digital flood insurance map for Yellowstone County and the public notice for Crow water rights preliminary decree is authorized to continue into state fiscal year 2014.

All remaining fiscal year 2013 federal budget amendment authority for the Flint Creek ditch diversion replacement and fish screen project and the collection of topographic data along stream corridors is authorized to continue into federal fiscal year 2014.

All remaining fiscal year 2013 federal budget amendment authority for the flood plain mapping for Granite County, the flood plain mapping for Missoula County, the flood plain mapping for Gallatin County, and the flood plain mapping for Flathead County is authorized to continue into federal fiscal year 2015.

Forestry and Trust Lands Division

All remaining fiscal year 2013 federal budget amendment authority for the fiscal year 2009 forest stewardship program, forest health management and urban and community forestry, state fire assistance and volunteer fire assistance and conservation education, and noxious weed control at gravel pits is authorized to continue into state fiscal year 2014.

All remaining fiscal year 2013 federal budget amendment authority for the fiscal year 2011 forest stewardship program, forest health management and urban and community forestry, state fire assistance and volunteer fire assistance and conservation education, the fiscal year 2011 hazardous fuels reduction on adjacent nonfederal lands, the fiscal year 2011 forest health protection for western bark beetle, the biomass utilization, the fiscal year 2009 hazardous fuel reduction work on adjacent nonfederal lands, the prescribed burning program on the Gallatin National Forest, and the ready reserve rural fire assistance is authorized to continue into federal fiscal year 2014.

All remaining fiscal year 2013 federal budget amendment authority for the forest health management western bark beetle/white pine blister rust and the fiscal year 2010 forest stewardship program, forest health management and urban and community forestry, and state fire assistance and volunteer fire assistance and conservation education is authorized to continue into state fiscal year 2015.

All remaining fiscal year 2013 federal budget amendment authority for the Helena interagency dispatch center, prescribed burns on federal lands, the Montana forest restoration committee collaborative, the hazardous fuel reduction on adjacent nonfederal lands, additional staffing for prescribed burning activities, the forest health protection for western bark beetle, whitebark pine cone collection, the fiscal year 2010 hazardous fuels reduction, the fiscal year 2012 forest stewardship program, forest health management and urban and community forestry, and state fire assistance and volunteer fire assistance and conservation education, the Montana cooperative fire management and Stafford Act response agreement, the conservation reserve program, the fiscal year 2012 cohesive strategy consolidated payments grant, and technical assistance on forest-based conservation and enhancement is authorized to continue into federal fiscal year 2015.

Department of Administration

Information Technology Services Division

All remaining fiscal year 2013 federal budget amendment authority for the community oriented policing services grant is authorized to continue into state fiscal year 2014.

All remaining fiscal year 2013 federal budget amendment authority for integration and enhancement of a statewide digital cadastral database and completing the project to map broadband availability is authorized to continue into state fiscal year 2015.

Department of Agriculture

Agricultural Development Division

All remaining fiscal year 2013 federal budget amendment authority for the fiscal year 2011 specialty crop block grant program and to develop efficiencies in food processing for rural farm-to-school programs through school food nutrition service cooperative agreements is authorized to continue into federal fiscal year 2014.

All remaining fiscal year 2013 federal budget amendment authority for the fiscal year 2012 specialty crop block grant program is authorized to continue into federal fiscal year 2015.

Department of Corrections

Youth services

All remaining fiscal year 2013 federal budget amendment authority for the rural school achievement program is authorized to continue into federal fiscal year 2014.

Administration and Financial Services

All remaining fiscal year 2013 federal budget amendment authority for the Prison Rape Elimination Act is authorized to continue into federal fiscal year 2014.

Adult Community Corrections

All remaining fiscal year 2013 federal budget amendment authority for smart probation in Montana is authorized to continue into federal fiscal year 2014.

Secure Custody Facilities

All remaining fiscal year 2013 federal budget amendment authority for "Family Matters: The Family Engagement Program" is authorized to continue into federal fiscal year 2014.

Department of Commerce

Business Resources Division

All remaining fiscal year 2013 federal budget amendment authority for the Small Business Jobs Act program is authorized to continue into state fiscal year 2014.

All remaining fiscal year 2013 federal budget amendment authority for the small business administration congressional earmark grant is authorized to continue into federal fiscal year 2014.

All remaining fiscal year 2013 federal budget amendment authority for the project to map broadband availability is authorized to continue into state fiscal year 2015.

Community Development Division

All remaining fiscal year 2013 federal budget amendment authority for the neighborhood stabilization program part I and the neighborhood stabilization program part III is authorized to continue into state fiscal year 2014.

Housing Division

| | | | |
|---|---|---|---|
| Section 811 project rental assistance demonstration program | FY 2013 | $2,000,000 | Federal |

All remaining fiscal year 2013 federal budget amendment authority for the emergency homeowners' loan program is authorized to continue into state fiscal year 2014.

All remaining fiscal year 2013 federal budget amendment authority for the project rental assistance demonstration program is authorized to continue into federal fiscal year 2015.

Department of Labor and Industry

Workforce Services Division

| | | | |
|---|---|---|---|
| Developing current labor exchange system by enhancing matching and integrating labor exchange with educational information | FY 2013 | $338,726 | Federal |

All remaining fiscal year 2013 federal budget amendment authority for the on-the-job training and fiscal year 2012 reemployment eligibility assessment is authorized to continue into state fiscal year 2014.

All remaining fiscal year 2013 federal budget amendment authority for updating the Montana works system for services to veterans is authorized to continue into federal fiscal year 2014.

All remaining fiscal year 2013 federal budget amendment authority for developing current labor exchange system by enhancing matching and integrating labor exchange with educational information is authorized to continue into federal fiscal year 2015.

Unemployment Insurance Division

| | | | |
|---|---|---|---|
| Fiscal year 2012 reemployment eligibility assessment | FY 2013 | $1,000 | Federal |
| Fiscal year 2013 unemployment insurance state administration | FY 2013 | $371,543 | Federal |
| Fiscal year 2013 emergency unemployment compensation | FY 2013 | $236,297 | Federal |
| Emergency unemployment compensation | FY 2013 | $279,829 | Federal |

All remaining fiscal year 2013 federal budget amendment authority for the fiscal year 2011 unemployment insurance program, fiscal year 2012 reemployment eligibility assessment, and the fiscal year 2011 emergency unemployment compensation is authorized to continue into state fiscal year 2014.

All remaining fiscal year 2013 federal budget amendment authority for the fiscal year 2012 unemployment insurance program and the fiscal year 2012 emergency unemployment compensation is authorized to continue into state fiscal year 2015.

All remaining fiscal year 2013 federal budget amendment authority for the fiscal year 2013 emergency unemployment compensation is authorized to continue into federal fiscal year 2015.

Department of Military Affairs

Starbase Program

| | | | |
|---|---|---|---|
| Starbase partial funding | FY 2013 | $150,000 | Federal |

Disaster and Emergency Services

| | | | |
|---|---|---|---|
| Fiscal year 2012 hazard mitigation grants program | FY 2013 | $604,330 | Federal |
| Hazardous materials transportation program | FY 2013 | $172,532 | Federal |

All remaining fiscal year 2013 federal budget amendment authority for the northern tier consortium border interoperability demonstration project is authorized to continue into state fiscal year 2014.

All remaining fiscal year 2013 federal budget amendment authority for the fiscal year 2011 predisaster mitigation competitive grant, the 2011 homeland security grant program, and the 2012 homeland security grant program is authorized to continue into federal fiscal year 2014.

All remaining fiscal year 2013 federal budget amendment authority for the fiscal year 2010 predisaster mitigation competitive grant, the fiscal year 2012 predisaster mitigation competitive grant, and the fiscal year 2011 hazard mitigation grants program is authorized to continue into state fiscal year 2015.

All remaining fiscal year 2013 federal budget amendment authority for the fiscal year 2012 hazard mitigation grants program is authorized to continue into federal fiscal year 2015.

Department of Public Health and Human Services

Human and Community Services

All remaining fiscal year 2013 federal budget amendment authority for the child care wellness program grants is authorized to continue into state fiscal year 2014.

All remaining fiscal year 2013 federal budget amendment authority for the food stamp performance bonus is authorized to continue into federal fiscal year 2015.

Child and Family Services

All remaining fiscal year 2013 federal budget amendment authority for the adoption incentive payments program is authorized to continue into federal fiscal year 2014.

Public Health and Safety Division

All remaining fiscal year 2013 federal budget amendment authority for the personal responsibility education program and the Affordable Care Act

maternal, infant, and early childhood home visiting program is authorized to continue into federal fiscal year 2014.

Developmental Services Division

All remaining fiscal year 2013 federal budget amendment authority for alternatives to Medicaid to psychiatric residential treatment facilities is authorized to continue into federal fiscal year 2014.

Health Resources Division

| | | | |
|---|---|---|---|
| Adult medicaid quality grants | FY 2013 | $500,000 | Federal |

All remaining fiscal year 2013 federal budget amendment authority for adult medicaid quality grants is authorized to continue into state fiscal year 2014.

Senior and Long Term Care Division

| | | | |
|---|---|---|---|
| State health insurance assistance program | FY 2013 | $324,000 | Federal |

All remaining fiscal year 2013 federal budget amendment authority for the state health insurance assistance program is authorized to continue into state fiscal year 2014.

All remaining fiscal year 2013 federal budget amendment authority for the Montana statewide lifespan respite grant is authorized to continue into federal fiscal year 2014.

All remaining fiscal year 2013 federal budget amendment authority for the Montana community choice partnership is authorized to continue into federal fiscal year 2015.

Addictive and Mental Disorders Division

| | | | |
|---|---|---|---|
| Flex rural veterans health access program | FY 2013 | $327,700 | Federal |

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved April 25, 2013

# CHAPTER NO. 295

[HB 64]

AN ACT REQUIRING CERTAIN STATE DISTRICT AND LOCAL CANDIDATES AND CERTAIN POLITICAL COMMITTEES TO CONTINUE FILING REPORTS OF CONTRIBUTIONS AND EXPENDITURES UNTIL FILING A CLOSING REPORT; AND AMENDING SECTION 13-37-226, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 13-37-226, MCA, is amended to read:

**"13-37-226. Time for filing reports.** (1) Candidates for a state office filled by a statewide vote of all the electors of Montana and political committees that are organized to support or oppose a particular statewide candidate shall file reports electronically as follows:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that the candidate expects to be on the ballot;

(b) on the 10th day of March, April, July, August, and September;

(c) on the 15th and 5th days preceding the date on which an election is held;

(d) within 24 hours after receiving a contribution of $200 or more if received between the 10th day before the election and the day of the election;

(e) not more than 20 days after the date of the election; and

(f) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).

(2) Political committees organized to support or oppose a particular statewide ballot issue shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which the text of the proposed ballot issue is submitted for review and approval pursuant to 13-27-202 during the year or years prior to the election year that an issue is or is expected to be on the ballot;

(b) on the 10th day of March and on the 10th day of each subsequent month through September in each year that an election is to be held;

(c) on the 15th and 5th days preceding the date on which an election is held;

(d) within 24 hours after receiving a contribution of $500 or more if received between the 10th day before the election and the day of the election;

(e) within 20 days after the election; and

(f) on the 10th day of March and September of each year following an election until the political committee files a closing report as specified in 13-37-228(3).

(3) Candidates for a state district office, including but not limited to candidates for the legislature, the public service commission, or a district court judge, and political committees that are specifically organized to support or oppose a particular state district candidate or issue shall file reports:

(a) on the 12th day preceding the date on which an election is held;

(b) within 48 hours after receiving a contribution of $100 or more if received between the 17th day before the election and the day of the election. The report under this subsection (3)(b) must be made by mail or by electronic communication to the commissioner pursuant to 13-37-225.

(c) not more than 20 days after the date of the election; and

(d) ~~whenever a~~ *on the 10th day of March and September of each year following an election until the* candidate or political committee files a closing report as specified in 13-37-228(3).

(4) Candidates for any other public office and political committees that are specifically organized to support or oppose a particular local issue shall file the reports specified in subsection (3) only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing fee paid by the candidate, exceeds $500, except as provided in 13-37-206.

(5) For the purposes of this subsection, a committee that is not specifically organized to support or oppose a particular candidate or ballot issue and that receives contributions and makes expenditures in conjunction with an election is an independent committee. For the purpose of reporting, a political party committee is an independent committee. An independent committee shall file:

(a) a report on the 12th day preceding the date of an election in which it participates by making an expenditure;

(b) a report within 24 hours of making an expenditure or incurring a debt or obligation of $500 or more for election material described in 13-35-225(1) if made between the 17th day before the election and the day of the election;

(c) a report not more than 20 days after the date of the election in which it participates by making an expenditure; and

(d) a report on a date to be prescribed by the commissioner for a closing report at the close of each calendar year.

(6) The commissioner may promulgate rules regarding the extent to which organizations that are incidental political committees shall report their politically related activities in accordance with this chapter.

(7) Except as provided in subsections (1)(d), (2)(d), (3)(b), and (5)(b), all reports required by this section must be complete as of the fifth day before the date of filing as specified in 13-37-228(2) and this section."

Approved April 25, 2013

# CHAPTER NO. 296

[HB 157]

AN ACT ALLOWING SPLIT WEIGHING OF COMMODITIES; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO ADOPT RULES TO IMPLEMENT THE SPLIT WEIGHING OF COMMODITIES; AMENDING SECTIONS 30-12-306 AND 30-12-406, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Split weighing of commodities allowed — disclosure — rules.** (1) The net weight of a commodity, including raw logs, grain, and quarried rock, transported by any combination of truck, truck tractor, trailer, or semitrailer, as those terms are defined in 61-1-101, may be determined by split weighing the combination if:

(a) the vendor and the purchaser agree in writing to the split weighing; and

(b) either the vendor or the purchaser who is a party to the agreement is responsible for paying the cost of the shipment and any freight charges.

(2) The weigh ticket, weight slip, or other documentation certifying the net weight of the commodity and accompanying delivery of the commodity must clearly disclose that the net weight of the commodity as delivered was determined by split weighing.

(3) The written agreement between the vendor and the purchaser to allow for split weighing must accompany delivery of the commodity.

(4) The department shall adopt rules consistent with this section to provide for the implementation and administration of split weighing. The rules must require, at a minimum that:

(a) the name of the person operating a scale to split weigh and the date and location of the scale be reported to the department and be stated on the weigh ticket, weight slip, or other documentation; and

(b) the person operating the scale must certify that:

(i) each axle of the vehicle or combination of vehicles rests on a straight surface that is level with the deck of the vehicle scale or, if not level, the amount by which the deck of the scale is not level does not exceed 1/3 inch per foot of distance between the deck of the vehicle scale and the axle;

(ii) the brakes of the vehicle or combination of vehicles are not used while the vehicle is being weighed; and

(iii) the transmission of the vehicle or combination of vehicles is in neutral.

**Section 2.** Section 30-12-306, MCA, is amended to read:

**"30-12-306. Sale by net weight.** *(1)* ~~When~~ *If* a commodity is sold on the basis of weight, the net weight of the commodity ~~shall~~ *must* be employed and all contracts concerning commodities ~~shall~~ *must* be ~~so~~ construed *on the basis of net weight*.

*(2) The net weight of a commodity being transported by any combination of truck, truck tractor, trailer, or semitrailer, as those terms are defined in 61-1-101, may be determined by split weighing the combination pursuant to [section 1]. All disclosure, reporting, or listing of the net weight of a commodity determined by split weighing must state that the net weight was determined by split weighing.*"

**Section 3.** Section 30-12-406, MCA, is amended to read:

**"30-12-406. Bulk deliveries sold in terms of weight and delivered by vehicle.** (1) When a vehicle delivers to an individual purchaser a commodity in bulk and the commodity is sold in terms of weight units, the delivery must be accompanied by a duplicate delivery ticket with the following information clearly stated in ink or by means of other indelible marking equipment and in clarity equal to type or printing:

(a) the name and address of the vendor;

(b) the name and address of the purchaser; ~~and~~

(c) the net weight of the delivery expressed in pounds*; and*

*(d) if the net weight was determined by split weighing pursuant to [section 1] or 30-12-306.*

(2) If the net weight is derived from determinations of gross and tare weights, the gross and tare weights must also be stated in terms of pounds. One of ~~these~~ *the delivery* tickets must be retained by the vendor, and the other must be delivered to the purchaser at the time of delivery of the commodity or must be surrendered on demand to the department. If the department desires to retain it as evidence, ~~it~~ *the department* shall issue a weight slip in place of the ticket for delivery to the purchaser. If the purchaser carries away the purchase, the vendor is only required to give to the purchaser at the time of sale a delivery ticket stating the number of pounds of commodity delivered to the purchaser."

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 30, chapter 12, part 1, and the provisions of Title 30, chapter 12, part 1, apply to [section 1].

**Section 5. Effective date.** [This act] is effective July 1, 2013.

Approved April 25, 2013

# CHAPTER NO. 297

[SB 200]

AN ACT REVISING LAWS RELATED TO WOLF MANAGEMENT; GRANTING RULEMAKING AUTHORITY; AUTHORIZING THE ISSUANCE OF MULTIPLE LICENSES TO HUNT AND TRAP WOLVES; AUTHORIZING LANDOWNERS AND THEIR AGENTS TO KILL WOLVES ON PRIVATE PROPERTY WITHOUT A HUNTING LICENSE; REQUIRING REPORTS TO THE ENVIRONMENTAL QUALITY COUNCIL; REDUCING THE PRICE OF A NONRESIDENT WOLF LICENSE; PROVIDING AN EXCEPTION TO THE REQUIREMENT THAT HUNTERS WEAR ORANGE; AMENDING

SECTIONS 87-2-104, 87-2-523, 87-2-524, 87-6-401, AND 87-6-414, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Gray wolf management — rulemaking — reporting.** (1) Except as provided in subsection (2), the commission shall establish by rule hunting and trapping seasons for wolves. For game management purposes, the commission may authorize:

(a) the issuance of more than one Class E-1 or Class E-2 wolf hunting license to an applicant; and

(b) the trapping of more than one wolf by the holder of a trapping license.

(2) The commission shall adopt rules to allow a landowner or the landowner's agent to take a wolf on the landowner's property at any time without the purchase of a Class E-1 or Class E-2 wolf license when the wolf is a potential threat to human safety, livestock, or dogs. The rules must:

(a) be consistent with the Montana gray wolf conservation and management plan and the adaptive management principles of the commission and the department for the Montana gray wolf population;

(b) require a landowner or the landowner's agent who takes a wolf pursuant to this subsection (2) to promptly report the taking to the department and to preserve the carcass of the wolf;

(c) establish a quota each year for the total number of wolves that may be taken pursuant to this subsection (2); and

(d) allow the commission to issue a moratorium on the taking of wolves pursuant to this subsection (2) before a quota is reached if the commission determines that circumstances require a limitation of the total number of wolves taken.

(3) Public land permittees who have experienced livestock depredation must obtain a special kill permit authorized in 87-5-131(3)(b) to take a wolf on public land without the purchase of a Class E-1 or Class E-2 license.

(4) The department shall report annually to the environmental quality council regarding the implementation of 87-5-131, 87-5-132, and this section.

**Section 2.** Section 87-2-104, MCA, is amended to read:

**"87-2-104. Number of licenses, permits, or tags allowed — fees.** (1) The department may prescribe rules and regulations for the issuance or sale of a replacement license, permit, or tag if the original license, permit, or tag is lost, stolen, or destroyed upon payment of a fee not to exceed $5.

(2) When authorized by the commission for game management purposes, the department may:

(a) issue more than one Class A-3 resident deer A, Class A-4 resident deer B, Class B-7 nonresident deer A, Class B-8 nonresident deer B, *Class E-1 resident wolf, Class E-2 nonresident wolf,* or special antelope license to an applicant; and

(b) issue a special antlerless moose license, a special cow or calf bison license, or one or more special adult ewe mountain sheep licenses to an applicant.

(3) For all of the game management licenses issued under subsection (2), the commission shall determine the hunting districts or portions of hunting districts for which the licenses are to be issued, the number of licenses to be issued, and all terms and conditions for the use of the licenses.

(4) When authorized by the commission for game management purposes, the department may issue Class A-9 resident antlerless elk B tag licenses and Class B-12 nonresident antlerless elk B tag licenses entitling the holder to take

an antlerless elk. Unless otherwise reduced pursuant to subsection (5), the fee for a Class B-12 license is $273. The commission shall determine the hunting districts or portions of hunting districts for which Class A-9 and Class B-12 licenses are to be issued, the number of licenses to be issued, and all terms and conditions for the use of the licenses.

(5) The fee for a resident or nonresident license of any class issued under subsection (2) or (4) may be reduced annually by the department."

**Section 3.** Section 87-2-523, MCA, is amended to read:

**"87-2-523. Class E-1—resident wolf license.** (1) Except as otherwise provided in this chapter, a person who is a resident, as defined in 87-2-102, and who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued, upon payment of a fee of $19, may receive a Class E-1 license that entitles a holder who is 12 years of age or older to hunt a wolf and possess the carcass of the wolf as authorized by commission rules.

*(2) A person who purchases a license pursuant to this section after August 31 may not use the license until 24 hours after the license is issued.*

~~(2)~~*(3)* Fees collected pursuant to this section must be deposited and used in accordance with 87-1-623."

**Section 4.** Section 87-2-524, MCA, is amended to read:

**"87-2-524. Class E-2—nonresident wolf license.** (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued, upon payment of a fee of ~~$350~~ *$50*, may receive a Class E-2 license that entitles a holder who is 12 years of age or older to hunt a wolf and possess the carcass of the wolf as authorized by commission rules.

*(2) A person who purchases a license pursuant to this section after August 31 may not use the license until 24 hours after the license is issued.*

~~(2)~~*(3)* Fees collected pursuant to this section must be deposited and used in accordance with 87-1-623."

**Section 5.** Section 87-6-401, MCA, is amended to read:

**"87-6-401. Unlawful use of equipment while hunting.** (1) A person may not:

(a) hunt or attempt to hunt any game animal or game bird by the aid or with the use of any snare, except as allowed in 87-3-127 and 87-3-128, set gun, projected artificial light, trap, salt lick, or bait;

(b) use any recorded or electrically amplified bird or animal calls or sounds or recorded or electrically amplified imitations of bird or animal calls or sounds to assist in the hunting, taking, killing, or capturing of wildlife except predatory animals*, wolves,* and those birds not protected by state or federal law;

(c) while hunting, take into a field or forest or have in the person's possession any device or mechanism devised to silence, muffle, or minimize the report of any firearm, whether the device or mechanism is operated from or attached to any firearm;

(d) while hunting, possess any electronic motion-tracking device or mechanism, as defined by commission rule, that is designed to track the motion of a game animal and relay information on the animal's movement to the hunter. A radio-tracking collar attached to a dog that is used by a hunter engaged in lawful hunting activities is not considered a motion-tracking device or mechanism for purposes of this subsection (1)(d).

(e) while hunting, use archery equipment that has been prohibited by rule of the commission;

(f) use a shotgun to hunt deer or elk except with weapon type and loads as specified by the department;

(g) use a rifle to hunt or shoot upland game birds unless the use of rifles is permitted by the department. This does not prohibit the shooting of wild waterfowl from blinds over decoys with a shotgun only, not larger than a number 10 gauge, fired from the shoulder.

(h) use a rifle to hunt or shoot wild turkey during the spring wild turkey season.

(2) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(3) A person convicted of hunting while using projected artificial light as described in subsection (1)(a) may be subject to the additional penalties provided in 87-6-901 and 87-6-902.

(4) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 through 87-6-907."

**Section 6.** Section 87-6-414, MCA, is amended to read:

**"87-6-414. Failure to wear hunter orange while big game hunting.** (1) Except as provided in subsection (3), a person may not hunt any big game animals in this state or accompany any hunter as an outfitter or guide under any of the provisions of the laws of this state without wearing as exterior garments above the waist a total of not less than 400 square inches of hunter orange material visible at all times while hunting.

(2) As used in this section, "hunter orange" means a daylight fluorescent orange color.

(3) This section does not apply to a person hunting*:*

*(a)* with a bow and arrow during the special archery season*; or*

*(b) wolves outside the general deer and elk season as authorized by commission rules*.

(4) The department shall make rules to implement this section.

(5) A person convicted of a violation of this section shall be punished by a fine of not less than $10 or more than $20."

**Section 7. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 87, chapter 1, and the provisions of Title 87, chapter 1, apply to [section 1].

**Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 9. Effective date.** [This act] is effective on passage and approval.

Approved April 25, 2013

# CHAPTER NO. 298

[HB 401]

AN ACT REVISING CERTAIN HUNTING LICENSE APPLICATION FEES; ALLOWING PER SPECIES COLLECTION OF THE PREFERENCE SYSTEM APPLICATION FEE; AMENDING SECTIONS 87-2-113 AND 87-2-730, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 87-2-113, MCA, is amended to read:

**"87-2-113. ~~Drawing and application~~ *Application* fees.** (1) *(a)* ~~When~~ *Except as provided in subsection (1)(b), when* the department determines a drawing is necessary prior to issuance of hunting licenses for any game species during a hunting season, it shall collect a $5 per species ~~drawing~~ *application* fee ~~with each application submitted~~.

*(b) The department shall collect the following per species special license application fees:*

*(i) moose—resident, $10; nonresident, $50;*

*(ii) mountain goat—resident, $10; nonresident, $50;*

*(iii) mountain sheep—resident, $10; nonresident, $50;*

*(iv) wild buffalo or bison—resident, $10; nonresident, $50.*

(2) (a) If a resident participates in a preference system adopted by the commission, the department shall collect an additional application fee of $2 ~~for each application form~~ *per species* to fund the administration of the preference system.

(b) If a nonresident participates in a preference system adopted by the commission, the department shall collect an additional application fee of $20 ~~for each application form~~ *per species* to fund the administration of the preference system.

(3) ~~Drawing~~ *Application* fees collected pursuant to this section must be deposited in the state special revenue fund to the credit of the department as set forth in 87-1-601.

(4) The payment of ~~a drawing~~ *an application* fee confers no hunting rights or privileges.

(5) The commission may waive the provisions of subsection (1) when a drawing is required for a special season under 87-1-304."

**Section 2.** Section 87-2-730, MCA, is amended to read:

**"87-2-730. Special wild buffalo license — regulation.** (1) The public hunting of wild buffalo or bison that have been designated as a species in need of disease control under 81-2-120 is permitted only when authorized by the department of livestock under the provisions set forth in 81-2-120.

(2) The department may issue special licenses to hunt wild buffalo or bison designated as a species in need of disease control when authorized by the department of livestock.

(3) The department shall adopt rules in cooperation with the department of livestock. The rules must provide for:

(a) license drawing procedures;

(b) ~~drawing and~~ application fees consistent with 87-2-113;

(c) notification of license recipients as to when and where they may hunt, but notification may not include information regarding the actual physical location

of a wild buffalo or bison other than the prescribed hunting district where the animal may be taken;

(d) fair chase hunting of wild buffalo or bison, including requirements that hunting be conducted on foot and away from public roads and that there be no designation of specific wild buffalo or bison to be hunted;

(e) means of taking and handling of carcasses in the field, which must include provisions for public safety because of the potential for the spread of infectious disease;

(f) the use of bows and arrows and other hunting arms;

(g) tagging requirements for carcasses, skulls, and hides;

(h) possession limits;

(i) requirements for transportation and exportation; and

(j) requirements and criteria for authorization by the state veterinarian and the department of livestock of any public hunting."

**Section 3. Effective date.** [This act] is effective March 1, 2014.

Approved April 25, 2013

# CHAPTER NO. 299

[HB 533]

AN ACT EXPANDING THE SCOPE OF THE BULL TROUT AND CUTTHROAT TROUT SPECIES ENHANCEMENT PROGRAM TO INCLUDE NATIVE MONTANA FISH SPECIES; CLARIFYING A REFERENCE TO FUNDING FOR EMERGENCY INSTREAM FLOWS; AND AMENDING SECTIONS 87-1-283 AND 87-1-274, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 87-1-283, MCA, is amended to read:

**"87-1-283. ~~Bull trout and cutthroat trout~~ *Native Montana fish species* enhancement program.** (1) In order to enhance ~~bull trout and cutthroat trout~~ populations *of native Montana fish species* through habitat restoration, reductions in species competition, and natural reproduction, the department shall, through its future fisheries improvement program, restore habitats and spawning areas and reduce species competition in rivers, lakes, and streams for Montana's ~~bull trout and cutthroat trout~~ *native fish species*.

(2) In order to implement this section, the department may expend revenue from the ~~bull trout and cutthroat trout~~ *native Montana fish species* enhancement program for one additional full-time employee and one contractor to assist the review panel.

(3) The department shall also work with the department of transportation to implement ~~bull trout and cutthroat trout~~ enhancement *of native Montana fish species* by providing annual updates to the state transportation improvement program regarding possible additions to projects that will benefit the enhancement effort. State transportation improvement plan funds expended for ~~bull trout and cutthroat trout~~ *native Montana fish species* must be accounted for separately and reported annually."

**Section 2.** Section 87-1-274, MCA, is amended to read:

**"87-1-274. Emergency instream flows — funding.** (1) The legislature recognizes the propriety of establishing voluntary leases or other authorized water augmentation measures for instream flows so that mechanisms will be in

place to maintain streamflows sufficient for fisheries and aquatic resources during emergency low-flow conditions.

(2) Funding for voluntary leases and other water augmentation measures authorized under subsection (1) may come from any uncommitted funds allocated to the state under the U.S. fish and wildlife service state wildlife grant program or other available federal funds, matched by the department with up to $500,000 from the future fisheries improvement program provided for in 87-1-272, from the ~~bull trout and cutthroat trout~~ *native Montana fish species* enhancement program provided for in 87-1-283, from the river restoration program provided for in 87-1-257, from a combination of funds from these programs, or from any other department funds available for voluntary leases or other water augmentation measures.

(3) All leasing or other authorized water augmentation measures for instream flow must comply with all requirements provided in Title 85, chapter 2, parts 3 and 4."

Approved April 25, 2013

# CHAPTER NO. 300

[HB 630]

AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, THE DEPARTMENT OF AGRICULTURE, AND THE DEPARTMENT OF LIVESTOCK TO CONDUCT A PROJECT EXAMINING AND RECOMMENDING UPDATES FOR MONTANA FOOD LAWS; REQUIRING THE DEPARTMENTS TO COORDINATE WITH STAKEHOLDERS AND REPORT TO THE ECONOMIC AFFAIRS INTERIM COMMITTEE; REQUIRING THE ECONOMIC AFFAIRS INTERIM COMMITTEE TO REVIEW A FINAL REPORT OF THE PROJECT AND RECOMMEND APPROPRIATE LEGISLATION; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, current Montana law contains a complex food code with jurisdiction spread between multiple departments and levels of government; and

WHEREAS, there is a growing movement to support locally sourced and community-based food production, sometimes referred to as "cottage food", which benefits local communities, small businesses, public health, and environmental sustainability; and

WHEREAS, numerous states have passed laws that allow small business entrepreneurs to use their home kitchens to prepare for sale foods that are not potentially hazardous, while Montana has not; and

WHEREAS, new federal rules and regulations under the Food Safety Modernization Act will require updates to Montana food safety laws.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Montana food policy modernization project — guidelines.** (1) The departments of public health and human services, agriculture, and livestock shall coordinate to conduct a project to assess Montana's food laws and develop a report for the economic affairs interim committee, including any proposed legislation for the 2015 legislature. The project must assess:

(a) potential changes in Montana laws and administrative rules necessitated by the passage and implementation of the federal Food Safety Modernization Act pursuant to Title 21, chapter 27, of the United States Code;

(b) the extent to which home kitchens can be used to prepare foods for sale that are not potentially hazardous while maintaining food safety for the public;

(c) the relative availability of community-based commercial kitchens and their use; and

(d) inconsistencies and inefficiencies in Montana's food laws that could be improved and streamlined.

(2) In conducting the project the departments shall form a steering committee and coordinate with stakeholders, including but not limited to:

(a) producers;

(b) institutional buyers;

(c) the food safety advisory council created under 50-50-103;

(d) county health officials; and

(e) community groups interested in locally sourced foods.

(3) The departments must use at least 50% of the money appropriated for this project to contract with a convening organization to hold at least one facilitated public meeting or conference to assist in forming consensus recommendations in the final report.

(4) The department of agriculture shall ensure that a final report of the project's findings and recommendations is presented to the economic affairs interim committee no later than May 15, 2014.

**Section 2. Appropriation.** (1) There is appropriated from the state general fund to the department of agriculture $18,000 for the biennium beginning July 1, 2013.

(2) The appropriation must be used to pay for the costs of the project described in [section 1].

**Section 3. Effective date.** [This act] is effective on passage and approval.

**Section 4. Termination.** [This act] terminates June 30, 2014, or upon completion of the duties described in [section 1], whichever occurs first.

Approved April 25, 2013

# CHAPTER NO. 301

[SB 301]

AN ACT REVISING COUNTY NOXIOUS WEED CONTROL LAWS; CLARIFYING PROCEDURES; REVISING TIME PERIODS FOR COMPLIANCE; AMENDING SECTIONS 7-22-2117, 7-22-2144, 7-22-2146, AND 7-22-2148, MCA; REPEALING SECTIONS 7-22-2123 AND 7-22-2124, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Noncompliance with weed control requirements — general notice.** (1) (a) If a complaint is made against a landowner or the board has reason to believe that noxious weeds are present on a landowner's property, the board shall notify the landowner by certified mail of the complaint and shall request permission for the board's agent to enter the property to conduct an inspection.

(b) If the landowner has an agent for service on file with the secretary of state, the notice must be given by certified mail to the registered agent.

(c) The landowner or the landowner's representative shall respond within 10 days of receipt of the notice.

(2) (a) If the board's agent and the landowner or landowner's representative agree to an inspection, the agent and the landowner or representative shall inspect the land at an agreed-upon time.

(b) The board or the board's agent may seek a court order to enter and inspect the land to determine if noxious weeds are present on the property if:

(i) within 10 days of sending the certified letter to the address on the tax records or to the agent for service, the board is unable to determine the owner of the property; or

(ii) the letter cannot be delivered because the landowner or the landowner's representative refuses to sign the receipt or does not reside on the property.

(3) If the board finds noxious weeds on the property during the inspection, the board shall:

(a) seek the landowner's or representative's voluntary compliance with the district weed management program in accordance with [section 2]; or

(b) if voluntary compliance is not obtained, notify the landowner or the landowner's representative by certified mail that noxious weeds were found on the property.

(4) The notice must contain the language specified in this section.

(5) If the board believes it is advisable, the board may post a dated order in a conspicuous place on the property, providing notice that noxious weeds have been found on the property and informing the landowner or landowner's representative of the options for complying with the weed management program pursuant to [section 2] and the actions that may be taken under [section 4] if the landowner fails to comply with the weed management program.

(6) All correspondence with a landowner or the landowner's representative concerning notifications of weed infestations, including requests made pursuant to subsection (1) to inspect property and notifications of noncompliance, must be made on the uniform notification material provided by the department and must:

(a) list the noxious weeds found on the property;

(b) provide the legal description of the property;

(c) provide the address of the property, if available;

(d) state the fact that the presence of the weeds violates state law and that the landowner has 10 days after receiving the notice to contact the board or its agent;

(e) provide the address and phone number for the board;

(f) notify the landowner of the landowner's:

(i) responsibility to submit a weed management proposal; and

(ii) right to request a hearing to contest the finding of noncompliance, including the timeframe for making the request; and

(g) specify the actions the board may take if the landowner fails to remove the weeds, including but not limited to the anticipated costs of destroying the weeds and the 25% penalty allowed under [section 4].

**Section 2. Procedures for compliance.** (1) A landowner is in compliance with this part if the landowner submits and the board accepts a written weed

management proposal to undertake specific control measures, and the landowner remains in compliance if the terms of the proposal are met. The proposal must require that the landowner or the landowner's representative notify the board as measures in the proposal are taken.

(2) In accepting or rejecting a weed management proposal, the board shall consider the economic impact on the landowner and neighboring landowners, practical biological and environmental limitations, and alternative control methods to be used.

**Section 3. Noncompliance — actions for landowners.** (1) If the board is unable to obtain the landowner's voluntary compliance with the weed management program within 10 days of the landowner's receipt of the notification, the landowner is considered to be in noncompliance and is subject to appropriate control measures pursuant to [section 4].

(2) (a) Within 10 days after receiving notice to comply with the weed management program, the landowner may request a hearing before the commissioners if the landowner disagrees with the weed control measures proposed by the board.

(b) If the landowner's objection to the board's action remains after the hearing, the landowner has 10 days to appeal the commissioners' decision to the district court with jurisdiction in the county in which the property is located.

(3) If the landowner has requested a hearing pursuant to subsection (2)(a) or has appealed a hearing decision pursuant to subsection (2)(b), the board may not take any action to control the noxious weeds until after the hearing and authorization is provided from the commissioners or the court.

**Section 4. Noncompliance — actions by board.** (1) The board may seek a court order to enter upon the infested parcels of the landowner's property if attempts to achieve voluntary compliance have been exhausted. The board may institute appropriate noxious weed control measures, including but not limited to:

(a) allowing the local weed district coordinator to implement the appropriate noxious weed control measures if the actions taken are valued at the current rate paid for commercial management operations in the district and are reflected in the bill sent to the landowner and the clerk and recorder; or

(b) contracting with a commercial applicator as defined in 80-8-102 if the issues of compliance are not resolved under an agreement proposed and accepted pursuant to [section 2] and:

(i) the landowner does not take corrective action within the 10-day period provided for in [section 3]; or

(ii) the board does not receive a formal objection or the board of county commissioners does not receive a request for a hearing.

(2) A commercial applicator hired under this section shall carry all insurance required by the board.

(3) If a court issues an order approving a board's actions, the court retains jurisdiction over the matter:

(a) until the actions specified in the weed management plan or court order are complete;

(b) for the length of time specified in the order; or

(c) for 3 years if the order does not specify a time limit.

(4) After instituting appropriate noxious weed control measures, the board shall submit a copy of the bill, including the penalty provided for in subsection

(4)(b), to the county clerk and recorder and, by certified mail, to the landowner that:

(a) covers the costs of the weed control measures;

(b) contains a penalty of 25% of the total cost incurred;

(c) itemizes the hours of labor, cost of material, equipment time, legal fees, and court costs or includes an invoice from a commercial applicator if the board contracted for weed control pursuant to subsection (1); and

(d) specifies that payment is due 30 days from the date the bill is received.

(5) If a landowner who received a notice to take corrective action requests an injunction or seeks to stay the corrective action in district court within 10 days of receipt of the notice, the board may not institute control measures until the matter is finally resolved, except in emergency situations.

(6) If the board declares an emergency and institutes appropriate measures to control the noxious weeds, the landowner who received the order is liable for costs as provided in subsection (4) only to the extent determined appropriate by the board, the board of county commissioners, or the court that finally resolves the matter.

**Section 5. Direction to department — notification of landowners.** The department shall distribute informational material about the changes provided for in [this act] within 30 days of [the effective date of this act]. The department may select the manner in which the information may be distributed, including distribution by electronic means. A board may not take action under [sections 1 through 4] before the department has distributed the materials.

**Section 6.** Section 7-22-2117, MCA, is amended to read:

**"7-22-2117. Violations.** (1) Any person who ~~in any manner~~ interferes with the board or its authorized agent in carrying out the provisions of this part or who refuses to obey an order or notice of the board is liable for a civil penalty in the amount of the actual cost to the board or the estimated cost of removing the noxious weeds from the impacted property in addition to any penalty imposed under ~~7-22-2124~~ *[section 4]*.

(2) All fines, bonds, and penalties collected under the provisions of this part must be paid to the county treasurer of each county and placed by the county treasurer into a fund to be known as the noxious weed fund."

**Section 7.** Section 7-22-2144, MCA, is amended to read:

**"7-22-2144. Payment of cost of weed control program.** The total cost of weed control within the district must be paid from the noxious weed fund. The cost of controlling weeds growing along the right-of-way of a state or federal highway must, upon the presentation by the board of a verified account of the expenses incurred, be paid from the state highway fund in compliance with 7-14-2132 and any agreement between the board and the department of transportation. Costs attributed to other lands within the district must be assessed to and collected from the responsible person as set forth in ~~7-22-2124~~ *[section 4]*."

**Section 8.** Section 7-22-2146, MCA, is amended to read:

**"7-22-2146. Financial assistance to persons responsible for weed control.** (1) The commissioners, upon recommendation of the board, may establish a cost-share program for the control of noxious weeds. The board shall develop rules and procedures for the administration of the cost-share program.

These procedures may include the cost-share rate or amount and ~~for what~~ *the* purposes *for which* cost-share funds may be used.

(2) (a) Any person may voluntarily enter into a cost-share agreement for the management of noxious weeds on the person's property. The coordinator shall draft a cost-share agreement in cooperation with the person. The agreement must, in the board's judgment, provide for effective weed management.

(b) The agreement must specify:

(i) costs that must be paid from the noxious weed fund;

(ii) costs that must be paid by the person;

(iii) a location-specific weed management plan that must be followed by the person; and

(iv) reporting requirements of the person to the board.

(c) The cost-share agreement must be signed by the person and, upon approval of the board, by the presiding officer.

(3) The agreement must contain a statement disclaiming any liability of the board for any injuries or losses suffered by the person in managing noxious weeds under a cost-share agreement. If the board later finds that the person has failed to abide by the terms of the agreement, all cost-share payments and agreements must be canceled and the provisions of ~~7-22-2124~~ *[section 4]* apply to that person.

(4) (a) When under the terms of any voluntary agreement, whether entered into pursuant to ~~7-22-2123~~ *[section 2]* or otherwise, or under any cost-share agreement entered pursuant to this section a person incurs any obligation for materials or services provided by the board, the board shall submit a bill to the person, itemizing hours of labor, material, and equipment time. The bill must specify and order a payment due date not less than 30 days from the date the bill is sent.

(b) A copy of the bill must be submitted by the board to the county clerk and recorder. If the sum to be repaid by the person billed is not repaid on or before the date due, the county clerk and recorder shall certify the amount not repaid, with the description of the land to be charged, and shall enter the sum on the assessment list as a special tax on the land, to be collected in the manner provided in 7-22-2148."

**Section 9.** Section 7-22-2148, MCA, is amended to read:

**"7-22-2148. Payment of weed control expenses — tax liability — ~~lien~~.** (1) ~~(a)~~ The expenses incurred by the board for noxious weed control undertaken pursuant to ~~7-22-2124~~ *[section 4]* must be paid by the county out of the noxious weed fund.

~~(b)~~*(2)* If the sum to be repaid by the landowner billed under ~~7-22-2124~~ *[section 4]* is not repaid on or before the date due, the county clerk shall certify the amount due, with the description of the land to be charged, and shall enter the amount on the assessment list of the county as a special tax on the land. If the land is exempt from general taxation for any reason, the amount due and to be repaid may be recovered by direct claim against the landowner and collected in the same manner as personal taxes.

~~(c)~~*(3)* All amounts collected pursuant to subsection ~~(1)(b)~~ *(2)* must be deposited in the noxious weed fund.

~~(2) If a civil penalty is imposed under 7-22-2123, the penalty is, until paid in full, a lien in the amount of the penalty on the infested parcel of the property that~~

~~lies within the district and belongs to the landowner on whom the penalty was imposed.~~"

**Section 10. Repealer.** The following sections of the Montana Code Annotated are repealed:

7-22-2123. Procedure in case of noncompliance — notice.

7-22-2124. Destruction of weeds by board — court order — deposits.

**Section 11. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 7, chapter 22, part 21, and the provisions of Title 7, chapter 22, part 21, apply to [sections 1 through 4].

**Section 12. Effective date.** [This act] is effective on passage and approval.

Approved April 25, 2013

# CHAPTER NO. 302

[SB 94]

AN ACT EXEMPTING THE EXCHANGE OF CERTAIN FOODS AND BEVERAGES FROM FOOD SAFETY REGULATIONS; AND AMENDING SECTION 50-50-102, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 50-50-102, MCA, is amended to read:

**"50-50-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Baked goods" means breads, cakes, candies, cookies, pastries, and pies that are not potentially hazardous foods.

(2) "Consumer" means a person who is a member of the public, takes possession of food, is not operating an establishment, and does not offer the food for resale.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) *(a)* "Establishment" means a retail food manufacturing establishment, meat market, food service establishment, perishable food dealer, or water hauler.

*(b) The term does not include people who gather to exchange in nonmonetary transactions:*

*(i) high-acid canned goods, including but not limited to tomato sauce, fruits, pickles, or other vinegar-based foods;*

*(ii) home-brewed beer; or*

*(iii) dehydrated fruits and vegetables.*

(5) "Farmer's market" means a farm premises, a roadside stand owned and operated by a farmer, or an organized market authorized by the appropriate municipal or county authority.

(6) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

(7) (a) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, private organization routinely

serving the public, or similar place where food or drink is prepared, served, or provided to the public at retail, with or without charge.

(b) The term does not include:

(i) operations, vendors, or vending machines that sell or serve only packaged, nonperishable foods in their unbroken, original containers;

(ii) a private organization serving food only to its members;

(iii) custom meat cutters or wild game processors who cut, process, grind, package, or freeze game meat for the owner of the carcass for consumption by the owner or the owner's family, pets, or nonpaying guests; ~~or~~

(iv) an establishment, as defined in 50-51-102, that serves food only to its registered guests and day visitors.

(8) "Local board of health" means a county, city, city-county, or district board of health.

(9) "Local health officer" means a county, city, city-county, or district health officer, appointed by the local board of health, or the health officer's authorized representative.

(10) "Meat market" means an operation and buildings or structures in connection with it used to process, store, or display meat or meat products for retail sale to the public or for human consumption.

(11) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under 26 U.S.C. 501.

(12) "Perishable food dealer" means an operation that is in the business of purchasing and selling perishable food to the public at retail.

(13) "Person" means a person, partnership, corporation, association, cooperative group, the state or a political subdivision of the state, or other entity.

(14) (a) "Potentially hazardous food" means a food that is natural or synthetic and is in a form capable of supporting:

(i) the rapid and progressive growth of infectious or toxigenic microorganisms; or

(ii) the growth and toxin production of Clostridium botulinum.

(b) The term includes cut melons, garlic and oil mixtures, a food of animal origin that is raw or heat-treated, and a food of plant origin that is heat-treated or consists of raw seed sprouts.

(c) The term does not include:

(i) an air-cooled, hard-boiled egg with intact shell;

(ii) a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 24 degrees C (75 degrees F);

(iii) a food with a water activity (aw) value of 0.85 or less;

(iv) a food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or

(v) a food for which laboratory evidence is accepted by the department as demonstrating that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of Clostridium botulinum cannot occur.

(15) (a) "Preserves" means processed fruit or berry jams, jellies, compotes, fruit butters, marmalades, chutneys, fruit aspics, fruit syrups, or similar products that have a hydrogen ion concentration (pH) of 4.6 or below when measured at 24 degrees C (75 degrees F) and that are aseptically processed, packaged, and sealed.

(b) The term does not include:

(i) tomatoes or food products containing tomatoes; or

(ii) any other food substrate or product preserved by any method other than that described in subsection (15)(a).

(16) "Raw and unprocessed farm products" means fruits, vegetables, and grains sold at a farmer's market in their natural state that are not packaged and labeled and are not:

(a) cooked;

(b) canned;

(c) preserved, except for drying;

(d) combined with other food products; or

(e) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures.

(17) "Regulatory authority" means the department, the local board of health, the local health officer, or the local sanitarian.

(18) "Retail" means the provision of food directly to the consumer.

(19) (a) "Retail food manufacturing establishment" means an operation and the buildings or structures used to manufacture or prepare food for sale or human consumption at retail.

(b) The term does not include:

(i) milk producers' facilities, milk pasteurization facilities, or milk product manufacturing plants;

(ii) slaughterhouses, meat packing plants, or meat depots; or

(iii) producers or harvesters of raw and unprocessed farm products.

(20) (a) "Water hauler" means a person engaged in the business of transporting water for human consumption and use and that is not regulated as a public water supply system as provided in Title 75, chapter 6.

(b) The term does not include a person engaged in the business of transporting water for human consumption that is used for individual family households and family farms and ranches."

Approved April 25, 2013

# CHAPTER NO. 303

[SB 158]

AN ACT CREATING THE CERTIFICATES OF INSURANCE MODEL ACT; GRANTING RULEMAKING AUTHORITY TO THE STATE AUDITOR ACTING AS COMMISSIONER OF INSURANCE; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 7] may be cited as the "Certificates of Insurance Model Act".

**Section 2. Definitions.** As used in [sections 1 through 7], the following definitions apply:

(1) "Certificate of insurance" means a document or instrument, regardless of how titled or described, that is prepared or issued by an insurer or insurance producer as evidence of property or casualty insurance coverage. The term does

not include a policy of insurance, insurance binder, policy endorsement, or automobile insurance identification or information card.

(2) "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate property or casualty insurance.

(3) "Insurer" means an organization that issues property or casualty insurance.

(4) "Person" means an individual, partnership, corporation, association, or other legal entity, including any government or governmental subdivision or agency.

**Section 3. Certificate forms.** (1) Except as provided in subsection (3), a person may not prepare, issue, request, or require the issuance of a certificate of insurance on property, operations, or risks located in this state unless the certificate of insurance form has been filed with the commissioner by or on behalf of an insurer.

(2) The commissioner shall prohibit the use of a certificate of insurance form if the form is unfair, misleading, or deceptive or violates public policy or law, including rules adopted by the commissioner.

(3) Insurers are not required to file the current standard certificate of insurance forms promulgated and filed with the commissioner by the Association for Cooperative Operations Research and Development, the American Association of Insurance Services, or the Insurance Services Office, Inc., or certificate of insurance forms whose specific content and wording are established by federal law or regulation or by any law or rule of this state.

(4) A certificate of insurance is not a policy of insurance and does not affirmatively or negatively amend, extend, or alter the coverage afforded by the policy to which the certificate of insurance makes reference. A certificate of insurance may not confer to any person new or additional rights beyond what the referenced policy of insurance expressly provides.

**Section 4. Limitations on use.** (1) A person may not:

(a) alter or modify a certificate of insurance form filed with the commissioner;

(b) prepare, issue, request, or require the issuance of a certificate of insurance that contains any false or misleading information concerning the policy of insurance to which the certificate of insurance makes reference; or

(c) prepare, issue, request, or require the issuance of a certificate of insurance that purports to affirmatively or negatively alter, amend, or extend the coverage provided by the policy of insurance to which the certificate of insurance makes reference.

(2) A certificate of insurance may not warrant that the policy of insurance referenced in the certificate complies with the insurance or indemnification requirements of a contract, and the inclusion of a contract number or description in the certificate of insurance may not be interpreted as warranting compliance with the insurance or indemnification requirements of a contract.

**Section 5. Notice requirements.** A person is entitled to notice of cancellation, nonrenewal, or other material change concerning a policy of insurance only if the person has notice rights under the terms of the policy of insurance or any endorsement to the policy. The terms and conditions of the notice are governed by the policy of insurance or endorsement and may not be altered by a certificate of insurance.

**Section 6. Scope — voidness.** (1) The provisions of [sections 1 through 7] apply to all certificates of insurance issued in connection with property, operations, or risks located in this state, regardless of where the policyholder, insurer, insurance producer, or person requesting or requiring the issuance of the certificate of insurance is located.

(2) A certificate of insurance or any other document or correspondence prepared, issued, requested, or required in violation of [sections 1 through 7] is void.

**Section 7. Enforcement and penalties — rulemaking.** (1) The commissioner may examine and investigate the activities of any person that the commissioner reasonably believes has been or is engaged in an act or practice prohibited by [sections 1 through 7].

(2) The commissioner may enforce the provisions of [sections 1 through 7] by issuing cease and desist orders and by imposing a fine not to exceed $1,000 for each violation.

(3) The commissioner may adopt rules to implement the provisions of [sections 1 through 7].

**Section 8. Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 33, chapter 2, and the provisions of Title 33, chapter 2, apply to [sections 1 through 7].

**Section 9. Effective date.** [This act] is effective July 1, 2013.

**Section 10. Applicability.** [This act] applies to certificates of insurance that are prepared, issued, requested, or required on property, operations, or risks located in this state on or after October 1, 2013.

Approved April 25, 2013

# CHAPTER NO. 304

[SB 160]

AN ACT CREATING THE OFFENSE OF CRIMINAL CHILD ENDANGERMENT; PROVIDING THAT A PERSON COMMITS THE OFFENSE OF CRIMINAL CHILD ENDANGERMENT IF THE PERSON PURPOSELY, KNOWINGLY, OR NEGLIGENTLY CAUSES SUBSTANTIAL RISK OF DEATH OR SERIOUS BODILY INJURY TO A CHILD UNDER 14 YEARS OF AGE; PROVIDING PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Criminal child endangerment**. (1) A person commits the offense of criminal child endangerment if the person purposely, knowingly, or negligently causes substantial risk of death or serious bodily injury to a child under 14 years of age by:

(a) failing to seek reasonable medical care for a child suffering from an apparent acute life-threatening condition;

(b) placing a child in the physical custody of another who the person knows has previously purposely or knowingly caused bodily injury to a child;

(c) placing a child in the physical custody of another who the person knows has previously committed an offense against the child under 45-5-502 or 45-5-503;

(d) manufacturing or distributing dangerous drugs in a place where a child is present;

(e) operating a motor vehicle under the influence of alcohol or dangerous drugs in violation of 61-8-401, 61-8-406, 61-8-410, or 61-8-465 with a child in the vehicle; or

(f) failing to attempt to provide proper nutrition for a child, resulting in a medical diagnosis of nonorganic failure to thrive.

(2) A person may not be charged under subsection (1)(b) or (1)(c) if the person placed the child in the other person's custody pursuant to a court order.

(3) A person convicted of the offense of criminal child endangerment shall be fined an amount not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(4) For purposes of this section, "nonorganic failure to thrive" means inadequate physical growth that is a result of insufficient nutrition and is not secondary to a diagnosed medical condition.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, part 6, and the provisions of Title 45, chapter 5, part 6, apply to [section 1].

**Section 3. Effective date.** [This act] is effective on passage and approval.

**Section 4. Applicability.** [This act] applies to offenses committed on or after [the effective date of this act].

Approved April 25, 2013

# CHAPTER NO. 305

[SB 191]

AN ACT PROVIDING FOR A LEVY TO PAY TUITION AND TRANSPORTATION FOR OUT-OF-DISTRICT ATTENDANCE OF A RESIDENT PUPIL; ALLOWING USE OF THE LEVY TO PROVIDE A FREE APPROPRIATE EDUCATION TO CHILDREN WITH DISABILITIES WHO RESIDE IN THE DISTRICT; PROVIDING LIMITATIONS ON THE AMOUNT OF THE LEVY; AMENDING SECTION 20-5-324, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-5-324, MCA, is amended to read:

**"20-5-324. Tuition report and payment provisions.** (1) Following the close of each school fiscal year, the trustees of a district shall report to the superintendent of public instruction:

(a) the name and district of residence of each child who attended a school of the district under a mandatory out-of-district attendance agreement approved under the provisions of 20-5-321(1)(d) or (1)(e) in the previous school year;

(b) the number of days of enrollment for each child reported under the provisions of subsection (1)(a);

(c) the annual tuition rate for each child's tuition payment, as determined under the provisions of 20-5-323, and the tuition cost for each child reported under the provisions of subsection (1)(a);

(d) the names, districts of attendance, and amount of tuition paid by the district for resident students attending public schools out of state in the previous school year; and

(e) the names, schools of attendance, and amount of tuition to be paid by the district for resident students attending day-treatment programs under approved individualized education programs at private, nonsectarian schools in the previous school year.

(2) Subject to the limitations of 20-5-323, the superintendent of public instruction shall:

(a) pay the district of attendance the amount of the tuition obligation reported under subsection (1)(c), prorated for the actual days of enrollment;

(b) determine the total per-ANB entitlement for which the district would have been eligible if the students reported in subsections (1)(d) and (1)(e) had been enrolled in the resident district in the prior year; and

(c) reimburse the district of residence for the state portion of the per-ANB entitlement for each student, not to exceed the district's actual payment of tuition or fees for service for the student in the previous year.

(3) In order to be eligible to receive payment under subsection (2), the trustees of the district of attendance shall submit the report required by subsection (1) within the school fiscal year following the year of attendance.

(4) Notwithstanding the requirements of subsection (5)(a), tuition payment provisions for out-of-district placement of students with disabilities must be determined pursuant to Title 20, chapter 7, part 4.

(5) (a) (i) When a child has approval to attend a school outside the child's district of residence at the resident district's expense under the provisions of 20-5-320 or 20-5-321(1)(a) or (1)(b) or when a child has approval to attend a day-treatment program under an approved individualized education program at a private, nonsectarian school located in or outside of the child's district of residence, the district of residence shall finance the tuition amount from the *levy authorized to support the* district tuition fund and any transportation amount from *the levy authorized to support* the transportation fund.

(ii) By December 31 of the school fiscal year following the year of attendance, the district of residence shall pay at least one-half of any tuition and transportation obligation established under subsection (5)(a)(i) out of the money realized to date from the district tuition or transportation fund *levy*. The remaining tuition and transportation obligation must be paid by June 15 of the school fiscal year following the year of attendance.

*(iii) In addition to use of a tuition levy to pay tuition for out-of-district attendance of a resident pupil, a school district may also include in its tuition levy an amount necessary to pay for the full costs of providing a free appropriate public education, as defined in 20-7-401, in the district to any child with a disability who lives in the district. The amount of the levy imposed for the costs associated with educating each child with a disability under this subsection is limited to the actual cost of service under the child's individualized education program minus:*

*(A) the student's state special education payment;*

*(B) the student's federal special education payment;*

*(C) the student's per-ANB amount;*

*(D) the prorated portion of the district's basic entitlement for each qualifying student; and*

*(E) the prorated portion of the district's general fund payments in 20-9-327 through 20-9-330 for each qualifying student.*

(b) When a child has approval to attend a school outside the child's district of residence because of a parent's or guardian's request under the provisions of 20-5-320 or 20-5-321(1)(c), the parent or guardian of the child shall finance the tuition and transportation amount.

(6) (a) Except as provided in subsections (6)(b) through (6)(d), the district shall credit tuition receipts to the district general fund and transportation receipts to the transportation fund.

(b) Any tuition receipts received under the provisions of 20-5-323(3) for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and must be used for that year in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

(c) Any tuition receipts received for the current school fiscal year for a pupil who is a child with a disability that exceed the tuition amount received for a pupil without disabilities may be deposited in the district miscellaneous programs fund and must be used for that year in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

(d) Any other tuition receipts received for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and may be used for that year in the manner provided for in that fund. For the ensuing school fiscal year, the receipts must be credited to the district general fund budget.

(7) The reimbursements paid under subsection (2)(c) must be deposited into the district tuition fund and must be used by the district to pay obligations for resident students attending public schools out of state or for resident students attending day-treatment programs under approved individualized education programs at private, nonsectarian schools at district expense.

(8) The provisions of this section do not apply to out-of-state placements made by a state agency pursuant to 20-7-422."

**Section 2. Effective date.** [This act] is effective July 1, 2013.

Approved April 25, 2013

# CHAPTER NO. 306

[HB 544]

AN ACT REVISING PERMISSIBLE AND MANDATORY PROVISIONS IN PREFERRED PROVIDER AGREEMENTS, INSURANCE POLICIES, AND SUBSCRIBER CONTRACTS; REMOVING REIMBURSEMENT LIMITATIONS IF A PROVIDER NETWORK IS DETERMINED TO BE ADEQUATE; AND AMENDING SECTION 33-22-1706, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 33-22-1706, MCA, is amended to read:

**"33-22-1706. Permissible and mandatory provisions in provider agreements, insurance policies, and subscriber contracts.** (1) A provider agreement, insurance policy, or subscriber contract issued or delivered in this state may contain ~~certain other~~ components designed to control the cost and improve the quality of health care for insureds and subscribers~~, including:~~ *as provided in this part.*

*(2) All terms or conditions of an insurance policy or subscriber contract, except those already approved by the commissioner, are subject to the prior approval of the commissioner.*

*(3) Provisions designed to control cost and improve the quality of health care under this section include but are not limited to those*

~~(a) a provision setting~~ *that set* a payment difference for reimbursement of a nonpreferred provider as compared to a preferred provider *and those designed to give policyholders or subscribers an incentive to choose a particular provider consistent with the other provisions of this part*. ~~If the~~

*(4) (a) A* health benefit plan *that* contains a payment difference provision~~,~~ *and that the commissioner has determined to have an adequate provider network is not subject to subsection (4)(b).*

*(b) A health benefit plan that contains a payment difference provision and has not been determined to have an adequate provider network may not exceed a 25%* ~~the~~ payment difference ~~may not exceed 25% of~~ *in* the reimbursement level ~~at which~~ *for* a preferred provider*, and the* ~~would be reimbursed. The~~ commissioner shall review differences between copayments, deductibles, and other cost-sharing arrangements *under this subsection (4)(b).*

*(c) For the purposes of this subsection (4), a provider network is adequate if:*

*(i) the network includes at least 80% of the licensed individual physicians actively practicing in the state of Montana;*

*(ii) the network includes at least 80% of the licensed individual nonphysician health care providers actively practicing in the state of Montana; and*

*(iii) the network includes at least 90% of those facilities licensed and operating as hospitals in the state of Montana.*

~~(b) conditions, not inconsistent with other provisions of this part, designed to give policyholders or subscribers an incentive to choose a particular provider.~~

~~(2) All terms or conditions of an insurance policy or subscriber contract, except those already approved by the commissioner, are subject to the prior approval of the commissioner.~~

~~(3)~~*(5)* A *health benefit* plan *or other plan* offering prepaid dental services under this part ~~must~~ *shall* offer its insureds the right to obtain dental care from any licensed dental care provider of their choice~~,~~ subject to the same terms and conditions imposed under ~~subsection (1)~~ *this section*."

Approved April 25, 2013

# CHAPTER NO. 307

[HB 391]

AN ACT REQUIRING PARENTAL CONSENT PRIOR TO AN ABORTION FOR A MINOR; PROVIDING FOR JUDICIAL WAIVER OF THE CONSENT REQUIREMENT; PROVIDING PENALTIES; REPEALING PRIOR STATUTES RELATED TO PARENTAL NOTIFICATION; AMENDING SECTIONS 41-1-405 AND 47-1-104, MCA; REPEALING SECTIONS 50-20-221, 50-20-222, 50-20-223, 50-20-224, 50-20-225, 50-20-228, 50-20-229, 50-20-232, AND 50-20-235, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 11] may be cited as the "Parental Consent for Abortion Act of 2013".

**Section 2. Legislative purpose and findings.** (1) The legislature finds that:

(a) immature minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences;

(b) the medical, emotional, and psychological consequences of abortion are sometimes serious and can be lasting, particularly when the patient is immature;

(c) the capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an abortion are not necessarily related;

(d) parents ordinarily possess information essential to a physician in the exercise of the physician's best medical judgment concerning the minor;

(e) parents who are aware that their minor daughter has had an abortion may better ensure that the daughter receives adequate medical care after the abortion; and

(f) parental consultation is usually desirable and in the best interests of the minor.

(2) The purpose of [sections 1 through 11] is to further the important and compelling state interests of:

(a) protecting minors against their own immaturity;

(b) fostering family unity and preserving the family as a viable social unit;

(c) protecting the constitutional rights of parents to rear children who are members of their household; and

(d) reducing teenage pregnancy and unnecessary abortion.

**Section 3. Definitions.** As used in [sections 1 through 11], unless the context requires otherwise, the following definitions apply:

(1) "Coerce" means to restrain or dominate the choice of a minor by force, threat of force, or deprivation of food and shelter.

(2) "Consent" means a notarized written statement obtained on a form and executed in the manner prescribed by [section 5] that is signed by a parent or legal guardian of a minor and that declares that the minor intends to seek an abortion and that the parent or legal guardian of the minor consents to the abortion.

(3) "Emancipated minor" means a person under 18 years of age who is or has been married or who has been granted an order of limited emancipation by a court as provided in 41-1-503.

(4) "Medical emergency" means a condition that, on the basis of the good faith clinical judgment of a physician or physician assistant, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of the woman's pregnancy to avert the woman's death or a condition for which a delay in treatment will create serious risk of substantial and irreversible impairment of a major bodily function.

(5) "Minor" means a pregnant female under 18 years of age who is not an emancipated minor.

(6) "Physical abuse" means any physical injury intentionally inflicted by a parent or legal guardian on a minor.

(7) "Physician" means a person licensed to practice medicine under Title 37, chapter 3.

(8) "Physician assistant" means a person licensed pursuant to Title 37, chapter 20, who provides medical services under the supervision of a physician.

(9) "Sexual abuse" has the meaning provided in 41-3-102.

**Section 4. Consent of parent or legal guardian required.** (1) Except as provided in [section 7], no physician or physician assistant may perform an abortion on a minor unless the physician or physician assistant or the agent of the physician or physician assistant first obtains the notarized written consent of a parent or legal guardian of the minor.

(2) The consent of a parent or legal guardian of the minor is invalid unless it is obtained in the manner and on the form prescribed by [section 5].

**Section 5. Consent form — disclosure — requirements for validity.** (1) The department of public health and human services shall create a consent form to be used by physicians, physician assistants, or their agents in obtaining the consent of a parent or legal guardian as required under [section 4] or in obtaining the waiver of the consent of a parent or legal guardian as provided for in [section 7].

(2) The form must disclose but is not limited to the following:

(a) any information that a physician or physician assistant is required by law to provide to the minor and the rights of the minor;

(b) the rights of the parent or legal guardian;

(c) the surgical or medical procedures that may be performed on the minor;

(d) the risks and hazards related to the procedures planned for the minor, including but not limited to the risks and hazards associated with:

(i) any surgical, medical, or diagnostic procedure, including the potential for infection, blood clots in veins and lungs, hemorrhage, and allergic reactions;

(ii) a surgical abortion, including hemorrhage, uterine perforation or other damage to the uterus, sterility, injury to the bowel or bladder, a potential hysterectomy caused by a complication or injury during the procedure, and the possibility of additional procedures being required because of failure to remove all products of conception;

(iii) a medical or nonsurgical abortion, including hemorrhage, sterility, the continuation of the pregnancy, and the possibility of additional procedures being required because of failure to remove all products of conception; and

(iv) the particular procedure that is planned for the minor, including cramping of the uterus, pelvic pain, infection of the female reproductive organs, cervical laceration, incompetent cervix, and the requirement of emergency treatment for any complications.

(3) The form must include:

(a) a minor consent statement that the minor must sign. The minor consent statement must include but is not limited to the following points, each of which must be initialed by the minor:

(i) the minor understands that the physician or physician assistant is going to perform an abortion on the minor and that the abortion will end the minor's pregnancy;

(ii) the minor is not being coerced into having an abortion, the minor has the choice not to have the abortion, and the minor may withdraw consent at any time prior to the abortion;

(iii) the minor consents to the procedure;

(iv) the minor understands the risks and hazards associated with the surgical or medical procedures planned for the minor;

(v) the minor has been provided the opportunity to ask questions about the pregnancy, alternative forms of treatment, the risk of nontreatment, the procedures to be used, and the risks and hazards involved; and

(vi) the minor has sufficient information to give informed consent.

(b) a parental consent statement that a parent or legal guardian must sign. The parental consent statement must include but is not limited to the following points, each of which must be initialed by a parent or legal guardian:

(i) the parent or legal guardian understands that the physician or physician assistant who signed the physician declaration statement provided for in subsection (3)(c) is going to perform an abortion on the minor that will end the minor's pregnancy;

(ii) the parent or legal guardian had the opportunity to read the consent form or had the opportunity to have the consent form read to the parent or legal guardian;

(iii) the parent or legal guardian had the opportunity to ask questions of the physician or physician assistant or the agent of the physician or physician assistant regarding the information contained in the consent form and the surgical and medical procedures to be performed on the minor;

(iv) the parent or legal guardian has been provided sufficient information to give informed consent.

(c) a physician declaration that the physician or physician assistant must sign, declaring that:

(i) the physician or physician assistant or the agent of the physician or physician assistant explained the procedure and contents of the consent form to the minor and a parent or legal guardian of the minor and answered any questions; and

(ii) to the best of the physician's or physician assistant's knowledge, the minor and a parent or legal guardian of the minor have been adequately informed and have consented to the abortion; and

(d) a signature page for a parent or legal guardian of the minor that must be notarized and that includes an acknowledgment by the parent or legal guardian affirming that the parent or legal guardian is the minor's parent or legal guardian.

**Section 6. Proof of identification and relationship to minor — retention of records.** (1) A parent or legal guardian of a minor who is consenting to the performance of an abortion on the minor must provide the attending physician or physician assistant or the agent of the physician or physician assistant with government-issued proof of identity and written documentation that establishes that the parent or legal guardian is the lawful parent or legal guardian of the minor.

(2) A physician or physician assistant shall retain the completed consent form and the documents provided pursuant to subsection (1) in the minor's medical file for 5 years after the minor reaches 18 years of age, but in no event less than 7 years.

(3) A physician or physician assistant receiving documentation under this section shall execute for inclusion in the minor's medical record an affidavit stating: "I, (insert name of physician or physician assistant), certify that according to my best information and belief, a reasonable person under similar circumstances would rely on the information presented by both the minor and the minor's parent or legal guardian as sufficient evidence of identity and relationship."

**Section 7. Exceptions.** Consent is not required under [section 4] if:

(1) the attending physician or physician assistant certifies in the minor's medical record that a medical emergency exists and there is insufficient time to provide consent;

(2) consent is waived, in a notarized writing, by the person entitled to give consent; or

(3) consent is waived under [section 9].

**Section 8. Coercion prohibited.** A parent, a legal guardian, or any other person may not coerce a minor to have an abortion. If a minor is denied financial support by the minor's parents, legal guardian, or custodian because of the minor's refusal to have an abortion, the minor must be considered an emancipated minor for the purposes of eligibility for public assistance benefits. The public assistance benefits may not be used to obtain an abortion.

**Section 9. Procedure for judicial waiver of consent.** (1) The requirements and procedures under this section are available to minors whether or not they are residents of this state.

(2) A minor may petition the youth court for a waiver of the requirement for consent and may participate in the proceedings on the minor's own behalf. The petition must include a statement that the minor is pregnant and is not emancipated. The court may appoint a guardian ad litem for the minor. A guardian ad litem is required to maintain the confidentiality of the proceedings. The youth court shall advise the minor of the right to assigned counsel and shall order the office of state public defender, provided for in 47-1-201, to assign counsel upon request.

(3) Proceedings under this section are confidential and must ensure the anonymity of the minor. All proceedings under this section must be sealed. The minor may file the petition using a pseudonym or using the minor's initials. All documents related to the petition and the proceedings on the petition are confidential and are not available to the public. The proceedings on the petition must be given preference over other pending matters to the extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings of fact and conclusions of law and rule within 48 hours of the time that the petition is filed unless the time is extended at the request of the minor. If the court fails to rule within 48 hours and the time is not extended, the petition is granted and the requirement for consent is waived.

(4) If the court finds that the minor is competent to decide whether to have an abortion, the court shall issue an order authorizing the minor to consent to the performance or inducement of an abortion without the consent of a parent or legal guardian.

(5) The court shall issue an order authorizing the minor to consent to an abortion without the consent of a parent or legal guardian if the court finds that:

(a) there is evidence of physical abuse, sexual abuse, or emotional abuse of the minor by one or both parents, a legal guardian, or a custodian; or

(b) the consent of a parent or legal guardian is not in the best interests of the minor.

(6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss the petition.

(7) A court that conducts proceedings under this section shall issue written and specific findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence, findings, and conclusions be maintained.

(8) The supreme court may adopt rules providing an expedited confidential appeal by a minor if the youth court denies a petition. An order authorizing an abortion without the consent of a parent or legal guardian is not subject to appeal.

(9) Filing fees may not be required of a minor who petitions a court for a waiver of the requirement for consent or who appeals a denial of a petition.

**Section 10. Criminal and civil penalties.** (1) A person convicted of performing an abortion in violation of [section 4] shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. On a second or subsequent conviction, the person shall be fined an amount not less than $500 or more than $50,000 and be imprisoned in the state prison for a term of not less than 10 days or more than 5 years, or both.

(2) Failure to obtain the consent required under [section 4] is prima facie evidence in an appropriate civil action for a violation of a professional obligation. The evidence does not apply to issues other than failure to obtain the consent of a parent or legal guardian. A civil action may be based on a claim that the failure to obtain consent was the result of a violation of the appropriate legal standard of care. Failure to obtain consent is presumed to be actual malice pursuant to the provisions of 27-1-221. [Sections 1 through 11] do not limit the common-law rights of parents.

(3) A person who coerces a minor to have an abortion is guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. On a second or subsequent conviction, the person shall be fined an amount not less than $500 or more than $50,000 and be imprisoned in the state prison for a term of not less than 10 days or more than 5 years, or both.

(4) A person not authorized to grant consent under [section 4] who signs a consent form provided for in [section 5] is guilty of a misdemeanor.

**Section 11. Construction.** Nothing in [sections 1 through 11] may be construed as creating or recognizing a right to abortion. It is not the intention of [sections 1 through 11] to make lawful an abortion that is currently unlawful.

**Section 12.** Section 41-1-405, MCA, is amended to read:

**"41-1-405. Emergencies and special situations.** (1) A health professional may render or attempt to render emergency service or first aid, medical, surgical, dental, or psychiatric treatment, without compensation, to any injured person or any person regardless of age who is in need of immediate health care when, in good faith, the professional believes that the giving of aid is the only alternative to probable death or serious physical or mental damage.

(2) A health professional may render nonemergency services to minors for conditions that will endanger the health or life of the minor if services would be delayed by obtaining consent from spouse, parent, parents, or legal guardian.

(3) Consent may not be required of a minor who does not possess the mental capacity or who has a physical disability that renders the minor incapable of giving consent and who has no known relatives or legal guardians, if a physician determines that the health service should be given.

(4) Self-consent of minors does not apply to sterilization or abortion, except as provided in ~~Title 50, chapter 20, part 2~~ *[sections 1 through 11]*."

**Section 13.** Section 47-1-104, MCA, is amended to read:

**"47-1-104. Statewide system — structure and scope of services — assignment of counsel at public expense.** (1) There is a statewide public defender system, which is required to deliver public defender services in all

courts in this state. The system is supervised by the commission and administered by the office.

(2) The commission shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The commission may establish a regional office to provide public defender services in each region, as provided in 47-1-215, establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

(3) When a court orders the office or the office of appellate defender to assign counsel, the appropriate office shall immediately assign a public defender qualified to provide the required services. The commission shall establish protocols to ensure that the offices make appropriate assignments in a timely manner.

(4) A court may order an office to assign counsel under this chapter in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child Welfare Act, as provided in 41-3-425;

(iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

(v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

(vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

(vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116;

(ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and

(x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.

(b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:

(i) as provided for in 41-3-425;

(ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;

(iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;

(iv) for a minor who petitions for a waiver of parental ~~notification~~ *consent* requirements under the ~~Parental Notice of Abortion Act~~ *Parental Consent for Abortion Act of 2013*, as provided in ~~50-20-232~~ *[section 9]*;

(v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; and

(c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of 47-1-216 to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest."

**Section 14. Repealer.** The following sections of the Montana Code Annotated are repealed:

50-20-221. Short title.

50-20-222. Legislative purpose and findings.

50-20-223. Definitions.

50-20-224. Notice of parent required.

50-20-225. Alternative notification.

50-20-228. Exceptions.

50-20-229. Coercion prohibited.

50-20-232. Procedure for judicial waiver of notice.

50-20-235. Criminal and civil penalties.

**Section 15. Codification instruction.** [Sections 1 through 11] are intended to be codified as an integral part of Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to [sections 1 through 11].

**Section 16. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 17. Effective date.** [This act] is effective July 1, 2013.

Approved April 25, 2013

# CHAPTER NO. 308

[HB 16]

AN ACT REVISING THE STATUTES RELATED TO INVOLUNTARY COMMITMENTS; REVISING WHEN THE RIGHT OF THE RESPONDENT TO BE PHYSICALLY PRESENT AT A HEARING MAY BE WAIVED; ALLOWING EMERGENCY DETENTION OF A PERSON IN CERTAIN CASES; AND AMENDING SECTIONS 53-21-102, 53-21-119, AND 53-21-129, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 53-21-102, MCA, is amended to read:

**"53-21-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Abuse" means any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment or maltreatment or misappropriation of personal property of any person receiving treatment in a mental health facility that insults the psychosocial, physical, or sexual integrity of any person receiving treatment in a mental health facility.

(2) "Behavioral health inpatient facility" means a facility or a distinct part of a facility of 16 beds or less licensed by the department that is capable of providing secure, inpatient psychiatric services, including services to persons with mental illness and co-occurring chemical dependency.

(3) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(4) "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.

(5) "Court" means any district court of the state of Montana.

(6) "Department" means the department of public health and human services provided for in 2-15-2201.

(7) "Emergency situation" means*:*

*(a)* a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder *and appears to require commitment; or*

*(b) a situation in which any person who appears to be suffering from a mental disorder and appears to require commitment is substantially unable to provide for the person's own basic needs of food, clothing, shelter, health, or safety* ~~and appears to require commitment~~.

(8) "Friend of respondent" means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or a person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others.

(9) (a) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term does not include:

(i) addiction to drugs or alcohol;

(ii) drug or alcohol intoxication;

(iii) mental retardation; or

(iv) epilepsy.

(c) A mental disorder may co-occur with addiction or chemical dependency.

(10) "Mental health facility" or "facility" means the state hospital, the Montana mental health nursing care center, or a hospital, a behavioral health inpatient facility, a mental health center, a residential treatment facility, or a residential treatment center licensed or certified by the department that provides treatment to children or adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(11) "Mental health professional" means:

(a) a certified professional person;

(b) a physician licensed under Title 37, chapter 3;

(c) a professional counselor licensed under Title 37, chapter 23;

(d) a psychologist licensed under Title 37, chapter 17;

(e) a social worker licensed under Title 37, chapter 22; or

(f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

(12) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect.

(b) The term includes but is not limited to:

(i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;

(ii) failure to follow a prescribed plan of care and treatment; or

(iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.

(13) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(14) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(15) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

(16) "Professional person" means:

(a) a medical doctor;

(b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing;

(c) a licensed psychologist; or

(d) a person who has been certified, as provided for in 53-21-106, by the department.

(17) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(18) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

(19) "State hospital" means the Montana state hospital."

**Section 2.** Section 53-21-119, MCA, is amended to read:

**"53-21-119. Waiver of rights.** (1) A person may waive the person's rights, or if the person is not capable of making an intentional and knowing decision, these rights may be waived by the person's counsel and friend of respondent*, if a friend of respondent is appointed,* acting together if a record is made of the reasons for the waiver. The right to counsel may not be waived. The right to treatment provided for in this part may not be waived.

(2) The right of the respondent to be physically present at a hearing may also be waived by the respondent's attorney and the friend of respondent with the concurrence of the professional person and the judge upon a finding supported by facts that:

(a) *(i)* the presence of the respondent at the hearing would be likely to seriously adversely affect the respondent's mental condition; and

~~(b)~~*(ii)* an alternative location for the hearing in surroundings familiar to the respondent would not prevent the adverse effects on the respondent's mental condition*; or*

*(b) the respondent has voluntarily expressed a desire to waive the respondent's presence at the hearing*.

(3) (a) In the case of a minor, provided that a record is made of the reasons for the waiver, the minor's rights may be waived by the mutual consent of the minor's counsel and parents or guardian or guardian ad litem if there are no parents or guardian.

(b) If there is an apparent conflict of interest between a minor and the minor's parents or guardian, the court shall appoint a guardian ad litem for the minor."

**Section 3.** Section 53-21-129, MCA, is amended to read:

**"53-21-129. Emergency situation — petition — detention.** (1) When an emergency situation *as defined in 53-21-102* exists, a peace officer may take any person who appears to have a mental disorder and to present an imminent danger of death or bodily harm to the person or to others *or who appears to have a mental disorder and to be substantially unable to provide for the person's own basic needs of food, clothing, shelter, health, or safety* into custody only for sufficient time to contact a professional person for emergency evaluation. If possible, a professional person should be called prior to taking the person into custody.

(2) If the professional person agrees that the person detained is a danger to the person or to others ~~because of a mental disorder~~ and that an emergency situation *as defined in 53-21-102* exists, then the person may be detained and treated until the next regular business day. At that time, the professional person shall release the detained person or file findings with the county attorney who, if the county attorney determines probable cause to exist, shall file the petition provided for in 53-21-121 through 53-21-126 in the county of the respondent's residence. In either case, the professional person shall file a report with the court explaining the professional person's actions.

(3) The county attorney of a county may make arrangements with a federal, state, regional, or private mental facility or with a mental health facility in a county for the detention of persons held pursuant to this section. If an arrangement has been made with a facility that does not, at the time of the emergency, have a bed available to detain the person at that facility, the person may be transported to the state hospital or to a behavioral health inpatient facility, subject to 53-21-193 and subsection (4) of this section, for detention and treatment as provided in this part. This determination must be made on an

individual basis in each case, and the professional person at the local facility shall certify to the county attorney that the facility does not have adequate room at that time.

(4) Before a person may be transferred to the state hospital or to a behavioral health inpatient facility under this section, the state hospital or the behavioral health inpatient facility must be notified prior to transfer and shall state whether a bed is available for the person. If the professional person determines that a behavioral health inpatient facility is the appropriate facility for the emergency detention and a bed is available, the county attorney shall direct the person to the appropriate facility to which the person must be transported for emergency detention."

Approved April 26, 2013

# CHAPTER NO. 309

[HB 233]

AN ACT REVISING THE 24/7 SOBRIETY PROGRAM; EXPANDING THE 24/7 SOBRIETY PROGRAM TO INCLUDE OTHER CRIMES IN WHICH THE ABUSE OF ALCOHOL OR DANGEROUS DRUGS WAS A CONTRIBUTING FACTOR IN THE COMMISSION OF THE CRIME; EXPANDING USE OF THE 24/7 PROGRAM TO ADDITIONAL LOCAL LAW ENFORCEMENT AGENCIES; REQUIRING THE STATEWIDE PROGRAM TO MEET CERTAIN STANDARDS; AUTHORIZING ANY COURT TO UTILIZE THE PROGRAM; AMENDING SECTIONS 44-4-1201, 44-4-1202, 44-4-1203, 44-4-1204, 44-4-1205, 44-4-1206, 46-18-201, 61-8-422, AND 61-8-733, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, a Rand Corporation study published in the American Journal of Public Health concluded that the 24/7 Sobriety Program's frequent alcohol testing combined with swift, certain, and modest sanctions for violations can reduce problem drinking and improve public health outcomes and public safety; and

WHEREAS, the Rand Corporation analysis provides strong evidence that the 24/7 Sobriety Program, when applied to repeat DUI offenders and offenders of other crimes in which the abuse of alcohol or dangerous drugs is a factor such as domestic violence, is successful in reducing arrests for those crimes; and

WHEREAS, as a result of the success of the 24/7 Sobriety Program, the program is an authorized program for which impaired driving countermeasure incentive grant funding is available under federal law.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 44-4-1201, MCA, is amended to read:

**"44-4-1201. Short title.** This part may be cited as the "Montana 24/7 Sobriety *and Drug Monitoring* Program Act"."

**Section 2.** Section 44-4-1202, MCA, is amended to read:

**"44-4-1202. Purpose — definitions.** (1) The legislature declares that driving in Montana upon a way of this state open to the public is a privilege, not a right. A driver who wishes to enjoy the benefits of this privilege ~~must~~ *shall* accept the corresponding responsibilities.

(2) The legislature further declares that the purpose of this part is:

(a) to protect the public health and welfare by reducing the number of people on Montana's highways who drive under the influence of alcohol or dangerous drugs; ~~and~~

*(b) to protect the public health and welfare by reducing the number of repeat offenders for crimes in which the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime; and*

~~(b)~~*(c)* to strengthen the pretrial and posttrial options available to prosecutors and judges in responding to repeat DUI offenders *or other repeat offenders who commit crimes in which the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime*.

(3) As used in this part, the following definitions apply:

*(a) "Core components" means those elements of a sobriety program that analysis demonstrates are most likely to account for positive program outcomes.*

*(b) "Dangerous drug" has the meaning provided in 50-32-101.*

~~(a)~~*(c)* "Department" means the department of justice provided for in 2-15-2001.

*(d) "Immediate sanction" means a sanction that is applied within minutes of a noncompliant test event.*

*(e) "Law enforcement agency" means the county sheriff's office or another law enforcement agency designated by the county sheriff's office that is charged with enforcing the sobriety program.*

~~(b)~~*(f)* "Sobriety program" or "program" means the 24/7 sobriety *and drug monitoring* program established in 44-4-1203*, which authorizes a court or an agency as defined in 2-15-102, as a condition of bond, sentence, probation, parole, or work permit to:*~~.~~

*(i) require an individual who has been charged with or convicted of a crime in which the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime, including but not limited to a second or subsequent offense of driving under the influence of alcohol or dangerous drugs, to abstain from alcohol or dangerous drugs for a period of time; and*

*(ii) require the individual to be subject to testing to determine the presence of alcohol or dangerous drugs:*

*(A) twice a day at a central location where immediate sanctions may be applied;*

*(B) when testing twice a day is impractical, by continuous, remote sensing, or transdermal alcohol monitoring by means of an electronic monitoring device that allows timely sanctions to be applied; or*

*(C) with the concurrence of the department, by an alternate method that is consistent with 44-4-1203.*

~~(c)~~*(g)* "Testing" means a procedure for determining the presence and level of alcohol or a dangerous drug~~, as defined in 50-32-101,~~ in an individual's *breath or body fluid, including* blood, ~~breath, or~~ urine*, saliva, or perspiration,* and includes any combination of the use of breath testing, drug patch testing, urinalysis *testing, saliva testing*, or continuous*, remote sensing,* or transdermal alcohol monitoring. *With the concurrence of the department and consistent with 44-4-1203, alternate body fluids may be approved for testing.*

*(h) "Timely sanction" means a sanction that is applied as soon as practical following a noncompliant test event.*"

**Section 3.** Section 44-4-1203, MCA, is amended to read:

**"44-4-1203. Sobriety *and drug monitoring* program created.** (1) There is a statewide 24/7 sobriety *and drug monitoring* program within the department ~~of justice~~ to be administered by the attorney general.

*(2) The core components of the sobriety program must include use of a primary testing methodology for the presence of alcohol or dangerous drugs that best facilitates the ability to apply immediate sanctions for noncompliance at an affordable cost. In cases of hardship or when a sobriety program participant is subject to less-stringent testing requirements, testing methodologies with timely sanctions for noncompliance may be utilized.*

*(3) The sobriety program must be supported by evidence of effectiveness and satisfy at least two of the following categories:*

*(a) the program is included in the federal registry of evidence-based programs and practices;*

*(b) the program has been reported in a peer-reviewed journal as having positive effects on the primary targeted outcome; or*

*(c) the program has been documented as effective by informed experts and other sources.*

~~(2)~~*(4)* If a ~~county sheriff~~ *law enforcement agency* chooses to participate in the sobriety program, the department shall assist in the creation and administration of the program ~~in the county~~ in the manner provided in this part. The department shall also assist ~~counties in which a sobriety program exists~~ *entities participating in the program* in determining alternatives to incarceration.

~~(3)~~*(5)* (a) If a ~~county~~ *law enforcement agency* participates in the program, the ~~sheriff~~ *law enforcement agency* may designate an entity to provide the testing services or to take any other action required or authorized to be provided by the ~~sheriff~~ *law enforcement agency* pursuant to this part, except that the ~~sheriff's~~ *law enforcement agency's* designee may not determine whether to participate in the sobriety program.

(b) The ~~sheriff~~ *law enforcement agency* shall establish the testing locations and times for the county but must have at least one testing location and two daily testing times approximately 12 hours apart.

*(6) Any efforts by the department to alter or modify the core components of the statewide sobriety program must include a documented strategy for achieving and measuring the effectiveness of the proposed modifications. Before core components may be modified, a pilot program with defined objectives and timelines must be initiated in which measurements of the effectiveness and impact of any proposed modifications to the core components are monitored. The data collected from the pilot program must be assessed by the department, and a determination must be made as to whether the stated goals were achieved and whether the modifications should be formally implemented in the sobriety program.*"

**Section 4.** Section 44-4-1204, MCA, is amended to read:

**"44-4-1204. Rulemaking — testing fee.** The attorney general shall adopt rules to implement this part. The rules must:

(1) provide for the nature and manner of testing and the procedures and apparatus to be used for testing;

(2) establish reasonable participation and testing fees for the program, including the collection of fees to pay the cost of installation, monitoring, and deactivation of any testing device;

(3) provide for the establishment and use of local accounts for the deposit of fees collected pursuant to these rules; and

(4) require and provide for the approval of a sobriety program data management technology plan that must be used by the department and participating ~~counties~~ *law enforcement agencies* to manage testing, data access, fees and fee payments, and any required reports."

**Section 5.** Section 44-4-1205, MCA, is amended to read:

**"44-4-1205. Authority of court to order participation in sobriety *and drug monitoring* program — probationary license — ~~condition of parole~~ *imposition of conditions.*** *(1) (a) Any court or agency utilizing the sobriety program may stay any sanctions that it imposed against an offender while the offender is in compliance with the sobriety program.*

~~(1)~~*(b)* If an individual convicted of *the offense of aggravated driving under the influence in violation of 61-8-465,* a second or subsequent offense of driving under the influence in violation of 61-8-401, or *a* second or subsequent offense of driving with excessive alcohol concentration in violation of 61-8-406 has been required to participate in the sobriety program, the court may, upon the individual's successful completion of a court-approved chemical dependency treatment program and proof of insurance pursuant *to* 61-6-301, notify the department that as a participant in the sobriety program, the individual is eligible for a restricted probationary driver's license pursuant to 61-2-302~~, notwithstanding the requirements of 61-5-208 that an individual must complete a certain portion of a suspension period before a probationary license may be issued~~*, notwithstanding the requirements of 61-5-208 that an individual is required to complete a certain portion of a suspension period before a probationary license may be issued*.

~~(2)~~*(c)* If the individual fails to comply with the requirements of the sobriety program, the court may notify the department of the individual's noncompliance and direct the department to withdraw the individual's probationary driver's license and reinstate the remainder of the suspension period provided in 61-5-208.

~~(3)~~*(2)* ~~The~~ *Upon an offender's participation in the sobriety program and payment of the fees required by 44-4-1204:*

*(a) the* court may condition any bond or pretrial release for an individual charged with *a violation of 61-8-465,* a second or subsequent violation of 61-8-401 or 61-8-406*, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime* ~~upon participation in the sobriety program and payment of the fees required by 44-4-1204.~~*;*

~~(4) The~~ *(b) the* court may condition the granting of a suspended execution of sentence or probation for an individual convicted of *a violation of 61-8-465,* a second or subsequent violation of 61-8-401 or 61-8-406*, or –a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime* ~~upon participation in the sobriety program and payment of the fees required by 44-4-1204.~~*;*

~~(5) The~~ *(c) the* board of pardons and parole~~, the department of corrections, or a parole officer~~ may condition parole *for a violation of 61-8-465,* ~~for~~ a second or subsequent violation of 61-8-401 or 61-8-406*, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of*

*alcohol or dangerous drugs was a contributing factor in the commission of the crime* ~~upon participation in the sobriety program and payment of the fees required by 44-4-1204.~~*; or*

*(d) the department of corrections may establish conditions for conditional release for a violation of 61-8-465, a second or subsequent violation of 61-8-401 or 61-8-406, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime.*

*(3) An entity referred to in subsections (2)(a) through (2)(d) may condition any bond or pretrial release, suspended execution of sentence, probation, parole, or conditional release as provided in those subsections for an individual charged with or convicted of a violation of any statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime regardless of whether the charge or conviction was for a first, second, or subsequent violation of the statute.*"

**Section 6.** Section 44-4-1206, MCA, is amended to read:

**"44-4-1206. Collection, distribution, and use of testing fees.** The ~~sheriff~~ *law enforcement agency* of a county in which a sobriety program exists shall collect the testing fee required by the rules of the department and deposit the fees into the local sobriety program account established pursuant to department rules. The fee must be distributed according to those rules to the proper ~~county~~ *entity* for use by the ~~sheriff~~ *law enforcement agency* or the ~~sheriff's~~ *law enforcement agency's* designee pursuant to the terms determined by the ~~sheriff~~ *law enforcement agency* in accordance with the provisions of this part and the rules implementing this part."

**Section 7.** Section 46-18-201, MCA, is amended to read:

**"46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(i) a fine as provided by law for the offense;

(ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in 46-8-113;

(iii) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(iv) commitment of:

(A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), and 45-5-625(4); or

(B) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(v) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(vi) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(vii) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

(viii) any combination of subsections (2) and (3)(a)(i) through (3)(a)(vii).

(b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank program.

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of assigned counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

(n) participation in a day reporting program provided for in 53-1-203;

(o) participation in the sobriety program provided for in Title 44, chapter 4, part 12, for *a violation of 61-8-465,* a second or subsequent violation of 61-8-401 or 61-8-406*, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime or for a violation of any statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime regardless of whether the charge or conviction was for a first, second, or subsequent violation of the statute*;

(p) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

(q) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(p).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise.

*(9) As used in this section, "dangerous drug" has the meaning provided in 50-32-101.*"

**Section 8.** Section 61-8-442, MCA, is amended to read:

**"61-8-442. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — ignition interlock device — *24/7 sobriety program — forfeiture of vehicle.*** (1) In addition to the punishments provided in 61-8-714 and 61-8-722, regardless of disposition and if a probationary license is recommended by the court, the court may, for a person convicted of a first offense under 61-8-401 or 61-8-406*,:*

*(a)* restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and require the person to pay the reasonable cost of leasing, installing, and maintaining the device*; or*

*(b) require the person to participate in a court-approved alcohol or drug detection testing program and pay the fees associated with the testing program*.

(2) If a person is convicted of a second or subsequent violation of 61-8-401 or 61-8-406, in addition to the punishments provided in 61-8-714 and 61-8-722, regardless of disposition, the court shall:

(a) if recommending that a probationary license be issued to the person, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and require the person to pay the reasonable cost of leasing, installing, and maintaining the device; ~~or~~

*(b) require the person to participate in the 24/7 sobriety program provided for in 44-4-1203 and pay the fees associated with the program or require the person to participate in a court-approved alcohol or drug detection testing program and pay the fees associated with the testing program; or*

~~(b)~~*(c)* order that each motor vehicle owned by the person at the time of the offense be seized and subjected to the forfeiture procedure provided under 61-8-421.

(3) Any restriction *or requirement* imposed under this section must be included in a report of the conviction made by the court to the department in accordance with 61-11-101 and placed upon the person's driving record maintained by the department in accordance with 61-11-102.

(4) The duration of a restriction imposed under this section must be monitored by the department."

**Section 9.** Section 61-8-733, MCA, is amended to read:

**"61-8-733. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — *ignition interlock device — 24/7 sobriety program* — forfeiture of vehicle.** (1) On the second or subsequent conviction of a violation of 61-8-401 or 61-8-406 or a second or subsequent conviction under 61-5-212 when the reason for the suspension or revocation was that the person was convicted of a violation of 61-8-401 or 61-8-406 or a similar offense under the laws of any other state or the suspension was under 61-8-402 or 61-8-409 or a similar law of any other state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, the court, in addition to the punishments provided in 61-5-212, 61-8-714, and 61-8-722 and any other penalty imposed by law, shall:

(a) if recommending that a probationary license be issued to the person, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and require the person to pay the reasonable cost of leasing, installing, and maintaining the device*;*

*(b) require the person to participate in the 24/7 sobriety program provided for in 44-4-1203 and pay the fees associated with the program or require the person to participate in a court-approved alcohol or drug detection testing program and pay the fees associated with the testing program*; or

~~(b)~~*(c)* order that each motor vehicle owned by the person at the time of the offense be seized and subjected to the procedure provided under 61-8-421.

(2) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession

of a person other than the owner in violation of the criminal laws of this state or the United States.

(3) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought."

**Section 10. Effective date.** [This act] is effective on passage and approval.

Approved April 26, 2013

# CHAPTER NO. 310

[HB 259]

AN ACT REQUIRING PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS AND PROGRAMS TO APPLY RELEVANT EDUCATION, TRAINING, OR SERVICE BY MEMBERS OF THE ARMED FORCES OR RESERVES OF THE UNITED STATES OR THE NATIONAL GUARD OF ANY STATE TO QUALIFICATIONS FOR CERTIFICATION OR LICENSURE; REQUIRING A PROGRESS REPORT; EXTENDING RULEMAKING AUTHORITY; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Military training or experience to satisfy licensing or certification requirements — rulemaking.** (1) Each licensing board or the department on behalf of a program shall by July 1, 2014, adopt rules that provide that certification or licensure requirements established by that board or program may be met by relevant military training, service, or education completed by an individual as a member of the armed forces or reserves of the United States, the national guard of any state, or the military reserves.

(2) (a) An applicant for certification or licensure shall provide to the board or, if applying for licensure by a program, to the department satisfactory evidence, as specified in rule, of receiving military training, service, or education that is equivalent to relevant certification or licensure requirements.

(b) The department and each licensing board shall, upon presentation of satisfactory evidence by an applicant for certification or licensure, accept education, training, or service completed by an individual as a member of the armed forces or reserves of the United States, the national guard of a state, or the military reserves toward the qualifications to receive the license or certification.

(3) The department shall report to the interim committee responsible for monitoring licensing boards by January 1, 2014, on the progress and actions taken under this section by each licensing board or program.

**Section 2. Appropriation — reversion.** (1) There is appropriated $9,500 for fiscal year 2014 from the general fund to the department of labor and industry for the rulemaking purposes described in [section 1].

(2) Any of the appropriation remaining unexpended and unencumbered by July 1, 2014, for the purposes of rulemaking under [section 1] must revert to the general fund, and the provisions of 17-7-304(4)(a) do not apply.

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 37, chapter 1, part 1, and the provisions of Title 37, chapter 1, part 1, apply to [section 1].

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 26, 2013

## CHAPTER NO. 311

[HB 310]

AN ACT PROHIBITING CLAIMS AND DAMAGES BASED ON THE BIRTH OF A CHILD.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Claims and damages based on birth of child prohibited.** (1) A cause of action or award of damages is prohibited if the cause of action or award of damages is based on the claim that, but for the conduct of a health care provider, a parent would not have permitted the parent's child to have been born.

(2) For the purposes of this section, the term "health care provider" means a health care facility as defined in 50-5-101 or a physician, physician assistant, registered nurse, advanced practice registered nurse, or direct-entry midwife licensed under Title 37.

(3) This section does not apply to instances of gross negligence or willful or wanton acts or omissions.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 27, chapter 1, part 7, and the provisions of Title 27, chapter 1, part 7, apply to [section 1].

**Section 3. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 25, 2013

## CHAPTER NO. 312

[HB 355]

AN ACT REVISING LAWS REGARDING ALCOHOL- AND DRUG-RELATED DRIVING OFFENSES; RAISING THE 5-YEAR LOOKBACK PROVISION FOR CERTAIN ALCOHOL- AND DRUG-RELATED DRIVING OFFENSES; PROVIDING THAT ALL PRIOR CONVICTIONS ARE COUNTED FOR DETERMINING THE NUMBER OF CONVICTIONS IN THE CASE OF A THIRD OR SUBSEQUENT DUI; AMENDING SECTIONS 61-8-465 AND 61-8-734, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-8-465, MCA, is amended to read:

**"61-8-465. Aggravated DUI.** (1) A person commits the offense of aggravated driving under the influence if the person is in violation of 61-8-401 or 61-8-406 and at the time of the offense:

(a) the person's blood alcohol concentration is 0.16 or more;

(b) the person is under the order of a court or the department to equip any motor vehicle the person operates with an approved ignition interlock device;

(c) the person's driver's license or privilege to drive is suspended, canceled, or revoked as a result of a prior violation of 61-8-401, 61-8-402, or 61-8-406;

(d) the person refuses to provide a breath or blood sample as required in 61-8-402 and the person's driver's license or privilege to drive was suspended, canceled, or revoked under 61-8-402 within 10 years of the commission of the present offense; or

(e) the person has one prior conviction or pending charge for a violation of 45-5-106, 45-5-205, 61-8-401, 61-8-406, or this section within ~~3~~ *10* years of the commission of the present offense, or two or more prior convictions or pending charges, or any combination thereof, for violations of 45-5-106, 45-5-205, 61-8-401, 61-8-406~~, or this section within 7 years of the commission of the present offense~~.

(2) A person convicted of the offense of aggravated driving under the influence shall be punished by:

(a) a fine of $1,000; and

(b) a term of imprisonment of not more than 1 year, part of which may be suspended, except for the mandatory minimum sentences set forth in 61-8-714.

(3) During the suspended sentence imposed by the court under subsection (2)(b):

(a) the person is subject to all conditions of the suspended sentence imposed by the court, including mandatory participation in drug or DUI courts if available;

(b) the person is subject to all conditions of the 24/7 sobriety program if available and if imposed by the court; and

(c) if the person violates any condition of the suspended sentence or any treatment requirement, the court may impose the remainder of any imprisonment term that was imposed and suspended.

(4) Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section."

**Section 2.** Section 61-8-734, MCA, is amended to read:

**"61-8-734. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — conviction defined — place of imprisonment — home arrest — exceptions — deferral of sentence not allowed.** (1) (a) For the purpose of determining the number of convictions for prior offenses referred to in 61-8-465, 61-8-714, 61-8-722, or 61-8-731, "conviction" means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute or regulation in another state or on a federally recognized Indian reservation, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state, in another state, or on a federally recognized Indian reservation, which forfeiture has not been vacated.

(b) An offender is considered to have been previously convicted for the purposes of sentencing if less than ~~5~~ *10* years have elapsed between the commission of the present offense and a previous conviction, unless the offense is the offender's ~~fourth~~ *third* or subsequent offense, in which case all previous convictions must be used for sentencing purposes.

(c) A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401 or 61-8-406 may be counted for purposes of determining the number of a subsequent conviction for violation of either 61-8-401 or 61-8-406.

(2) Except as provided in 61-8-731, the court may order that a term of imprisonment imposed under 61-8-714, 61-8-722, or 61-8-731 be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(3) Subject to the limitations set forth in 61-8-714 and 61-8-722 concerning minimum periods of imprisonment, the court may order that a term of imprisonment imposed under either section be served by imprisonment under home arrest, as provided in Title 46, chapter 18, part 10.

(4) A court may not defer imposition of sentence under 61-8-714, 61-8-722, or 61-8-731.

(5) The provisions of 61-2-107, 61-5-205(2), and 61-5-208(2), relating to suspension of driver's licenses and later reinstatement of driving privileges, apply to any conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406."

**Section 3. Effective date.** [This act] is effective on passage and approval.

**Section 4. Applicability — retroactive applicability.** (1) [This act] applies to offenses committed on or after [the effective date of this act].

(2) For the purpose of determining the number of convictions for prior offenses referred to in 61-8-465, 61-8-714, 61-8-722, or 61-8-731, [this act] applies retroactively, within the meaning of 1-2-109, to convictions that occurred before [the effective date of this act].

Approved April 26, 2013

# CHAPTER NO. 313

[HB 415]

AN ACT CREATING THE GUARANTEED ASSET PROTECTION WAIVER ACT; AMENDING SECTION 33-1-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Title — scope.** (1) [Sections 1 through 7] may be cited as the "Guaranteed Asset Protection Waiver Act".

(2) The purpose of [sections 1 through 7] is to provide a framework within which guaranteed asset protection waivers are defined and may be offered within this state.

(3) [Sections 1 through 7] do not apply to:

(a) an insurance policy offered by an insurer under the insurance laws of this state; or

(b) a debt cancellation or debt suspension contract being offered in compliance with 32-1-429, 32-3-609, 12 CFR, part 37 or part 721, or other federal law.

(4) Guaranteed asset protection waivers governed by [sections 1 through 7] are not insurance and are exempt from the insurance laws of this state. Persons

that comply with [sections 1 through 7] in marketing, selling, or offering to sell guaranteed asset protection waivers to borrowers are exempt from this state's insurance licensing requirements.

**Section 2. Definitions.** As used in [sections 1 through 7], the following definitions apply:

(1) "Administrator" means a person, other than an insurer or creditor, that performs administrative or operational functions pursuant to guaranteed asset protection waiver programs.

(2) "Borrower" means a debtor, retail buyer, or lessee under a finance agreement.

(3) "Creditor" means:

(a) the lender in a loan or credit transaction;

(b) the lessor in a lease transaction;

(c) a retail dealer of motor vehicles that provides credit to buyers as part of a retail sale, provided that the dealer complies with the provisions of [sections 1 through 7];

(d) the seller in commercial retail installment transactions; or

(e) the assignees of any of the persons set out in subsections (3)(a) through (3)(d) to whom the credit obligation is payable.

(4) "Finance agreement" means a loan, lease, or retail installment sales contract for the purchase or lease of a motor vehicle.

(5) "Free look period" means the period of time from the effective date of the guaranteed asset protection waiver until the date the borrower may cancel the contract without penalty, fees, or costs to the borrower. The period of time may not be less than 30 days.

(6) "Guaranteed asset protection waiver" or "GAP waiver" means a contractual agreement that is part of or a separate addendum to the finance agreement in which a creditor agrees for a separate charge to cancel or waive all or part of amounts due on a borrower's finance agreement in the event of a total physical damage loss or unrecovered theft of a motor vehicle.

(7) "Insurer" means an insurance company licensed, registered, or otherwise authorized to do business under the insurance laws of this state.

(8) "Motor vehicle" means a self-propelled or towed vehicle designed for personal or commercial use, including but not limited to an automobile, truck, motorcycle, recreational vehicle, all-terrain vehicle, snowmobile, camper, boat, and personal watercraft and a trailer used to transport a motorcycle, boat, camper, or personal watercraft.

(9) "Person" includes an individual, company, association, organization, partnership, business trust, corporation, and every form of legal entity.

**Section 3. Requirements for offering guaranteed asset protection waivers.** (1) GAP waivers may be offered, sold, or provided to borrowers in this state in compliance with [sections 1 through 7].

(2) GAP waivers may, at the option of the creditor, be sold for a single payment or may be offered with a monthly or periodic payment option.

(3) Any cost to the borrower for a guaranteed asset protection waiver entered into in compliance with the Truth in Lending Act, 15 U.S.C. 1601, et. seq., must be separately stated and is not considered a finance charge or interest.

(4) A retail dealer of motor vehicles shall insure its GAP waiver obligations under a contractual liability or other insurance policy issued by an insurer. A creditor, other than a retail dealer of motor vehicles, may insure its GAP waiver obligations under a contractual liability policy or similar policy issued by an insurer. The insurance policy may be directly obtained by a creditor or a retail dealer of motor vehicles or may be procured by an administrator to cover a creditor's or retail dealer's obligations. However, retail dealers of motor vehicles that are lessors of motor vehicles are not required to insure obligations related to GAP waivers on leased vehicles.

(5) The GAP waiver remains a part of the finance agreement upon the assignment, sale, or transfer of the finance agreement by the creditor.

(6) The extension of credit, the term of credit, or the term of the related motor vehicle sale or lease may not be conditioned upon the purchase of a GAP waiver.

(7) A creditor that offers a GAP waiver shall report the sale of and forward funds received on all GAP waivers to the designated party, if any, as prescribed in any applicable administrative services agreement, contractual liability policy, other insurance policy, or other specified program document.

(8) Funds received or held by a creditor or administrator and belonging to an insurer, creditor, or administrator pursuant to the terms of a written agreement must be held by the creditor or administrator in a fiduciary capacity.

**Section 4. Contractual liability or other insurance policies.** (1) Contractual liability or other insurance policies insuring GAP waivers must state the obligation of the insurer to reimburse or pay to the creditor any sums the creditor is legally obligated to waive under the GAP waivers issued by the creditor and purchased or held by the borrower.

(2) Coverage under a contractual liability or other insurance policy insuring a GAP waiver must also cover any subsequent assignee upon the assignment, sale, or transfer of the finance agreement.

(3) Coverage under a contractual liability or other insurance policy insuring a GAP waiver must remain in effect unless canceled or terminated in compliance with applicable insurance laws of this state.

(4) The cancellation or termination of a contractual liability or other insurance policy may not reduce the insurer's responsibility for GAP waivers issued by the creditor prior to the date of cancellation or termination and for which premiums have been received by the insurer.

**Section 5. Disclosures.** Guaranteed asset protection waivers must disclose, as applicable, in writing and in clear, understandable language, the following:

(1) the name and address of the initial creditor and the borrower at the time of sale and the identity of any administrator if different from the creditor;

(2) the purchase price and the terms of the GAP waiver, including without limitation the requirements for protection, conditions, or exclusions associated with the GAP waiver;

(3) that the borrower may cancel the GAP waiver within a free look period as specified in the waiver and is entitled to a full refund of the purchase price so long as benefits have not been provided;

(4) the procedure the borrower must follow, if any, to obtain GAP waiver benefits under the terms and conditions of the waiver, including a telephone number and address where the borrower may apply for waiver benefits;

(5) whether the GAP waiver may be canceled after the free look period and the conditions under which it may be canceled, including the procedures for requesting any refund due;

(6) that in order to receive any refund due in the event of a borrower's cancellation of the GAP waiver agreement or early termination of the finance agreement, the borrower, in accordance with terms of the waiver, shall provide a written request to cancel to the creditor, administrator, or other party as specified in the GAP waiver. If a borrower is canceling the GAP waiver due to early termination of the finance agreement, the borrower shall provide a written request to the creditor, administrator, or other party within 90 days of the occurrence of the event terminating the finance agreement.

(7) the methodology for calculating any refund of the unearned purchase price of the GAP waiver due in the event of cancellation of the GAP waiver or early termination of the finance agreement; and

(8) that the extension of credit, the terms of the credit, or the terms of the related motor vehicle sale or lease may not be conditioned upon the purchase of the GAP waiver.

**Section 6. Cancellation.** (1) Guaranteed asset protection waiver agreements may be cancelable or noncancelable after the free look period. GAP waivers must provide that if a borrower cancels a GAP waiver within the free look period, so long as no benefits have been provided, the borrower is entitled to a full refund of the purchase price.

(2) If the borrower cancels the GAP waiver or terminates the finance agreement early but after the agreement has been in effect beyond the free look period, the borrower is entitled to a refund of any unearned portion of the purchase price of the GAP waiver unless the GAP waiver provides otherwise. In order to receive a refund, the borrower, in accordance with any applicable terms of the waiver, shall provide a written request to the creditor, administrator, or other party. If the borrower is canceling the GAP waiver due to the early termination of the finance agreement, the borrower shall provide a written request within 90 days of the event terminating the finance agreement.

(3) If the cancellation of a GAP waiver occurs as a result of a default under the finance agreement, the repossession of the motor vehicle associated with the finance agreement, or other termination of the finance agreement, any refund due may be paid directly to the creditor or administrator and applied as set forth in subsection (4).

(4) A cancellation or termination refund under subsection (1), (2), or (3) may be applied by the creditor as a reduction of the amount owed under the finance agreement unless the borrower can show that the finance agreement has been paid in full.

**Section 7. Commercial transactions exempted.** [Sections 3(3) and 5] do not apply to a guaranteed asset protection waiver offered in connection with a lease or retail installment sale associated with a commercial transaction.

**Section 8.** Section 33-1-102, MCA, is amended to read:

**"33-1-102. Compliance required — exceptions — health service corporations — health maintenance organizations — governmental insurance programs — service contracts.** (1) A person may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations to the extent that the existence and operations of those organizations are governed by chapter 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, parts 21 and 23, and related sections.

(6) The department of public health and human services may limit the amount, scope, and duration of services for programs established under Title 53 that are provided under contract by entities subject to this title. The department of public health and human services may establish more restrictive eligibility requirements and fewer services than may be required by this title.

(7) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8, or the Montana university system group benefits plans established in Title 20, chapter 25, part 13.

(8) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(9) (a) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

(10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making of, proposal to make, and administration of a service contract.

(b) A "service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair, replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service. A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from power surges or accidental damage from handling. A service contract does not include motor club service as defined in 61-12-301.

(11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance services sold by a county, city, or town or to insurance

sold by a third party if the county, city, or town is liable for the financial risk under the contract with the third party as provided in 7-34-103.

(b) If the financial risk for ambulance service insurance is with an entity other than the county, city, or town, the entity is subject to the provisions of this code.

(12) This code does not apply to the self-insured student health plan established in Title 20, chapter 25, part 14.

(13) This code does not apply to private air ambulance services that are in compliance with 50-6-320 and that solicit membership subscriptions, accept membership applications, charge membership fees, and provide air ambulance services to subscription members and designated members of their households.

*(14) This code does not apply to guaranteed asset protection waivers that are governed by [sections 1 through 7].*"

**Section 9. Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 30, chapter 14, part 1, and the provisions of Title 30, chapter 14, part 1, apply to [sections 1 through 7].

**Section 10. Effective date.** [This act] is effective on passage and approval.

**Section 11. Applicability.** [This act] applies to guaranteed asset protection waivers issued on or after October 1, 2013.

Approved April 26, 2013

## CHAPTER NO. 314

[HB 442]

AN ACT INCREASING THE DOLLAR AMOUNT OF PROPERTY DAMAGE THAT MUST BE SUSTAINED IN AN ACCIDENT BEFORE A MOTOR VEHICLE OPERATOR IS REQUIRED TO IMMEDIATELY REPORT THE ACCIDENT; AND AMENDING SECTION 61-7-108, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-7-108, MCA, is amended to read:

**"61-7-108. Immediate notice of accidents.** The driver of a vehicle who knows or reasonably should have known that the driver has been involved in an accident resulting in injury to or death of any person, striking the body of a deceased person, or property damage to an apparent extent of ~~$500~~ *$1,000* or more shall immediately by the quickest means of communication give notice of the accident to the local police department if the accident occurs within a municipality, otherwise to the office of the county sheriff or the nearest office of the highway patrol."

Approved April 26, 2013

## CHAPTER NO. 315

[HB 498]

AN ACT REVISING THE EXPIRATION DATE OF STATE IDENTIFICATION CARDS; AMENDING SECTION 61-12-504, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-12-504, MCA, is amended to read:

**"61-12-504. Fees for identification cards — expiration of cards.** (1) ~~Fees not in excess of $8 for~~ *Upon application for an* identification ~~cards~~ *card* issued pursuant to this part*, a fee of $16* must be collected and deposited in the general fund*, except that the fee for a card issued under subsection (3)(b) is $8*.

(2) A person with a disability, as defined in 39-30-103, may obtain a free identification card. An individual discharged from any correctional facility must be furnished a free identification card upon release, discharge, or parole.

(3) (a) ~~An identification card expires on the anniversary of the date of birth of the holder 4 years after the date of issue.~~ *Except as provided in subsections (3)(b) and (3)(c), an identification card expires on the anniversary of the cardholder's date of birth 8 years after the date of issue.*

*(b) An identification card issued to a person who is under 21 years of age expires on the anniversary of the cardholder's date of birth 4 years after the card's issue date.*

~~(b)~~*(c)* An identification card issued to a person whose presence in the United States is temporarily authorized under federal laws expires, as determined by the department, no later than the expiration date of the official document issued to the person by the United States citizenship and immigration services of the department of homeland security that authorizes the person's presence in the United States."

**Section 2. Effective date.** [This act] is effective July 1, 2013.

Approved April 26, 2013

# CHAPTER NO. 316

[HB 575]

AN ACT GENERALLY REVISING 9-1-1 LAWS; REVISING DEFINITIONS; REQUIRING THAT FEES COLLECTED FOR WIRELESS ENHANCED 9-1-1 SERVICES BE REALLOCATED TO WIRELESS 9-1-1 JURISDICTIONS AND WIRELESS PROVIDERS UNDER CERTAIN CIRCUMSTANCES; ESTABLISHING A REALLOCATION PROCESS; AMENDING SECTIONS 10-4-101 AND 10-4-313, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 10-4-101, MCA, is amended to read:

**"10-4-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Allowable costs" ~~means~~ *means* the actual costs associated with upgrading, purchasing, programming, installing, testing, operating, and maintaining data, hardware, and software necessary to comply with federal communications commission ~~orders~~ *orders for the delivery of 9-1-1 calls and data as set forth in 47 CFR 20.18*.

(2) "Basic 9-1-1 account" means the 9-1-1 emergency telecommunications account established in 10-4-301(1)(a).

(3) "Basic 9-1-1 service" means a telephone service meeting the standards established in 10-4-103 that automatically connects a person dialing the digits 9-1-1 to an established public safety answering point.

(4) "Basic 9-1-1 system" includes equipment for connecting and outswitching 9-1-1 calls within a telephone central office, trunking facilities from the central office to a public safety answering point, and equipment, as

appropriate, that is used for transferring the call to another point, when appropriate, and that is capable of providing basic 9-1-1 service.

(5) "Commercial mobile radio service" means:

(a) a mobile service that is:

(i) provided for profit with the intent of receiving compensation or monetary gain;

(ii) an interconnected service; and

(iii) available to the public or to classes of eligible users so as to be effectively available to a substantial portion of the public; or

(b) a mobile service that is the functional equivalent of a mobile service described in subsection (5)(a).

(6) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(7) "Direct dispatch" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, provides for a decision as to the proper action to be taken and for dispatch of appropriate emergency service units.

(8) "Emergency" means an event that requires dispatch of a public or private safety agency.

(9) "Emergency services" means services provided by a public or private safety agency, including law enforcement, firefighting, ambulance or medical services, and civil defense services.

(10) "Enhanced 9-1-1 account" means the 9-1-1 emergency telecommunications account established in 10-4-301(1)(b).

(11) "Enhanced 9-1-1 service" means telephone service that meets the requirements for basic 9-1-1 service and that consists of selective routing with the capability of automatic number identification and automatic location identification at a public safety answering point enabling users of the public telecommunications system to request emergency services by dialing the digits 9-1-1.

(12) "Enhanced 9-1-1 system" includes customer premises equipment that is directly related to the operation of an enhanced 9-1-1 system, including but not limited to automatic number identification or automatic location identification controllers and display units, printers, and software associated with call detail recording, and that is capable of providing enhanced 9-1-1 service.

(13) "Exchange access services" means:

(a) telephone exchange access lines or channels that provide local access from the premises of a subscriber in this state to the local telecommunications network to effect the transfer of information; and

(b) unless a separate tariff rate is charged for the exchange access lines or channels, any facility or service provided in connection with the services described in subsection (13)(a).

~~(14) "Federal communications commission order" means a federal communications commission enhanced 9-1-1 first report and order addressing 47 CFR 20.18.~~

~~(15)~~*(14)* A "9-1-1 jurisdiction" means a group of public or private safety agencies who operate within or are affected by one or more common central office boundaries and who have agreed in writing to jointly plan a 9-1-1 emergency telephone system.

*(15) "Per capita basis" means a calculation made according to the most recent decennial census or population estimate compiled by the United States bureau of the census.*

~~(16)~~*(16)* "Phase I wireless enhanced 9-1-1" means a 9-1-1 system that automatically delivers number information to the public safety answering point for wireless calls.

~~(17)~~*(17)* "Phase II wireless enhanced 9-1-1" means a 9-1-1 system that automatically delivers number information and location information to the public safety answering point for wireless calls.

~~(18)~~*(18)* "Place of primary use" means the primary business or residential street address location at which an end-use customer's use of the commercial mobile radio service primarily occurs.

~~(19)~~*(19)* "Private safety agency" means any entity, except a public safety agency, providing emergency fire, ambulance, or medical services.

~~(20)~~*(20)* "Provider" means a public utility, a cooperative telephone company, or any other entity that provides telephone exchange access services.

~~(21)~~*(21)* "Public safety agency" means the state and any city, county, city-county consolidated government, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state that provides or has authority to provide emergency services.

~~(22)~~*(22)* "Public safety answering point" means a communications facility operated on a 24-hour basis that first receives 9-1-1 calls from persons in a 9-1-1 service area and that may, as appropriate, directly dispatch public or private safety services or transfer or relay 9-1-1 calls to appropriate public safety agencies.

~~(23)~~*(23)* "Relay" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, notes the pertinent information from the caller and relays the information to the appropriate public safety agency, other agencies, or other providers of emergency services for dispatch of an emergency unit.

~~(24)~~*(24)* "Subscriber" means an end user who receives telephone exchange access services or who contracts with a wireless provider for commercial mobile radio services.

~~(25)~~*(25)* "Transfer" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, directly transfers the request to an appropriate public safety agency or other provider of emergency services.

~~(26)~~*(26)* "Wireless enhanced 9-1-1" means either phase I wireless enhanced 9-1-1 or phase II wireless enhanced 9-1-1.

~~(27)~~*(27)* "Wireless enhanced 9-1-1 account" means the wireless enhanced 9-1-1 account established in 10-4-301.

~~(28)~~*(28)* "Wireless provider" means an entity, as defined in 35-1-113, that is authorized by the federal communications commission to provide facilities-based commercial mobile radio service within this state."

**Section 2.** Section 10-4-313, MCA, is amended to read:

**"10-4-313. Distribution of wireless enhanced 9-1-1 account by department.** (1) ~~The~~ *Except as provided in subsection (2), the* department shall make quarterly distribution of the portion of the wireless enhanced 9-1-1 account for allowable costs described in 10-4-301(1)(c)(ii) incurred by each wireless provider in each 9-1-1 jurisdiction as follows:

(a) For each fiscal year through the fiscal year ending June 30, 2015:

(i) 84% of the balance of the account must be allocated to the wireless providers providing wireless enhanced 9-1-1 in each county on a per capita basis. The wireless provider in each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(ii) the balance of the account must be allocated evenly to the wireless providers providing wireless enhanced 9-1-1 in counties with 1% or less of the total population of the state; and

(iii) prior to distribution, the amounts allocated under subsections (1)(a)(i) and (1)(a)(ii) must be adjusted to ensure that a wireless provider does not receive less than the amount allocated to wireless providers providing wireless enhanced 9-1-1 in counties with 1% or less of the total population of the state.

(b) For fiscal years beginning after June 30, 2015, 100% of the balance of the account must be allocated to the wireless providers providing wireless enhanced 9-1-1 in each county on a per capita basis. Each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(c) If the department is unable to fully reimburse a wireless provider under subsection (1)(a) in any quarter, the department shall in the subsequent quarter pay from the allocation under subsection (1)(a) to wireless providers any unpaid balances from the previous quarter. If the amount available is insufficient to pay all previous unpaid balances, the department shall repeat the process of paying unpaid balances that remain unpaid for as many quarters as necessary until all unpaid balances are fully paid. The department shall review all invoices for appropriateness of costs claimed by the wireless provider. If the wireless provider contests the review, payment may not be made until the amount owed to the wireless provider is determined.

(d) A wireless provider shall submit an invoice for cost recovery according to the allowable costs.

(e) The department shall determine the percentage of overall subscribers, based on billing addresses, within the 9-1-1 jurisdiction for each wireless provider seeking cost recovery by dividing the wireless provider's subscribers by the total number of subscribers in that 9-1-1 jurisdiction. The percentage must be applied to the total wireless provider funds for that 9-1-1 jurisdiction, and each wireless provider shall receive distribution based on the provider's percentage. To receive cost recovery, wireless providers shall submit subscriber counts to the department on a quarterly basis. The subscriber count must be provided for each 9-1-1 jurisdiction in which the wireless provider receives cost recovery within 30 calendar days following the end of each quarter. The department shall recalculate distribution percentages on a quarterly basis.

(f) If the department determines that a wireless provider has submitted costs that exceed allowable costs or are not submitted in the manner prescribed in 10-4-115, the department may, after giving notice to the wireless provider, suspend or withhold payment from the wireless enhanced 9-1-1 account.

*(2) (a) Except as provided in subsection (3) and after the distribution for the final quarter of each fiscal year is made pursuant to subsection (1), the department, within 45 days of the end of the final quarter of each fiscal year, shall:*

*(i) determine an amount equal to 50% of the total balance included in the account under 10-4-301(1)(c)(ii); and*

*(ii) except as provided in subsection (2)(b), distribute the amount determined in accordance with subsection (2)(a)(i) to wireless providers to reimburse the unpaid balances carried over by wireless providers pursuant to subsection (1)(c).*

*(b) If the amount determined pursuant to subsection (2)(a)(i) is insufficient to reimburse all wireless providers in full in accordance with subsection (2)(a)(ii), the department shall proportionately, based on outstanding balances, distribute the money to each wireless provider that has an unpaid balance carried over pursuant to subsection (1)(c).*

*(3) Funds may not be reallocated in accordance with subsection (2) if the county contains less than 1% of the state population.*

*(4) Any reallocated funds not distributed in accordance with subsection (2) must be returned to the account established under 10-4-301(1)(c).*

~~(2)~~*(5)* The department shall make quarterly distribution of the portion of the wireless enhanced 9-1-1 account described in 10-4-301(1)(c)(i) to each 9-1-1 jurisdiction as follows:

(a) for each fiscal year through the fiscal year ending June 30, 2015:

(i) 84% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(ii) the balance of the account must be allocated evenly to the counties with 1% or less than 1% of the total population of the state; and

(iii) prior to distribution, the amounts allocated under subsections ~~(2)(a)(i) and (2)(a)(ii)~~ *(5)(a)(i) and (5)(a)(ii)* must be adjusted to ensure that a county does not receive less than the amount allocated to counties with 1% or less of the total population of the state; and

(b) for fiscal years beginning after June 30, 2015, 100% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account."

**Section 3. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 4. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 5. Effective date.** [This act] is effective July 1, 2013.

Approved April 26, 2013

# CHAPTER NO. 317

[SB 108]

AN ACT REVISING LAWS RELATED TO THE TAX CREDIT FOR CONTRIBUTIONS TO A QUALIFIED ENDOWMENT; EXTENDING THE TERMINATION DATE OF THE TAX CREDIT; SPECIFYING THE MINIMUM ANNUITY RATE FOR DEFERRED CHARITABLE GIFT ANNUITIES; CLARIFYING THE REQUIRED TIMING OF PAYMENTS FOR DEFERRED CHARITABLE GIFT ANNUITIES; APPLYING THE PROVISIONS OF THE UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT TO THE DEFINITION OF "PERMANENT, IRREVOCABLE FUND";

AMENDING SECTION 15-30-2327, MCA; AMENDING SECTION 9, CHAPTER 537, LAWS OF 1997, SECTION 5, CHAPTER 226, LAWS OF 2001, SECTION 7, CHAPTER 4, LAWS OF 2005, AND SECTIONS 2, 3, 4, AND 7, CHAPTER 208, LAWS OF 2007; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-30-2327, MCA, is amended to read:

**"15-30-2327. (Temporary) Qualified endowments credit — definitions — rules.** (1) For the purposes of 15-30-2328 and this section, the following definitions apply:

(a) (i) "Permanent, irrevocable fund" means a fund comprising cash, securities, mutual funds, or other investment assets established for a specific charitable, religious, educational, or eleemosynary purpose and *managed,* invested*,* ~~for the production or growth of income, or both, that may either be added to principal or expended~~ *and appropriated pursuant to the Uniform Prudent Management of Institutional Funds Act provided for in Title 72, chapter 30*.

(ii) The term does not include a fund held by or for a tax-exempt organization to accomplish a charitable, religious, educational, or eleemosynary purpose from which contributions are expended directly for constructing, renovating, or purchasing operational assets, such as buildings or equipment.

(b) Subject to subsection ~~(2)~~ *(3)*, "planned gift" means an irrevocable contribution to a permanent endowment held by or for a tax-exempt organization when the contribution uses any of the following techniques that are authorized under the Internal Revenue Code:

(i) charitable remainder unitrusts, as defined by 26 U.S.C. 664;

(ii) charitable remainder annuity trusts, as defined by 26 U.S.C. 664;

(iii) pooled income fund trusts, as defined by 26 U.S.C. 642(c)(5);

(iv) charitable lead unitrusts qualifying under 26 U.S.C. 170(f)(2)(B);

(v) charitable lead annuity trusts qualifying under 26 U.S.C. 170(f)(2)(B);

(vi) charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);

(vii) deferred charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);

(viii) charitable life estate agreements qualifying under 26 U.S.C. 170(f)(3)(B);

(ix) paid-up life insurance policies meeting the requirements of 26 U.S.C. 170.

(c) "Qualified endowment" means a permanent, irrevocable fund that is held by a Montana incorporated or established organization that:

(i) is a tax-exempt organization under 26 U.S.C. 501(c)(3); or

(ii) is a bank or trust company, as defined in Title 32, chapter 1, part 1, that is holding the fund on behalf of a tax-exempt organization.

*(2) (a) Terms in a document creating a donor restriction, such as those provided for in subsection (2)(b), intending to qualify a gift for the tax credit referenced in 15-30-2328, 15-30-2329, 15-31-161, 15-31-162, and this section, require that the gift satisfy the current definition of permanent, irrevocable fund and not any previous definition unless other language in the document demonstrates a different intent.*

*(b) The restrictions referenced in subsection (2)(a) include but are not limited to a requirement that the contribution be held in a "qualified endowment" or "permanent, irrevocable fund" or that the "present value of the fund at the time of the planned gift or outright contribution" not be expendable.*

*(c) Subsections (2)(a) and (2)(b) apply to funds and terms existing on or established on [the effective date of this act]. As applied to permanent, irrevocable funds existing on [the effective date of this act], this subsection (2) governs only decisions made or actions taken on or after that date.*

~~(2)~~*(3)* (a) A contribution using a technique described in subsection (1)(b)(i) or (1)(b)(ii) is not a planned gift unless the trust agreement provides that the trust may not terminate and the beneficiaries' interest in the trust may not be assigned or contributed to the qualified endowment sooner than the earlier of:

(i) the date of death of the beneficiaries; or

(ii) 5 years from the date of the contribution.

(b) A contribution using the technique described in subsection (1)(b)(vii) is not a planned gift unless the *first partial or full-year* payment of the annuity is required to begin within the life expectancy of the annuitant or of the joint life expectancies of the annuitants, if more than one annuitant, as determined using the actuarial tables adopted by rule by the department in effect on the date of the contribution.

(c) A contribution using a technique described in subsection (1)(b)(vi) or (1)(b)(vii) is not a planned gift unless the annuity agreement provides that the interest of the annuitant or annuitants in the gift annuity may not be assigned to the qualified endowment sooner than the earlier of:

(i) the date of death of the annuitant or annuitants; or

(ii) 5 years after the date of the contribution.

(d) A contribution using a technique described in subsection (1)(b)(vi) or (1)(b)(vii) is not a planned gift unless the annuity is a qualified charitable gift annuity as defined in 33-20-701.

*(e) A contribution using a technique described in subsection (1)(b)(vii) is not a planned gift unless the annuity rate to be paid is at least 5%.*

~~(3)~~*(4)* The department shall adopt rules to prepare life expectancy tables that are derived from the actuarial tables contained in the most recent Publication 1457 by the internal revenue service. (Terminates December 31, ~~2013~~ *2019*~~—secs. 2, 3, 7, Ch. 208, L. 2007~~.)"

**Section 2.** Section 9, Chapter 537, Laws of 1997, is amended to read:

"**Section 9. Termination.** [This act] terminates December 31, ~~2001~~ *2019*."

**Section 3.** Section 5, Chapter 226, Laws of 2001, is amended to read:

"**Section 5.** Section 9, Chapter 537, Laws of 1997, is amended to read:

"**Section 9. Termination.** [This act] terminates December 31, ~~2001~~ ~~*2007*~~ *2019*.""

**Section 4.** Section 7, Chapter 4, Laws of 2005, is amended to read:

"**Section 7. Termination.** [This act] terminates December 31, ~~2007~~ *2019*."

**Section 5.** Section 2, Chapter 208, Laws of 2007, is amended to read:

"**Section 2.** Section 9, Chapter 537, Laws of 1997, is amended to read:

"**Section 9. Termination.** [This act] terminates December 31, ~~2001~~ ~~*2013*~~ *2019*.""

**Section 6.** Section 3, Chapter 208, Laws of 2007, is amended to read:

"**Section 3.** Section 5, Chapter 226, Laws of 2001, is amended to read:

"**Section 5**. Section 9, Chapter 537, Laws of 1997, is amended to read:

"**Section 9. Termination.** [This act] terminates December 31, ~~2001~~ *~~2007~~ ~~2013~~ 2019*."""

**Section 7.** Section 4, Chapter 208, Laws of 2007, is amended to read:

"**Section 4.** Section 7, Chapter 4, Laws of 2005, is amended to read:

"**Section 7. Termination.** [This act] terminates December 31, ~~2007~~ *~~2013~~ 2019*.""

**Section 8.** Section 7, Chapter 208, Laws of 2007, is amended to read:

"**Section 7. Termination.** (1) [Section 1] terminates December 31, ~~2013~~ *2019*.

(2) Sections 1 through 4, Chapter 226, Laws of 2001, terminate December 31, ~~2013~~ *2019*.

(3) Section 7, Chapter 482, Laws of 2003, terminates December 31, ~~2013~~ *2019*."

**Section 9. Effective date.** [This act] is effective on passage and approval.

**Section 10. Applicability.** [This act] applies to charitable contributions made on or after [the effective date of this act].

**Section 11. Termination.** [Section 1] terminates December 31, 2019.

Approved April 26, 2013

# CHAPTER NO. 318

[SB 139]

AN ACT REQUIRING THAT A SMALL BUSINESS IMPACT ANALYSIS BE CONDUCTED PRIOR TO THE ADOPTION OF AN ADMINISTRATIVE RULE; DEFINING "SMALL BUSINESS"; AMENDING SECTION 2-4-102, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Small business impact analysis — assistance.** (1) Prior to the adoption of a proposed rule, the agency that has proposed the rule shall determine if the rule will significantly and directly impact small businesses. If the agency determines that the proposed rule will impact small businesses, the determination must be published in the register when the proposed rule is published. If the agency determines that the proposed rule may have a significant and direct impact on small businesses and if subsection (4) does not apply, the agency shall prepare a small business impact analysis that, at a minimum, must:

(a) identify by class or group the small businesses probably affected by the proposed rule;

(b) include a statement of the probable significant and direct effects of the proposed rule on the small businesses identified in subsection (1)(a); and

(c) include a description of any alternative methods that may be reasonably implemented to minimize or eliminate any potential adverse effects of adopting the proposed rule, while still achieving the purpose of the proposed rule.

(2) The agency shall provide documentation for the estimates, statements, and descriptions required under subsection (1).

(3) The office of economic development, established in 2-15-218, shall advise and assist agencies in complying with this section.

(4) An agency is not required to prepare a separate small business impact analysis under this section if the agency pursuant to 2-4-405 is preparing or has prepared an economic impact statement regarding adoption, amendment, or repeal of a rule.

(5) The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a result of the inaccuracy or inadequacy of a small business impact analysis required under this section.

**Section 2.** Section 2-4-102, MCA, is amended to read:

**"2-4-102. Definitions.** For purposes of this chapter, the following definitions apply:

(1) "Administrative rule review committee" or "committee" means the appropriate committee assigned subject matter jurisdiction in Title 5, chapter 5, part 2.

(2) (a) "Agency" means an agency, as defined in 2-3-102, of state government, except that the provisions of this chapter do not apply to the following:

(i) the state board of pardons and parole, except that the board is subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the ARM and the register;

(ii) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youth or prisoners;

(iii) the board of regents and the Montana university system;

(iv) the financing, construction, and maintenance of public works;

(v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C. 252 and 69-3-837.

(b) The term does not include a school district, a unit of local government, or any other political subdivision of the state.

(3) "ARM" means the Administrative Rules of Montana.

(4) "Contested case" means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) (a) "Interested person" means a person who has expressed to the agency an interest concerning agency actions under this chapter and has requested to be placed on the agency's list of interested persons as to matters of which the person desires to be given notice.

(b) The term does not extend to contested cases.

(6) "License" includes the whole or part of an agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(7) "Licensing" includes an agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(8) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but this chapter may not be construed to prevent an agency from admitting any person as a party for limited purposes.

(9) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

(10) "Register" means the Montana Administrative Register.

(11) (a) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule.

(b) The term does not include:

(i) statements concerning only the internal management of an agency or state government and not affecting private rights or procedures available to the public, including rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide accounting, budgeting, and human resource system;

(ii) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(iii) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

(iv) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules is indicated to the public by means of signs or signals; or

(v) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the ARM.

(12) (a) "Significant interest to the public" means agency actions under this chapter regarding matters that the agency knows to be of widespread citizen interest. These matters include issues involving a substantial fiscal impact to or controversy involving a particular class or group of individuals.

(b) The term does not extend to contested cases.

*(13) "Small business" means a business entity, including its affiliates, that is independently owned and operated and that employs fewer than 50 full-time employees.*

~~(13)~~*(14)* "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law."

**Section 3. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 2, chapter 4, part 1, and the provisions of Title 2, chapter 4, part 1, apply to [section 1].

**Section 5. Effective date.** [This act] is effective July 1, 2013.

**Section 6. Termination.** [This act] terminates July 1, 2015.

Approved April 26, 2013

# CHAPTER NO. 319

[SB 178]

AN ACT ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO RETAIN A PERCENTAGE OF THE CLASS B-10 LICENSE FEE IF AN APPLICANT CHOOSES TO PURCHASE ONLY A PORTION OF THE LICENSE; AMENDING SECTION 87-2-511, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 87-2-511, MCA, is amended to read:

**"87-2-511. Sale and use of Class B-10, Class B-11, and Class B-13 licenses.** (1) The department shall offer the Class B-10 and Class B-11 licenses for sale on March 15, with 2,000 of the authorized Class B-11 licenses reserved for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor, as provided in subsections (2) and (3).

(2) Each application for a resident-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant intends to hunt with a resident sponsor and must indicate the name of the resident sponsor with whom the applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed by a resident sponsor and that affirms that the resident sponsor will:

(a) direct the applicant's hunting and advise the applicant of game and trespass laws of the state;

(b) submit to the department, in a manner prescribed by the department, complete records of who hunted with the resident sponsor, where they hunted, and what game was taken; and

(c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the sponsor. If there is a sufficient number of licenses set forth in subsection (1), the department shall issue a license to one applicant sponsored by each resident landowner who owns 640 or more contiguous acres. If enough licenses remain for a second applicant for each resident landowner sponsor, the department shall issue a license to the second applicant sponsored by each resident landowner. The department shall conduct a drawing for any remaining resident-sponsored licenses. If there is not a sufficient number of licenses set forth in subsection (1) to allow each resident landowner who owns 640 contiguous acres to sponsor one applicant, the department shall conduct a drawing for the resident-sponsored licenses. However, a resident sponsor of a Class B-11 license may submit no more than 15 certificates of sponsorship in any license year.

(4) A nonresident who hunts under the authority of a resident landowner-sponsored license shall conduct all deer hunting on the deeded lands of the sponsoring landowner.

(5) All Class B-10 and Class B-11 licenses that are not reserved under subsection (1) must be issued by a drawing among all applicants for the respective unreserved licenses.

(6) (a) An applicant who applies for a Class B-10 license and an applicable special elk permit but who is not successful in a drawing for the special elk permit may choose to retain only the Class B-7 portion of the Class B-10 license. The department shall sell the Class B-7 portion as a Class B-11 license for the fee set in 87-2-510. The provisions of this subsection (6)(a) do not affect the limits established in 87-2-510(2). The remaining elk tag portion of the Class B-10 license must be sold by the department as an elk-only combination license for a fee that is $150 less than that set for a Class B-10 license in 87-2-505.

(b) The department may ~~charge a $25 processing~~ *retain 10% of the Class B-10 license* fee if an applicant chooses to buy only a portion of the Class B-10 license pursuant to subsection (6)(a) after the Class B-10 license has been issued to the applicant.

(c) The revenue collected pursuant to this subsection (6) must be deposited in the state special revenue account to the credit of the department and may not be allocated pursuant to other statutory requirements generally applicable to Class B-10 or Class B-11 licenses.

(7) The department shall offer the Class B-13 nonresident youth big game combination license for sale on March 1. An applicant shall provide the name and automated licensing system number of the adult immediate family member who will accompany the youth. The adult sponsor must possess either a valid Class B-10 or Class B-11 license or a valid resident deer or elk tag at the time of application."

**Section 2. Effective date.** [This act] is effective March 1, 2014.

Approved April 26, 2013

# CHAPTER NO. 320

[SB 183]

AN ACT REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY AND EACH LICENSING BOARD ATTACHED TO THE DEPARTMENT TO ACCEPT EVIDENCE OF MILITARY TRAINING AND EXPERIENCE TO SATISFY LICENSING OR CERTIFICATION REQUIREMENTS; REQUIRING THE DEPARTMENT AND EACH LICENSING BOARD TO ADOPT RULES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Military training or experience to satisfy licensing or certification requirements — rulemaking.** (1) Each licensing board or the department on behalf of a program shall by July 1, 2014, adopt rules that provide that certification or licensure requirements established by that board or program may be met by relevant military training, service, or education completed by an individual as a member of the armed forces or reserves of the United States, the national guard of a state, or the military reserves.

(2) (a) An applicant for certification or licensure shall provide to the board or, if applying for licensure by a program, to the department satisfactory evidence, as specified in rule, of receiving military training, service, or education that is equivalent to relevant certification or licensure requirements.

(b) The department and each licensing board shall, upon presentation of satisfactory evidence by an applicant for certification or licensure, accept education, training, or service completed by an individual as a member of the armed forces or reserves of the United States, the national guard of a state, or the military reserves toward the qualifications to receive the license or certification.

(3) The department shall report to the interim committee responsible for monitoring licensing boards by January 1, 2014, on the progress and actions taken under this section by each licensing board or program.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 37, chapter 1, part 1, and the provisions of Title 37, chapter 1, part 1, apply to [section 1].

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved April 26, 2013

# CHAPTER NO. 321

[SB 203]

AN ACT ADOPTING THE INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN; REQUIRING A REPORT; PROVIDING A FUNDING SOURCE; AND PROVIDING A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Enactment — provisions.** The Interstate Compact on Educational Opportunity for Military Children is enacted into law and entered into with all other jurisdictions joining in the compact in the form substantially as follows:

ARTICLE I

PURPOSE

(1) It is the purpose of this compact to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

(a) facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from the previous school districts or variations in entrance or age requirements;

(b) facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content, or assessment;

(c) facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities;

(d) facilitating the on-time graduation of children of military families;

(e) providing for the promulgation and enforcement of administrative rules implementing the provisions of this compact;

(f) providing for the uniform collection and sharing of information between and among member states, schools, and military families under this compact;

(g) promoting coordination between this compact and other compacts affecting military children; and

(h) promoting flexibility and cooperation between the educational system, parents, and the student in order to achieve educational success for the student.

(2) The purpose of the legislation and the Interstate Compact is not to supersede the sovereignty of any member state but instead to facilitate the collective exercise of each state's sovereignty to allow a uniform solution without federal intervention. No provision of the Interstate Compact may be construed as a waiver of any state's sovereignty.

ARTICLE II

DEFINITIONS

As used in this compact, unless the context clearly requires a different construction, the following definitions apply:

(1) "Active duty" means full-time duty status in the active uniformed service of the United States, including members of the national guard and reserve on active duty orders pursuant to 10 U.S.C. 12301(d) and 12304.

(2) "Children of military families" means school-aged children enrolled in kindergarten through 12th grade, in the household of an active duty member.

(3) "Compact commissioner" means the voting representative of each member state appointed pursuant to Article VIII of this compact.

(4) "Deployment" means the period 1 month prior to the service member's departure from the service member's home station on military orders though 6 months after return to the service member's home station.

(5) "Education records" means those official records, files, and data directly related to a student and maintained by the school or local education agency, including but not limited to records encompassing all the material kept in the student's cumulative folder, such as general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs.

(6) "Extracurricular activities" means voluntary activities sponsored by the school or local education agency or an organization sanctioned by the local education agency. Extracurricular activities include but are not limited to preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, and club activities.

(7) "Interstate Commission on Educational Opportunity for Military Children" or "Interstate Commission" means the commission that is created under Article IX of this compact.

(8) "Local education agency" means a public authority legally constituted by the state as an administrative agency to provide control of and direction for kindergarten through 12th grade public educational institutions.

(9) "Member state" means a state that has enacted this compact.

(10) "Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other facility under the jurisdiction of the department of defense, including any leased facility, that is located within any state.

(11) "Nonmember state" means a state that has not enacted this compact.

(12) "Receiving state" means the state to which a child of a military family is sent, brought, or caused to be sent or brought.

(13) "Rule" means a written statement by the Interstate Commission promulgated pursuant to Article XII of this compact that is of general applicability, that implements, interprets, or prescribes a policy or provision of

the compact, or that is an organizational, procedural, or practice requirement of the Interstate Commission and has the force and effect of statutory law in a member state. The term includes the amendment, repeal, or suspension of an existing rule.

(14) "Sending state" means the state from which a child of a military family is sent, brought, or caused to be sent or brought.

(15) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other U.S. territory.

(16) "Student" means the child of a military family for whom the local education agency receives public funding and who is formally enrolled in kindergarten through 12th grade.

(17) "Transition" means:

(a) the formal and physical process of transferring from school to school; or

(b) the period of time during which a student moves from one school in the sending state to another school in the receiving state.

(18) "Uniformed service" means the army, navy, air force, marine corps, or coast guard.

(19) "Veteran" means a person who served in the uniformed services and who was discharged or released from service under conditions other than dishonorable.

ARTICLE III

APPLICABILITY

(1) Except as otherwise provided in subsection (3), this compact applies to the children of:

(a) active duty members of the uniformed services as defined in this compact, including members of the national guard and reserve on active duty orders pursuant to 10 U.S.C. 12301(d) and 12304;

(b) members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of 1 year after medical discharge or retirement; and

(c) members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of 1 year after death.

(2) The provisions of this compact apply only to local education agencies as defined in this compact.

(3) The provisions of this compact do not apply to the children of:

(a) inactive members of the national guard and military reserves;

(b) members of the uniformed services now retired, except as provided in subsection (1);

(c) veterans of the uniformed services, except as provided in subsection (1); and

(d) other U.S. department of defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

ARTICLE IV

EDUCATIONAL RECORDS AND ENROLLMENT

(1) In the event that official education records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial

educational records from a local education facility, as defined by federal law, containing uniform information as determined by the Interstate Commission. Upon receipt of the unofficial education records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records, pending validation by the official records, as quickly as possible.

(2) Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student's official education record from the school in the sending state. Upon receipt of this request, the school in the sending state shall process and furnish the official education records to the school in the receiving state within 10 days or within a time that is reasonably determined under the rules promulgated by the Interstate Commission.

(3) Receiving states shall give 30 days from the date of enrollment or a time as is reasonably determined under the rules promulgated by the Interstate Commission for students to obtain any immunizations required by the receiving state. For a series of immunizations, initial vaccinations must be obtained within 30 days or within a time that is reasonably determined under the rules promulgated by the Interstate Commission.

(4) Students must be allowed to continue their enrollment at grade level in the receiving state commensurate with their grade level, including kindergarten, from a local education agency in the sending state at the time of transition regardless of age. A student that has satisfactorily completed the prerequisite grade level in the local education agency in the sending state must be eligible for enrollment in the next highest grade level in the receiving state regardless of age. A student transferring after the start of the school year in the receiving state shall enter the school in the receiving state on the student's validated level from a school in the sending state.

ARTICLE V

PLACEMENT AND ATTENDANCE

(1) When the student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the student's enrollment in the sending state school, educational assessments conducted at the school in the sending state, or both, if the courses are offered and space is available. Course placement includes but is not limited to honors, international baccalaureate, advanced placement, and vocational, technical, and career pathways courses. Continuing the student's academic program from the previous school and promoting placement in academically and career challenging courses should be paramount when considering placement. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the courses.

(2) The receiving state school shall initially honor placement of the student in educational programs based on space availability and current educational assessments conducted at the school in the sending state or participation or placement in like programs in the sending state. Such programs include but are not limited to gifted and talented programs. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student. This section does not require a local education agency to create programs or offer services that were not in place prior to the enrollment of the student unless the programs or services are required by federal or state law.

(3) (a) In compliance with the federal requirements of the Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq., the receiving state shall initially provide comparable services to a student with disabilities based on the student's current individualized education program.

(b) In compliance with the requirements of section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and with Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12131 through 12165, the receiving state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing 504 or Title II plan, to provide the student with equal access to education. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

(4) Local education agency administrative officials have flexibility in waiving course or program prerequisites or other preconditions for placement in courses or programs offered under the jurisdiction of the local education agency.

(5) A student whose parent or legal guardian is an active duty member of the uniformed services, as defined by the compact, and has been called to duty for, is on leave from, or has immediately returned from deployment to a combat zone or combat support posting must be granted additional excused absences at the discretion of the local education agency superintendent to visit with the student's parent or legal guardian relative to the leave or deployment of the parent or guardian.

ARTICLE VI

ELIGIBILITY

(1) A special power of attorney, relative to the guardianship of a child of a military family and executed under applicable law, is sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.

(2) A local education agency is prohibited from charging local tuition to a transitioning military child placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent.

(3) A transitioning military child, placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent may continue to attend the school in which the child was enrolled while residing with the custodial parent.

(4) State and local education agencies shall facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regardless of application deadlines, to the extent they are otherwise qualified.

ARTICLE VII

GRADUATION

In order to facilitate the on-time graduation of children of military families, states and local education agencies shall incorporate the following procedures:

(1) Local education agency administrative officials shall waive specific courses required for graduation if similar course work has been satisfactorily completed in another local education agency or shall provide reasonable justification for denial. If a waiver is not granted to a student who would qualify to graduate from the sending state, the local education agency shall provide an alternative means of acquiring required coursework so that graduation may occur on time.

(2) (a) In lieu of testing requirements for graduation in the receiving state, states shall accept:

(i) exit or end-of-course exams required for graduation from the sending state;

(ii) national norm-referenced achievement tests; or

(iii) alternative testing.

(b) In the event that the above alternatives cannot be accommodated by the receiving state for a student transferring to the school during the student's senior year, the provisions of subsection (3) of this article apply.

(3) If a military student transferring at the beginning of or during the student's senior year is ineligible to graduate from the receiving local education agency after all alternatives have been considered, the sending and receiving local education agencies shall ensure the receipt of a diploma from the sending local education agency if the student meets the graduation requirements of the sending local education agency. In the event that one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with subsections (1) and (2) of this article.

ARTICLE VIII

STATE COORDINATION

(1) Each member state shall, through the creation of a state council or use of an existing body or board, provide for the coordination among its agencies of government, local education agencies, and military installations concerning the state's participation in and compliance with this compact and Interstate Commission activities. While each member state may determine the membership of its own state council, its membership must, at a minimum, include the state superintendent of public instruction, a superintendent of a school district with a high concentration of military children, a representative from a military installation, one representative each from the legislative and executive branches of government, and other offices and stakeholder groups that the state council considers appropriate.

(2) The state council of each member state shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact.

(3) The compact commissioner responsible for the administration and management of the state's participation in the compact must be appointed by the governor or as otherwise determined by each member state.

(4) The compact commissioner and the military family education liaison designated herein are ex-officio members of the state council unless either is already a full voting member of the state council.

ARTICLE IX

INTERSTATE COMMISSION ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

The member states hereby create the Interstate Commission on Educational Opportunity for Military Children. The activities of the Interstate Commission are the formation of public policy and are a discretionary state function.

(1) The Interstate Commission is a body corporate and joint agency of the member states and has all the responsibilities, powers, and duties set forth herein and additional powers that may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact.

(2) (a) The Interstate Commission consists of one voting representative from each member state who is that state's compact commissioner.

(b) Each member state represented at a meeting of the Interstate Commission is entitled to one vote.

(c) A majority of the total member states constitute a quorum for the transaction of business unless a larger quorum is required by the bylaws of the Interstate Commission.

(d) A representative may not delegate a vote to another member state. In the event that the compact commissioner is unable to attend a meeting of the Interstate Commission, the governor or state council may delegate voting authority to another person from the state for a specified meeting.

(e) The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or electronic communication.

(3) The Interstate Commission consists of ex-officio, nonvoting representatives who are members of interested organizations. The ex-officio members, as defined in the bylaws, may include but may not be limited to members of the representative organizations of military family advocates, local education agency officials, parent and teacher groups, the U.S. department of defense, the education commission of the states, the Interstate Agreement on the Qualification of Educational Personnel, and other interstate compacts affecting the education of children of military members.

(4) The Interstate Commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings.

(5) The Interstate Commission shall establish an executive committee, whose members must include the officers of the Interstate Commission and any other members of the Interstate Commission as determined by the bylaws. Members of the executive committee shall serve 1-year terms. Members of the executive committee are entitled to one vote each. The executive committee has the power to act on behalf of the Interstate Commission, with the exception of rulemaking, during periods when the Interstate Commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact, including enforcement and compliance with the provisions of the compact and its bylaws and rules and other duties considered necessary. The U.S. department of defense shall serve as an ex-officio, nonvoting member of the executive committee.

(6) The Interstate Commission shall establish bylaws and rules that provide for conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

(7) Public notice must be given by the Interstate Commission of all meetings, and all meetings must be open to the public except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and its committees may close a meeting or portion thereof if it determines by a two-thirds vote that an open meeting would be likely to:

(a) relate solely to the Interstate Commission's internal personnel;

(b) disclose matters specifically exempted from disclosure by federal and state statute;

(c) disclose trade secrets or commercial or financial information that is privileged or confidential;

(d) involve accusing a person of a crime or formally censuring a person;

(e) disclose information of a personal nature when disclosure would constitute a clearly unwarranted invasion of personal privacy;

(f) disclose investigative records compiled for law enforcement purposes; or

(g) specifically relate to the Interstate Commission's participation in a civil action or other legal proceeding.

(8) For a meeting or portion of a meeting closed pursuant to this provision, the Interstate Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exemptible provision. The Interstate Commission shall keep minutes, which shall fully and clearly describe all matters discussed in a meeting, and shall provide a full and accurate summary of actions taken and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action must be identified in the minutes. All minutes and documents of a closed meeting must remain under seal, subject to release by a majority vote of the Interstate Commission.

(9) The Interstate Commission shall collect standardized data concerning the educational transition of the children of military families under this compact as directed through its rules, which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements. The methods of data collection, exchange, and reporting must, in so far as is reasonably possible, conform to current technology, and the Interstate Commission shall coordinate its information functions with the appropriate custodian of records as identified in the bylaws and rules.

(10) The Interstate Commission shall create a process that permits military officials, education officials, and parents to inform the Interstate Commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency. This section may not be construed to create a private right of action against the Interstate Commission, any member state, or any local education agency.

## ARTICLE X

## POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The Interstate Commission may:

(1) provide for dispute resolution among member states;

(2) adopt rules that have the force and effect of law and are binding in the compact states to the extent and in the manner provided in this compact and take all necessary actions to effect the goals, purposes, and obligations as enumerated in this compact;

(3) issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact and its bylaws, rules, and actions;

(4) monitor compliance with the compact provisions, the rules adopted by the commission, and the bylaws;

(5) establish and maintain offices, which must be located within one or more of the member states;

(6) purchase and maintain insurance and bonds;

(7) borrow, accept, hire, or contract for services of personnel;

(8) establish and appoint committees, including but not limited to an executive committee as required by subsection (5) of Article IX of this compact, which has the power to act on behalf of the Interstate Commission in carrying out its powers and duties under this compact;

(9) elect or appoint officers, attorneys, employees, agents, or consultants, fix their compensation, define their duties, and determine their qualifications, and establish the Interstate Commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;

(10) accept any and all donations and grants of money, equipment, supplies, materials, and services and receive, utilize, and dispose of it;

(11) lease, purchase, accept contributions or donations of, or otherwise own, hold, improve, or use any property, whether real, personal, or mixed;

(12) sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, whether real, personal, or mixed;

(13) establish a budget and make expenditures;

(14) adopt a seal and bylaws governing the management and operation of the Interstate Commission;

(15) report annually to the legislatures, governors, judiciary, and state councils of the member states concerning the activities of the Interstate Commission during the preceding year. The reports must also include any recommendations that may have been adopted by the Interstate Commission.

(16) coordinate education, training, and public awareness regarding the compact and its implementation and operation for officials and parents involved in such activity;

(17) establish uniform standards for the reporting, collecting, and exchanging of data;

(18) maintain corporate books and records in accordance with the bylaws;

(19) perform functions that may be necessary or appropriate to achieve the purposes of this compact;

(20) provide for the uniform collection and sharing of information between and among member states, schools, and military families under this compact.

ARTICLE XI

ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

(1) The Interstate Commission shall, by a majority of the members present and voting, within 12 months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including but not limited to:

(a) establishing the fiscal year of the Interstate Commission;

(b) establishing an executive committee and other committees as may be necessary;

(c) providing for the establishment of committees and for governing any general or specific delegation of authority or function of the Interstate Commission;

(d) providing reasonable procedures for calling and conducting meetings of the Interstate Commission and ensuring reasonable notice of each meeting;

(e) establishing the titles and responsibilities of the officers and staff of the Interstate Commission;

(f) providing a mechanism for concluding the operations of the Interstate Commission and the return of surplus funds that may exist upon the

termination of the compact after the payment and reserving of all of its debts and obligations;

(g) providing startup rules for initial administration of the compact.

(2) The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson, a vice chairperson, and a treasurer, each of whom has authority and duties as specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice chairperson, shall preside at all meetings of the Interstate Commission. The officers shall serve without compensation or remuneration from the Interstate Commission. However, subject to the availability of budgeted funds, the officers must be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the Interstate Commission.

(3) The executive committee has authority and duties as set forth in the bylaws, including but not limited to:

(a) managing the affairs of the Interstate Commission in a manner consistent with the bylaws and purposes of the Interstate Commission;

(b) overseeing an organizational structure and appropriate procedures for the Interstate Commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and

(c) planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the Interstate Commission.

(4) The executive committee may, subject to the approval of the Interstate Commission, appoint or retain an executive director for a period, upon terms and conditions, and for compensation as the Interstate Commission considers appropriate. The executive director shall serve as secretary to the Interstate Commission, but may not be a member of the Interstate Commission. The executive director shall hire and supervise other persons as authorized by the Interstate Commission.

(5) The Interstate Commission's executive director and its employees are immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred or that the person had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities. However, that person is not protected from suit or liability for damage, loss, injury, or liability caused by the person's intentional or willful and wanton misconduct.

(6) The liability of the Interstate Commission's executive director and employees or Interstate Commission representatives, acting within the scope of their employment or duties for acts, errors, or omissions occurring within their state, may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. The Interstate Commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection may be construed to protect a person from suit or liability for damage, loss, injury, or liability caused by the person's intentional or willful and wanton misconduct.

(7) The Interstate Commission shall defend the executive director and its employees and, subject to the approval of the attorney general or other appropriate legal counsel of the member state represented by an Interstate

Commission representative, shall defend the Interstate Commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities if the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of the person.

(8) To the extent not covered by the state involved, the member state, the Interstate Commission, or the representatives or employees of the Interstate Commission must be held harmless in the amount of a settlement or judgment, including attorney fees and costs, obtained against those persons arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities or that the persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities if the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of the persons.

ARTICLE XII

RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

(1) The Interstate Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the Interstate Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact or the powers granted under the compact, then such an action by the Interstate Commission is invalid and has no force or effect.

(2) Rules must be made pursuant to a rulemaking process that substantially conforms to the Model State Administrative Procedure Act revised as of 2012 as may be appropriate to the operations of the Interstate Commission.

(3) Not later than 30 days after a rule is promulgated, any person may file a petition for judicial review of the rule. However, the filing of a petition does not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Interstate Commission consistent with applicable law and may not find the rule to be unlawful if the rule represents a reasonable exercise of the Interstate Commission's authority.

(4) If a majority of the legislatures of the member states rejects a rule by enactment of a statute or resolution in the same manner used to adopt the compact, then the rule has no further force and effect in any member state.

ARTICLE XIII

OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION

(1) Each member state shall enforce this compact to effectuate the compact's purposes and intent.

(2) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact that may affect the powers, responsibilities, or actions of the Interstate Commission.

(3) The Interstate Commission is entitled to receive all service of process in any such proceeding and has standing to intervene in the proceeding for all purposes. Failure to provide service of process to the Interstate Commission

renders a judgment or order void as to the Interstate Commission, this compact, or promulgated rules.

(4) The purpose of this compact is not to supersede the sovereignty of any member state but instead to facilitate the collective exercise of each state's sovereignty to allow a uniform solution without federal intervention. No provision of the interstate compact may be construed as a waiver of a state's sovereignty.

(5) If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the bylaws or promulgated rules, the Interstate Commission shall:

(a) provide written notice to the defaulting state and other member states of the nature of the default, the means of curing the default, and any action taken by the Interstate Commission. The Interstate Commission shall specify the conditions by which the defaulting state is required to cure its default.

(b) provide remedial training and specific technical assistance regarding the default.

(6) If the defaulting state fails to cure the default, the defaulting state must be terminated from the compact upon an affirmative vote of a majority of the member states and all rights, privileges, and benefits conferred by this compact must be terminated from the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default, except that in the event of a default by this state, its total financial responsibility is limited to the amount of its most recent annual assessment.

(7) Suspension or termination of membership in the compact may be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate must be given by the Interstate Commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

(8) The state that has been suspended or terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of suspension or termination up to a maximum amount of $5,000 multiplied by the number of years that the state has been a member of the compact. In the event that this state is suspended or terminated, its total financial responsibility is limited to the amount of its most recent annual assessment.

(9) The Interstate Commission may not bear any costs relating to any state that has been found to be in default or that has been suspended or terminated from the compact unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

(10) The defaulting state may appeal the action of the Interstate Commission by petitioning the U.S. district court for the District of Columbia or the federal district where the Interstate Commission has its principal offices. The prevailing party must be awarded all costs of litigation, including reasonable attorney fees.

(11) The Interstate Commission shall attempt, upon the request of a member state, to resolve disputes that are subject to the compact and that may arise among member states and between member and nonmember states.

(12) The Interstate Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

ARTICLE XIV

FINANCING OF THE INTERSTATE COMMISSION

(1) The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(2) The Interstate Commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the Interstate Commission and its staff, which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount must be allocated based upon a formula to be determined by the Interstate Commission, which shall promulgate a rule binding upon all member states to the limits as specified herein.

(3) The annual assessment applicable to this state may not exceed an amount equal to $2 multiplied by the latest available number of children of military families in this state.

(4) This state may not be held liable for the payment of any special assessment or other assessment other than the annual assessment in the amount established by subsection (3).

(5) The Interstate Commission may not incur obligations of any kind prior to securing the funds adequate to meet those obligations, and the Interstate Commission may not pledge the credit of any of the member states except by and with the authority of the member state.

(6) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission are subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission must be audited yearly by a certified or licensed public accountant, and the report of the audit must be included in and become part of the annual report of the Interstate Commission.

(7) All expenditures for the state, including withdrawal or dissolution costs, or both, may not exceed an amount of $5,000 annually.

ARTICLE XV

MEMBER STATES, EFFECTIVE DATE, AND AMENDMENT

(1) Any state is eligible to become a member state, except that in the case of this state, withdrawal from the compact may also be accomplished by statutorily allowing for expiration of this section.

(2) Withdrawal from the compact must be by the enactment of a statute repealing the compact, except in the case of this state, withdrawal from the compact may also be accomplished by statutorily allowing for the expiration of this section.

(3) The Interstate Commission may propose amendments to the compact for enactment by the member states. An amendment may not become effective and binding upon the Interstate Commission and the member states unless it is enacted into law by unanimous consent of the member states.

ARTICLE XVI

WITHDRAWAL AND DISSOLUTION

(1) Once effective, the compact continues in force and remains binding upon each and every member state. However, a member state may withdraw from the compact by specifically repealing the statute that enacted the compact into law,

except that in the case of this state, withdrawal from the compact may also be accomplished by statutorily allowing for expiration of this section.

(2) Withdrawal from this compact must be by the enactment of legislation repealing the compact except in the case of this state, withdrawal from the compact may also be accomplished by statutorily allowing for the expiration of this section.

(3) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state, except that if this state elects to withdraw from the compact by statutorily allowing for the expiration of this section, this state shall notify the chairperson of the commission when it becomes evident that the expiration will take effect. The Interstate Commission shall notify the other member states of the withdrawing state's intent to withdraw within 60 days of its receipt of the notice.

(4) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal up to a maximum amount equal to $2 multiplied by the latest available number of children of military families in this state.

(5) Reinstatement following withdrawal of a member state may occur upon the withdrawing state reenacting the compact or upon a later date as determined by the Interstate Commission.

(6) (a) This compact dissolves on the date of the withdrawal or default of the member state that reduces the membership in the compact to one member state.

(b) Upon the dissolution of this compact, the compact becomes null and void and is of no further force or effect and the business and affairs of the Interstate Commission must be concluded and surplus funds must be distributed in accordance with the bylaws.

ARTICLE XVII

SEVERABILITY AND CONSTRUCTION

(1) The provisions of this compact are severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact are enforceable.

(2) The provisions of this compact must be liberally construed to effectuate its purposes.

(3) Nothing in this compact may be construed to prohibit the applicability of other interstate compacts to which the states are members.

ARTICLE XVIII

BINDING EFFECT OF COMPACT AND OTHER LAWS

(1) Nothing in this compact prevents the enforcement of any other law of a member state that is not inconsistent with this compact. All member states' laws conflicting with this compact are superseded to the extent of the conflict.

(2) All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the member states.

(3) All agreements between the Interstate Commission and the member states are binding in accordance with their terms.

(4) In the event that any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, that provision is ineffective to the extent of the conflict with the constitutional provision in question in that member state.

ARTICLE XIX
STATE COUNCIL - CREATION

The state council on educational opportunity for military children must be created and consist of:

(1) the following voting members:

(a) the superintendent of public instruction, who shall serve as the chairperson;

(b) the superintendent of a school district that includes a high concentration of military children, appointed by the governor;

(c) a representative of a military installation, appointed by the governor;

(d) a legislator, appointed by the senate president;

(e) a representative of the executive branch of government, appointed by the governor; and

(f) any other individuals recommended by a majority of the members of the state council listed in subsections (1)(a) through (1)(e); and

(2) the following nonvoting members:

(a) the compact commissioner appointed under Article XX; and

(b) the military family education liaison, appointed under Article XXI.

ARTICLE XX
COMPACT COMMISSIONER - APPOINTMENT AND DUTIES

The governor shall appoint a compact commissioner who is responsible for the administration and management of the state's participation in the compact on educational opportunity for military children.

ARTICLE XXI
MILITARY FAMILY EDUCATION LIAISON -
APPOINTMENT AND DUTIES

The state council shall appoint a military family education liaison to assist military families and the state in facilitating the implementation of the compact on educational opportunity for military children.

ARTICLE XXII
PROVISION OF FUNDING - ADJUTANT GENERAL

Each state's equivalent of a department of military affairs under the adjutant general shall pay all expenses incurred by the state to participate in the compact on educational opportunity for military children, including the reimbursement of actual and necessary expenses incurred by members of the state council.

**Section 2. Report to legislature.** By July 1, 2014, representatives of the Great Falls school district, the Helena school district, and a member of the military, as specified by the adjutant general, shall provide, singly or jointly, a report to the senate president, the speaker of the house, and the education and local government interim committee regarding the state's participation in the compact on educational opportunity for military children established in [section 1].

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 20, chapter 1, part 2, and the provisions of Title 20, chapter 1, part 2, apply to [section 1].

**Section 4. Termination.** [This act] terminates June 30, 2015.

Approved April 26, 2013

# CHAPTER NO. 322

[SB 275]

AN ACT PROVIDING FOR A VETERAN DESIGNATION ON STATE DRIVER'S LICENSES AND IDENTIFICATION CARDS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 61-5-111, 61-5-114, AND 61-12-501, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Veteran status on driver's license and identification cards — documentation — rulemaking.** (1) Upon receipt of documentation confirming veteran status from a person who wishes to have that status indicated on a driver's license or identification card issued by the department of justice, the department shall verify the person's status as a veteran.

(2) When the person applies for, renews, or seeks replacement of a driver's license or identification card under Title 61, the person may request that veteran status be indicated on the driver's license or identification card.

(3) The department shall, in consultation with the department of justice, make rules necessary to carry out the provisions of this section.

**Section 2.** Section 61-5-111, MCA, is amended to read:

**"61-5-111. Contents of driver's license, renewal, renewal by mail, license expirations, grace period, and fees for licenses, permits, and endorsements — notice of expiration.** (1) (a) The department may appoint county treasurers and other qualified officers to act as its agents for the sale of driver's license receipts. The department shall adopt necessary rules governing sales. In areas in which the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may appoint an agent to sell receipts.

(b) The department may enter into an authorized agent agreement with the county treasurer of any county in which the department no longer maintains a driver examination station for the purpose of providing driver's license renewal services.

(2) (a) The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to each qualifying applicant. The license must contain:

(i) a full-face photograph of the licensee in the size and form prescribed by the department;

(ii) a distinguishing number issued to the licensee;

(iii) the full legal name, date of birth, Montana residence address unless the licensee requests use of the mailing address, and a brief description of the licensee; ~~and~~

(iv) either the licensee's customary signature or a digital reproduction of the licensee's customary signature*; and*

*(v) if the applicant qualifies under subsection (7), indication of the applicant's status as a veteran*.

(b) The department may not use the licensee's social security number as the distinguishing number unless the licensee expressly authorizes the use. A license is not valid until it is signed by the licensee.

(3) (a) When a person applies for renewal of a driver's license, the department shall conduct a records check in accordance with 61-5-110(1) to determine the applicant's eligibility status and shall test the applicant's

eyesight. The department may also require the applicant to submit to a knowledge and road or skills test if:

(i) the renewal applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the expired or expiring license does not include adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify the restrictions stated on the expired or expiring license.

(b) In the case of a commercial driver's license, the department shall, if the information was not provided in a prior licensing cycle, require the renewal applicant to provide the name of each jurisdiction in which the applicant was previously licensed to drive any type of motor vehicle during the 10-year period immediately preceding the date of the renewal application and may also require that the applicant successfully complete a written examination as required by federal regulations.

(c) A person is considered to have applied for renewal of a Montana driver's license if the application is made within 6 months before or 3 months after the expiration of the person's license. Except as provided in subsection (3)(d), a person seeking to renew a driver's license shall appear in person at a Montana driver's examination station.

(d) (i) Except as provided in subsections (3)(d)(iv) through (3)(d)(vi), a person may renew a driver's license by mail if the person certifies that the person is temporarily out of state and will not be returning to the state prior to the expiration of the license. A person may not renew by mail for a subsequent license term after a mail renewal, except that a spouse or dependent of a person stationed outside Montana on active military duty may renew a driver's license by mail for one additional consecutive term following a mail renewal.

(ii) An applicant who renews a driver's license by mail shall submit to the department an approved vision examination and a medical evaluation from a licensed physician, licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102, in addition to the fees required for renewal.

(iii) If the department does not have a digitized photograph or signature record of the renewal applicant from the expiring license, then the department may require the renewal applicant to submit a personal photograph and signature that meets the requirements prescribed by the department.

(iv) Except as provided in subsections (4)(b) and (4)(c), the term of a license renewed by mail is 8 years.

(v) The department may not renew a license by mail if:

(A) the records check conducted in accordance with 61-5-110(1) shows an ineligible license status for the applicant; or

(B) the applicant holds a commercial driver's license with a hazardous materials endorsement, the retention of which requires additional testing and a security threat assessment under 49 CFR, part 1572.

(vi) If a license was issued to a foreign national whose presence in the United States is temporarily authorized under federal law, the license may not be renewed by mail.

(e) The department shall mail a driver's license renewal notice no earlier than 60 days and no later than 30 days prior to the expiration date of a driver's license. Except as provided in 61-3-119 and 61-5-115, the department shall mail the notice to the Montana mailing address shown on the driver's license.

(4) (a) Except as provided in subsections (4)(b) through (4)(e), a license expires on the anniversary of the licensee's birthday 8 years or less after the date of issue or on the licensee's 75th birthday, whichever occurs first.

(b) A license issued to a person who is 75 years of age or older expires on the anniversary of the licensee's birthday 4 years or less after the date of issue.

(c) A license issued to a person who is under 21 years of age expires on the licensee's 21st birthday.

(d) (i) Except as provided in subsection (4)(d)(ii), a commercial driver's license expires on the anniversary of the licensee's birthday 5 years or less after the date of issue.

(ii) When a person obtains a Montana commercial driver's license with a hazardous materials endorsement after surrendering a comparable commercial driver's license with a hazardous materials endorsement from another licensing jurisdiction, the license expires on the anniversary of the licensee's birthday 5 years or less after the date of the issue of the surrendered license if, as reported in the commercial driver's license information system, a security threat assessment was performed on the person as a condition of issuance of the surrendered license.

(e) A license issued to a person who is a foreign national whose presence in the United States is temporarily authorized under federal law expires, as determined by the department, no later than the expiration date of the official document issued to the person by the bureau of citizenship and immigration services of the department of homeland security authorizing the person's presence in the United States.

(5) When the department issues a driver's license to a person under 18 years of age, the license must be clearly marked with a notation that conveys the restrictions imposed under 61-5-133.

(6) (a) Upon application for a driver's license or commercial driver's license and any combination of the specified endorsements, the following fees must be paid:

(i) driver's license, except a commercial driver's license — $5 a year or fraction of a year;

(ii) motorcycle endorsement — 50 cents a year or fraction of a year;

(iii) commercial driver's license:

(A) interstate — $10 a year or fraction of a year; or

(B) intrastate — $8.50 a year or fraction of a year.

(b) A renewal notice for either a driver's license or a commercial driver's license is 50 cents.

*(7) (a) Upon receiving a request from a person whose status as a veteran has been verified by the department of military affairs pursuant to [section 1] and upon receiving the information and fees required in this part, the department shall include the word "veteran" on the face of the license.*

*(b) After a person's status as a veteran is denoted on a driver's license, the department may not require further documentation of that status from the holder of the license upon subsequent renewal or replacement.*"

**Section 3.** Section 61-5-114, MCA, is amended to read:

**"61-5-114. Replacement license or permit — *veteran designation.*** (1) If an instruction permit or driver's license issued under the provisions of this chapter is lost or destroyed or a person wants to update personal information contained on an instruction permit or a driver's license issued to the person, the person to whom the permit or license was issued may, upon the payment of a fee of $10, obtain a replacement permit or license, upon furnishing proof satisfactory to the department that the permit or license has been lost or destroyed or that personal information has changed.

(2) If the hazardous materials endorsement on a commercial driver's license issued under the provisions of this chapter is revoked or removed pursuant to the authority provided in 61-5-147, the person to whom the license was issued shall surrender to the department the person's commercial driver's license with the hazardous materials endorsement and may obtain, upon making application and paying a $10 fee, a replacement license that does not include a hazardous materials endorsement.

*(3) The department shall include the word "veteran" on the face of a driver's license if the requirements of 61-5-111(7) are met by the person applying for the driver's license.*"

**Section 4.** Section 61-12-502, MCA, is amended to read:

**"61-12-502. Rules for identification cards — *veteran designation.*** *(1)* The department shall formulate and adopt rules governing the issuance and cancellation of identification cards that comport with the proof of identify, residence, and authorized presence standards for a driver's license issued under Title 61, chapter 5.

*(2) The department shall include the word "veteran" on the face of an identification card if the requirements of 61-5-111(7) are met by the person applying for the identification card.*"

**Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 10, chapter 2, and the provisions of Title 10, chapter 2, apply to [section 1].

**Section 6. Effective date.** [This act] is effective January 1, 2014.

Approved April 26, 2013

# CHAPTER NO. 323

[SB 355]

AN ACT CREATING A PETITION PROCESS TO JUDICIALLY DETERMINE CLAIMS FOR EXISTING WATER RIGHTS THAT WERE EXEMPT FROM FILING FOR THE ADJUDICATION OF WATER RIGHTS; PROVIDING THAT WITHOUT A DETERMINATION WATER RIGHTS EXEMPT FROM FILING ARE NOT ADMINISTERED BY FIRST IN TIME, FIRST IN RIGHT; AMENDING SECTIONS 85-2-222, 85-2-233, AND 85-2-234, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 85-2-222, MCA, is amended to read:

**"85-2-222. Exemptions — *petition for determination.*** *(1)* Claims for existing rights for livestock and individual *uses* as opposed to municipal domestic uses based upon instream flow or ground water sources and claims for rights in the Powder River basin included in a declaration filed pursuant to the order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, or under sections 3 and 4 of Chapter 485, Laws of

1975, are exempt from the filing requirements of 85-2-221(1). ~~Such claims may, however, be voluntarily filed.~~

*(2) The owner of an existing right exempt from filing under this section who did not voluntarily file a claim may request a judicial determination from the water court of the existing water right at least 90 days prior to issuance of a final decree pursuant to 85-2-234 or upon the reopening of a final decree pursuant to 85-2-237, whichever occurs later.*

*(3) To request a judicial determination of an existing right exempt from filing, the owner shall:*

*(a) file a petition in the water court and pay a filing fee, including the cost of examination by the department under 85-2-243;*

*(b) submit information required by 85-2-224(1) and (2) on a form provided by the department; and*

*(c) provide and pay for the notice required by 85-2-233(6).*

*(4) A claim of an existing right undergoing judicial determination pursuant to this section constitutes prima facie proof of its content.*

*(5) The provisions of 85-2-233, 85-2-243, and 85-2-248 as well as supreme court examination rules apply to petitions for judicial determination under this section, except that the department may not resolve issue remarks.*

*(6) Failure to file a claim for an existing right exempt under this section or failure to request a judicial determination for an existing right exempt under this section:*

*(a) does not result in the forfeiture of an existing water right; and*

*(b) subordinates the existing right to all other water rights except those that are exempt from this section and for which there has been neither a claim filed nor a judicial determination sought.*"

**Section 2.** Section 85-2-233, MCA, is amended to read:

**"85-2-233. Hearing on temporary preliminary decree or preliminary decree — procedure.** (1) (a) For good cause shown and subject to the provisions of subsection (9), a hearing must be held before the water judge on any objection to a temporary preliminary decree, ~~or~~ preliminary decree*, or a petition for judicial determination under 85-2-222* by:

(i) the department;

(ii) a person named in the temporary preliminary decree or preliminary decree;

(iii) any person within the basin entitled to receive notice under 85-2-232(1); or

(iv) any other person who claims rights to the use of water from sources in other basins that are hydrologically connected to the sources within the decreed basin and who would be entitled to receive notice under 85-2-232 if the claim or claims were from sources within the decreed basin.

(b) For the purposes of this subsection (1), "good cause shown" means a written statement showing that a person has an ownership interest in water or its use that has been affected by the decree.

(c) A person does not waive the right to object to a preliminary decree by failing to object to a temporary preliminary decree issued before March 28, 1997. However, a person may not raise an objection to a matter in a preliminary decree if that person was a party to the matter when the matter was previously litigated and resolved as the result of an objection raised in a temporary

preliminary decree unless the objection is allowed for any of the following reasons:

(i) mistake, inadvertence, surprise, or excusable neglect;

(ii) newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), Montana Rules of Civil Procedure;

(iii) fraud, misrepresentation, or other misconduct of an adverse party;

(iv) the judgment is void; or

(v) any other reason justifying relief from the operation of the judgment.

(d) After March 28, 1997, a person may not raise an objection or counterobjection to a matter contained in a subsequent decree issued under this part if the matter was contained in a prior decree issued under this part for which there was an objection and counterobjection period unless the objection is allowed for any of the following reasons:

(i) mistake, inadvertence, surprise, or excusable neglect;

(ii) newly discovered evidence that by due diligence could not have been discovered at the close of the objection period set forth in subsection (2);

(iii) fraud, misrepresentation, or other misconduct of an adverse party;

(iv) the temporary preliminary decree is void; or

(v) any other reason justifying relief from the operation of the prior decree issued under this part. The fact that a prior owner of a water right did not object or counterobject at a prior decree stage may not be a basis for a subsequent owner of the water right to object or counterobject absent a finding that one of the provisions in this subsection (1)(d) applies.

(2) Objections must be filed with the water judge within 180 days after entry of the temporary preliminary decree or preliminary decree. The water judge may, for good cause shown, extend this time limit up to two additional 90-day periods if application for an extension is made prior to expiration of the original 180-day period or any extension of it.

(3) Upon expiration of the time for filing objections under subsection (2), the water judge shall notify each party whose claim received an objection that an objection was filed. The notice must set forth the name of each objector and must allow an additional 60 days for the party whose claim received an objection to file a counterobjection to the claim or claims of the objector. Counterobjections must be limited to those claims that are included within the particular decree issued by the court.

(4) Objections and counterobjections must specify the paragraphs and pages containing the findings and conclusions to which objection is made. The request must state the specific grounds and evidence on which the objections are based.

(5) (a) Upon expiration of the time for filing counterobjections under subsection (3), the water judge shall notify each party named in the temporary preliminary decree or preliminary decree or that person's successor as documented in the department records and shall notify the attorney general that objections and counterobjections have been filed. The water judge shall fix a day when all parties who wish to participate in future proceedings are required to appear or file a statement. The water judge shall then set a date for a hearing. The water judge may conduct individual or consolidated hearings. A hearing must be conducted in the same manner as for other civil actions. At the order of the water judge, a hearing may be conducted by the water master, who shall

prepare a report of the hearing as provided in Rule 53(e), Montana Rules of Civil Procedure.

(b) In conducting hearings pursuant to this chapter, a water judge may require the parties to participate in settlement conferences or may assign the matter to a mediator. Any settlement reached by the parties is subject to review and approval by a water judge.

(6) *(a)* After the issuance of a temporary preliminary decree or preliminary decree, notice ~~of any motion to amend a statement of claim or a timely filed objection that may adversely affect other water rights~~ must be published *once a week* for 3 consecutive weeks in two newspapers of general circulation in the basin where ~~the statement of claim or objection was filed~~ *the decree was issued for:*

*(i) a motion to amend a statement of claim that may adversely affect other water rights;*

*(ii) a motion to amend a timely objection that may adversely affect other water rights; or*

*(iii) a petition for judicial determination as provided for in 85-2-222.*

*(b)* The notice must specify that any response or objection to the proposed amendment must be filed within 45 days of the date of the last notice.

*(c)* The water judge may order any additional notice of the motion as the water judge considers necessary.

*(d)* The costs of the notice required pursuant to this subsection must be borne by the moving party.

(7) Failure to object under subsection (1) to a compact negotiated and ratified under 85-2-702 or 85-2-703 bars any subsequent cause of action in the water court.

(8) If the court sustains an objection to a compact, it may declare the compact void. The agency of the United States, the tribe, or the United States on behalf of the tribe party to the compact is permitted 6 months after the court's determination to file a statement of claim, as provided in 85-2-224, and the court shall issue a new preliminary decree in accordance with 85-2-231. However, any party to a compact declared void may appeal from that determination in accordance with those procedures applicable to 85-2-235, and the filing of a notice of appeal stays the period for filing a statement of claim as required under this subsection.

(9) Upon petition by a claimant, the water court may grant a motion for dismissal to an objection to a temporary preliminary or preliminary decree if the objection pertains to an element of a water right that was previously decreed and if dismissal is consistent with common-law principles of issue and claim preclusion.

(10) The provisions of subsection (9) do not apply to issues arising after entry of the previous decree, including but not limited to the issues of abandonment, expansion of the water right, and reasonable diligence.

(11) All issue remarks, as defined in 85-2-250, must be finally resolved before the issuance of a final decree."

**Section 3.** Section 85-2-234, MCA, is amended to read:

**"85-2-234. Final decree.** (1) The water judge shall, on the basis of the preliminary decree, on the basis of any hearing that may have been held, and on final resolution of all issue remarks, as defined in 85-2-250, enter a final decree affirming or modifying the preliminary decree.

(2) The terms of a compact negotiated and ratified under 85-2-702 must be included in the final decree without alteration unless an objection is sustained pursuant to 85-2-233. However, the court may not alter or amend any of the terms of a compact except with the prior written consent of the parties in accordance with applicable law.

(3) The final decree must establish the existing rights and priorities within the water judge's jurisdiction of persons who have filed a claim in accordance with 85-2-221, of persons required to file a declaration of existing rights in the Powder River basin pursuant to an order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, *of any judicial determinations made pursuant to 85-2-222,* and of any federal agency or Indian tribe possessing water rights arising under federal law, required by 85-2-702 to file claims.

(4) The final decree must establish, in a form determined to be appropriate by the water judge, one or more tabulations or lists of all water rights and their relative priorities.

(5) The final decree must state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person, federal agency, and Indian tribe named in the decree are based.

(6) For each person who is found to have an existing right arising under the laws of the state of Montana, the final decree must state:

(a) the name and post-office address of the owner of the right;

(b) the amount of water included in the right, as follows:

(i) by flow rate for direct flow rights, such as irrigation rights;

(ii) by volume for rights, such as stockpond and reservoir storage rights, and for rights that are not susceptible to measurement by flow rate; or

(iii) by flow rate and volume for rights that a water judge determines require both volume and flow rate to adequately administer the right;

(c) the date of priority of the right;

(d) the purpose for which the water included in the right is used;

(e) the place of use and a description of the land, if any, to which the right is appurtenant;

(f) the source of the water included in the right;

(g) the place and means of diversion;

(h) the inclusive dates during which the water is used each year;

(i) any other information necessary to fully define the nature and extent of the right.

(7) For each person, tribe, or federal agency possessing water rights arising under the laws of the United States, the final decree must state:

(a) the name and mailing address of the holder of the right;

(b) the source or sources of water included in the right;

(c) the quantity of water included in the right;

(d) the date of priority of the right;

(e) the purpose for which the water included in the right is currently used, if at all;

(f) the place of use and a description of the land, if any, to which the right is appurtenant;

(g) the place and means of diversion, if any; and

(h) any other information necessary to fully define the nature and extent of the right, including the terms of any compacts negotiated and ratified under 85-2-702.

(8) Clerical mistakes in a final decree may be corrected at any time on the initiative of the water judge or on the petition of any person who possesses a water right. The water judge shall order the notice of a correction proceeding that the judge determines to be appropriate to advise all persons who may be affected by the correction. An order of the water judge making or denying a clerical correction is subject to appellate review."

Approved April 26, 2013

# CHAPTER NO. 324

[SB 357]

AN ACT REVISING LAWS RELATING TO PREPAID LEGAL INSURANCE; PROVIDING A SEPARATE LICENSE EXAM FOR PREPAID LEGAL INSURANCE; PROVIDING THAT LICENSE EXAMS COVER ONLY THE KINDS OF INSURANCE FOR WHICH THE APPLICANT APPLIES TO BE LICENSED; REVISING CONTINUING EDUCATION REQUIREMENTS FOR INDIVIDUALS LICENSED SOLELY TO SELL PREPAID LEGAL INSURANCE; AND AMENDING SECTIONS 33-17-212 AND 33-17-1203, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 33-17-212, MCA, is amended to read:

**"33-17-212. Examination required — exceptions — fees.** (1) Except as provided in subsection (6), an individual applying for a license is required to pass a written examination. The examination must test the knowledge of the individual concerning each kind of insurance listed in subsection (5) for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and rules of this state. The examination must be developed and conducted under rules adopted by the commissioner.

(2) *(a)* The commissioner may conduct the examination or make arrangements, including contracting with an outside testing service, for administering the examination. The commissioner may arrange for the testing service to recover the cost of the examination from the applicant.

*(b) The commissioner may not charge a fee for an applicant taking an examination pertaining to prepaid legal insurance. However, the commissioner may contract with an outside testing service for administering the examination, and the commissioner may arrange for the testing service to recover the cost of the examination from the applicant.*

(3) An individual who fails to appear for the examination as scheduled or fails to pass the examination may reapply for an examination and shall remit all forms before being rescheduled for another examination.

(4) Except as provided in subsection (6), if the applicant is a business entity, each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license must meet the qualifications provided for in this section.

(5) Examination of an applicant for a license must cover ~~all of~~ *only* the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:

(a) life insurance;

(b) disability insurance;

(c) property insurance, which for the purposes of this provision includes marine insurance;

(d) casualty insurance;

(e) surety insurance;

(f) limited lines credit insurance;

(g) title insurance*;*

*(h) prepaid legal insurance as provided for in 33-1-215*.

(6) This section does not apply to and an examination is not required of:

(a) an individual lawfully licensed as an insurance producer as to the kind or kinds of insurance to be transacted as of or immediately prior to January 1, 1961, and who continues to be licensed;

(b) an applicant for a license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months immediately preceding the date of application unless the commissioner has suspended, revoked, or terminated the previous license;

(c) an applicant for a license as a nonresident insurance producer;

(d) transportation ticket agents of common carriers applying for a license to solicit and sell only:

(i) accident insurance ticket policies; or

(ii) insurance of personal effects while being carried as baggage on a common carrier, as incidental to their duties as transportation ticket agents; ~~or~~

(e) an association applying for a license under 33-17-211*; or*

*(f) a casualty insurance producer, for the purposes of a separate exam for prepaid legal insurance, if the casualty insurance producer sells prepaid legal insurance as of [the effective date of this act] and continues to maintain a license in good standing as a casualty insurance producer*.

(7) (a) Subject to the provisions of subsection (7)(b), an individual who applies for a nonresident insurance producer license in this state and who was previously licensed for the same lines of authority in another state may not be required to complete any prelicensing education or examination.

(b) The exemption in subsection (7)(a) is available only if the individual is currently licensed in the other state or the individual's application is received within 90 days of the cancellation of the individual's previous license and if the other state issues a certification that, at the time of the cancellation, the individual was in good standing in that state or the state's database records, maintained by the national association of insurance commissioners or any of the association's affiliates or subsidiaries that the association oversees, indicate that the insurance producer is or was licensed in good standing for the lines of authority requested."

**Section 2.** Section 33-17-1203, MCA, is amended to read:

**"33-17-1203. Continuing education — basic requirements — exceptions.** (1) Unless exempt under subsection (3):

(a) an individual licensed to act as an insurance producer, adjuster, or consultant other than an individual licensed only for surety bail bonds or for limited lines credit insurance shall, during each 24-month period, complete at least 24 credit hours of approved continuing education, including at least 3

hours of ethics credits and at least 1 credit hour on changes in Montana insurance statutes and administrative rules;

(b) an individual licensed to act as an insurance producer only for surety bail bonds*, prepaid legal insurance,* or ~~for~~ limited lines credit insurance shall, during each biennium, complete 5 credit hours of approved continuing education, including at least 1 credit hour on changes in Montana insurance statutes and administrative rules and the remaining credit hours in the areas of insurance law, ethics, or topics specific to surety bail bonds*, prepaid legal insurance,* or limited lines credit insurance.

(2) The commissioner may, for good cause, grant an extension of time, not to exceed 1 year, during which the requirements imposed by subsection (1) may be completed.

(3) The minimum continuing education requirements do not apply to:

(a) an individual holding a temporary license issued under 33-17-216; or

(b) an insurance producer, adjuster, or consultant otherwise exempted by the commissioner."

Approved April 26, 2013

# CHAPTER NO. 325

[HB 15]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO PUBLIC SCHOOL FACILITY PROJECTS THROUGH THE QUALITY SCHOOLS FACILITY GRANT PROGRAM; AUTHORIZING GRANTS FROM THE SCHOOL FACILITY AND TECHNOLOGY STATE SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS UPON GRANTS AND FUNDS; REVISING PRIORITIZATION OF DISTRIBUTIONS MADE FROM THE SCHOOL FACILITY AND TECHNOLOGY ACCOUNT; ALLOWING FOR CERTAIN ADMINISTRATIVE COSTS TO BE PAID FROM THE ACCOUNT; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR EMERGENCY GRANTS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR PLANNING GRANTS; ESTABLISHING A PREFERENCE FOR CERTAIN PROJECTS; TRANSFERRING FUNDS FROM THE ORPHAN SHARE ACCOUNT; AMENDING SECTIONS ~~20-9-343, 20-9-516, 20-9-620,~~ 90-6-802, AND 90-6-811, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** ~~Section 20-9-343, MCA, is amended to read:~~

**~~"20-9-343. Definition of and revenue for state equalization aid.~~** ~~(1) As used in this title, the term "state equalization aid" means revenue as required in this section for:~~

~~(a) distribution to the public schools for guaranteed tax base aid, BASE aid, and state reimbursement for school facilities; and~~

~~(b) negotiated payments authorized under 20-7-420(3) up to $500,000 a biennium.~~

~~(2) The superintendent of public instruction may spend throughout the biennium funds appropriated for the purposes of guaranteed tax base aid, BASE aid for the BASE funding program, state reimbursement for school facilities, and negotiated payments authorized under 20-7-420(3).~~

~~(3) The following money must be paid into the guarantee account provided for in 20-9-622 for the public schools of the state as indicated:~~

~~(a) subject to 20-9-516(2)(a) *20-9-516(3)(a)*, interest and income money described in 20-9-341 and 20-9-342; and~~

~~(b) investment income earned by investing interest and income money described in 20-9-341 and 20-9-342.~~"

~~**Section 2.** Section 20-9-516, MCA, is amended to read:~~

~~**"20-9-516. School facility and technology account.** (1) There is a school facility and technology account in the state special revenue fund provided for in 17-2-102. The purpose of the account is to provide money to schools. *After the distribution pursuant to 20-9-534 is made, the remainder of the account must be used* for:~~

~~(a) major deferred maintenance;~~

~~(b) improving energy efficiency in school facilities;~~

~~(c) critical infrastructure in school districts;~~

~~(d) emergency facility needs;~~

~~(e) technological improvements; and~~

~~(f) state reimbursement for school facilities as provided in 20-9-371.~~

~~*(2) If funds remain in the account after the distribution in subsection (1) is made, the budget director shall certify the amount of unencumbered funds available in the account. These available funds must be used for grants made by the department of commerce under 90-6-802. Grants made pursuant to 90-6-802 must be for:*~~

~~*(a) emergency facility needs;*~~

~~*(b) critical infrastructure in school districts;*~~

~~*(c) major deferred maintenance;*~~

~~*(d) improving energy efficiency in school facilities; and*~~

~~*(e) technological improvements.*~~

~~(2)*(3)* There must be deposited in the account:~~

~~(a) an amount of money equal to the income attributable to the difference between the average sale value of 18 million board feet and the total income produced from the annual timber harvest on common school trust lands during the fiscal year;~~

~~(b) the mineral royalties transferred from the guarantee account as provided in 20-9-622; and~~

~~(c) the income received from certain lands and riverbeds as provided in 17-3-1003(5).~~"

~~**Section 3.** Section 20-9-620, MCA, is amended to read:~~

~~**"20-9-620. Definition.** (1) As used in 20-9-621, 20-9-622, and this section, "distributable revenue" means, except for that portion of revenue described in 20-9-516(2)(a) *20-9-516(3)(a)* and 77-1-109, 95% of all revenue from the management of school trust lands and the permanent fund, including timber sale proceeds, lease fees, interest, dividends, and net realized capital gains.~~

~~(2) The term does not include mineral royalties or land sale proceeds that are deposited directly in the permanent fund or net unrealized capital gains that remain in the permanent fund until realized.~~"

**Section 4.** Section 90-6-802, MCA, is amended to read:

**"90-6-802. Purpose.** *(1)* The purpose of this part is to establish a mechanism to distribute grants to public school districts for school facility and technology projects from the school facility and technology account established in 20-9-516. The account is to be used to assist schools in addressing major deferred maintenance, energy efficiency, critical infrastructure needs, emergency facility needs, and technological improvements and establishes an ongoing flow of state revenue into the account. Grants must be distributed for projects that:

~~(1)~~*(a)* enhance the quality of life and protect the health, safety, and welfare of Montana's public school students;

~~(2)~~*(b)* ensure the successful delivery of an educational system that meets the accreditation standards provided for in 20-7-111;

~~(3)~~*(c)* extend the life of Montana's existing public school facilities;

~~(4)~~*(d)* promote energy conservation and reduction;

~~(5)~~*(e)* integrate technology into Montana's education framework to support student educational needs for the 21st century; and

~~(6)~~*(f)* are fiscally responsible by considering both long-term and short-term needs of the public school district, the local community, and the state.

*(2) The department may charge reasonable administrative costs for administering the grant program. Costs must be paid from the account established in 20-9-516.*"

**Section 5. Appropriation from school facility and technology state special revenue account.** (1) There is appropriated to the department of commerce $11,418,642 from the school facility and technology state special revenue account to be used to finance grants authorized by this section.

(2) The funds appropriated in subsection (1) must be used by the department to make grants to the public school districts listed in subsection (3) for the described purposes and in amounts not to exceed the amounts set out in subsection (3). The appropriation is subject to the conditions set forth in [section 7] and described in the quality schools facility grant program 2015 biennium report to the 63rd legislature. The legislature, pursuant to 90-6-809 and 90-6-810, authorizes the grants for the projects listed in subsection (3). The department shall commit funds to projects listed in subsection (3), up to the amounts authorized, based on the manner of disbursement set forth in subsection (5) until the funds appropriated in subsection (1) are expended.

(3) The following applicants and projects are authorized for grants and listed in the order of their priority:

| Applicant/Project | | Grant Amount |
|---|---|---|
| 1. | DeSmet ELE/Asbestos abatement | $30,000 |
| 2. | Fairfield ELE/Kitchen upgrades | $596,379 |
| 3. | Montana City ELE/Fire sprinklers system | $764,700 |
| 4. | Powder River HS/Asbestos abatement | $36,380 |
| 5. | Vaughn ELE/Mitigate moisture problems | $133,227 |
| 6. | Eureka ELE/Asbestos abatement | $195,593 |
| 7. | Frontier ELE/Build technology lab | $200,000 |
| 8. | Wyola ELE/Roof replacement | $514,900 |
| 9. | Lone Rock ELE/Replace gymnasium | $206,375 |
| 10. | Hamilton K-12/Replace restroom floor | $41,494 |
| 11. | Plenty Coups HS/Energy efficiency project | $307,000 |

| | | |
|---|---|---|
| 12. | St. Ignatius K-12/Roof repairs | $534,590 |
| 13. | Simms HS/Kitchen upgrades | $123,644 |
| 14. | Hot Springs HS/Consolidate campus facilities | $497,240 |
| 15. | Grass Range ELE/Install air lock doors | $45,799 |
| 16. | Flathead HS/Energy efficiency project | $1,010,067 |
| 17. | Box Elder ELE/Install emergency generator | $310,607 |
| 18. | Missoula ELE/Replace boiler and system | $200,000 |
| 19. | Havre ELE/Renovations to K-2 school | $2,000,000 |
| 20. | Geraldine ELE/Complete energy upgrades | $68,161 |
| 21. | Plains ELE/Classroom addition project | $1,150,000 |
| 22. | St. Regis K-12/ADA upgrades | $185,837 |
| 23. | Corvallis K-12/Replace boiler and system | $729,910 |
| 24. | Stanford K-12/Replace heating units | $184,196 |
| 25. | Darby K-12/ADA upgrades | $404,207 |
| 26. | Nashua K-12/Replace boilers and heating units | $463,200 |
| 27. | Target Range ELE/Technology upgrades | $31,324 |
| 28. | Ryegate K-12/Lighting replacement | $9,962 |
| 29. | Froid HS/ELE/Replace boiler and system | $294,000 |
| 30. | Miles City ELE/Replace boiler and system | $149,850 |

(4) This section constitutes a valid obligation of funds to the grant recipients listed in subsection (3) for purposes of encumbering the school facility and technology state special revenue account funds during the biennium beginning July 1, 2013, pursuant to 17-7-302. However, a grant recipient's entitlement to receive funds is dependent on the grant recipient's compliance with the conditions referred to in [section 7] and on the availability of funds.

(5) Funding for projects in subsection (3) will be provided only as long as there are sufficient funds available from the school facility and technology state special revenue account. Funding for these projects will be made available in the order that the grant recipients satisfy the conditions in [section 7].

(6) Grants to recipients listed in subsection (3) that have not completed all of the conditions described in [section 7] by September 30, 2014, must be reviewed by the next regular session of the legislature to determine if the authorized grant should be withdrawn.

**Section 6. Approval of grants — completion of biennial appropriation.** (1) The legislature, pursuant to 90-6-809 and 90-6-810, authorizes grants for the projects and purposes identified in [section 5(3)] and for the projects and purposes identified in [sections 8 and 9].

(2) The authorization of these grants completes a biennial appropriation from the school facility and technology state special revenue account provided for in 20-9-516(1).

**Section 7. Conditions of grants — disbursement of funds.** The disbursement of grant funds for the projects specified in [section 5(3)] is subject to the conditions set forth in 90-6-812.

**Section 8. Appropriations from school facility and technology state special revenue account for emergency grants.** There is appropriated to the department of commerce $100,000 for the biennium beginning July 1, 2013, from the school facility and technology state special revenue account for the

purpose of providing emergency grants to public school districts for a school facility project that is necessitated by an emergency, as defined in 90-6-803.

**Section 9. Appropriations from school facility and technology state special revenue account for planning grants.** There is appropriated to the department of commerce $900,000 for the biennium beginning July 1, 2013, from the school facility and technology state special revenue account for the purpose of providing matching planning grants to public school districts for the planning of school facility projects, as defined in 90-6-803.

**Section 10.** Section 90-6-811, MCA, is amended to read:

**"90-6-811. Priorities for projects — application of criteria — consideration of project attributes — adjustments for educationally relevant factors.** (1) In preparing recommendations to the governor under 90-6-810, the department shall apply the following criteria to applications for school facility projects in the listed order of priority *giving preference to school facility projects involving repairs to existing facilities over projects involving construction of new facilities*:

(a) projects that solve urgent and serious public health or safety problems or that enable public school districts to meet state or federal health or safety standards;

(b) projects that ~~provide improvements necessary to bring school facilities up to current local, state, and federal codes and standards~~ *address deferred maintenance by repairing or replacing existing building components that are inoperable or difficult to service or that lack minimum integrity*;

(c) projects that enhance a public school district's ability to offer specific services related to the requirements of the accreditation standards provided for in 20-7-111;

(d) projects that provide long-term, cost-effective benefits through energy-efficient design;

(e) projects that incorporate long-term, cost-effective benefits to school facilities, including the technology needs of school facilities; and

(f) projects that enhance educational opportunities for students.

(2) In applying the criteria under subsection (1), the department shall consider~~, without preference or priority,~~ the following attributes of a school facility project application:

(a) the need for financial assistance;

(b) the fiscal capacity of the public school district to meet the conditions established in 90-6-812;

(c) past efforts to ensure sound, effective, long-term planning and management of the school facility and attempts to address school facility needs with local resources;

(d) the ability to obtain funds from sources other than the funds provided under this part; and

(e) the importance of the project and support for the project from the community.

(3) Before making its recommendations to the governor, the department may make adjustments to its ranking of the projects based on the educationally relevant factors established in 20-9-309. Before making any adjustments, the department may consult with the office of public instruction concerning the educationally relevant factors."

**Section 11. Transfer of funds.** By July 15, 2013, the state treasurer shall transfer the amount of $149,850 from the orphan share state special revenue account to the school facility and technology state special revenue account.

**Section 12. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

**Section 13. Effective date.** [This act] is effective July 1, 2013.

Approved April 26, 2013

Note: The striking of language in the title and the striking of sections 1 through 3 was done by Governor's line item veto dated April 26, 2013.

# CHAPTER NO. 326

[SB 144]

AN ACT REVISING NOXIOUS WEED MANAGEMENT TRUST FUND LAWS; REQUIRING THE USE OF REVERTED FUNDS FOR FUTURE NOXIOUS WEED MANAGEMENT GRANT AWARDS; PROHIBITING THE DEPARTMENT OF AGRICULTURE FROM APPLYING FOR OR RECEIVING GRANT AWARDS; CLARIFYING ELIGIBLE ADMINISTRATIVE COSTS AND EXPENDITURES SUBJECT TO THE ADMINISTRATIVE EXPENDITURE LIMITATION APPLICABLE TO THE NOXIOUS WEED MANAGEMENT PROGRAM; AMENDING SECTION 80-7-814, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 80-7-814, MCA, is amended to read:

**"80-7-814. Administration and expenditure of funds.** (1) The provisions of this section constitute the noxious weed management program.

(2) (a) Except as provided in subsection (2)(b), money deposited in the noxious weed management trust fund may not be committed or expended until the principal reaches $10 million.

(b) In the case of a noxious weed emergency, as provided in 80-7-815, a vote of three-fourths of the members of each house of the legislature may appropriate principal from the trust fund.

(c) Interest or revenue generated by the trust fund, excluding unrealized gains and losses, must be deposited in the noxious weed management special revenue fund and may be expended for noxious weed management projects before the principal of the noxious weed management trust reaches $10 million with a majority vote of each house of the legislature.

(d) Any grant funds, regardless of the time at which the grant was awarded, that are not fully expended upon termination of the contract or an extension of the contract, not to exceed 1 year, must revert to the department. The department ~~shall deposit~~ *shall use* any reverted funds ~~into the noxious weed management trust fund as principal~~ *for future grant awards, provided the noxious weed management trust fund principal exceeds $10 million as provided in subsection (2)(a).*

*(e) The department may not apply for or receive grant awards from the noxious weed management special revenue fund.*

(3) The principal of the noxious weed management trust fund in excess of $10 million may be appropriated by a majority vote of each house of the

legislature. Appropriations of the principal in excess of $10 million may be used only to fund the noxious weed management program.

(4) The department may expend funds under this section through grants or contracts to communities, weed management districts, or other entities that it considers appropriate for noxious weed management projects. A project is eligible to receive funds only if the county in which the project occurs has funded its own weed management program using one of the following methods, whichever is less:

(a) levying an amount of not less than 1.6 mills or an equivalent amount from another source; or

(b) appropriating an amount of not less than $100,000 from any source.

(5) The department may expend funds without the restrictions specified in subsection (4) for the following:

(a) employment of a new and innovative noxious weed management project or the development, implementation, or demonstration of any noxious weed management project that may be proposed, implemented, or established by local, state, or national organizations, whether public or private. The expenditures must be on a cost-share basis with the organizations.

(b) cost-share noxious weed management programs with local weed management districts;

(c) special grants to local weed management districts to eradicate or contain significant noxious weeds newly introduced into the county. These grants may be issued without matching funds from the district.

(d) ~~administrative expenses of~~ *costs incurred by* the department for ~~managing~~ *administering* the noxious weed management program ~~and other provisions of this part. The cost of~~ *as follows:*

*(i) In fiscal year 2014, the funds used by the department for* administering the program*, including but not limited to personal services costs, operating costs, and other administrative and program costs attributable to the program,* may not exceed ~~12%~~ *16%* of the total ~~program expenses.~~ *amount expended through grants and contracts made under subsection (4). No additional administrative or other costs may be taken by the department on reverted funds used for future grant awards.*

*(ii) In fiscal year 2015 and in each succeeding fiscal year, the funds used by the department for administering the program, including but not limited to personal services costs, operating costs, and other administrative and program costs attributable to the program, may not exceed 12% of the total amount expended through grants and contracts made under subsection (4). No additional administrative or other costs may be taken by the department on reverted funds used for future grant awards.*

(e) administrative expenses incurred by the noxious weed management advisory council;

(f) a project recommended by the noxious weed management advisory council, if the department determines that the project will significantly contribute to the management of noxious weeds within the state; and

(g) grants to the agricultural experiment station and the cooperative extension service for crop weed management research, evaluation, and education.

(6) The agricultural experiment station and cooperative extension service shall submit annual reports on current projects and future plans to the noxious weed management advisory council.

(7) In making expenditures under subsections (3) through (5), the department shall give preference to weed management districts and community groups.

(8) If the noxious weed management trust fund is terminated by constitutional amendment, the money in the fund must be divided between all counties according to rules adopted by the department for that purpose."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 26, 2013

# CHAPTER NO. 327

[SB 294]

AN ACT AUTHORIZING THE DEPARTMENT OF REVENUE TO ADJUST PENALTIES WITHIN PENALTY RANGES BASED ON MITIGATING AND AGGRAVATING CIRCUMSTANCES ON THE PART OF A LICENSEE VIOLATING A PROVISION OF STATE ALCOHOL LAWS; AND AMENDING SECTION 16-4-406, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 16-4-406, MCA, is amended to read:

**"16-4-406. Renewal — suspension or revocation — penalty — *mitigating and aggravating circumstances.*** (1) The department shall upon a written, verified complaint of a person request that the department of justice investigate the action and operation of a brewer, winery, wholesaler, or retailer licensed under this code.

(2) Subject to the opportunity for a hearing under the Montana Administrative Procedure Act, if the department, after reviewing admissions of the licensee or receiving the results of the department of justice's or a local law enforcement agency's investigation, has reasonable cause to believe that a licensee has violated a provision of this code or a rule of the department, it may, in its discretion and in addition to the other penalties prescribed:

(a) reprimand a licensee;

(b) proceed to revoke the license of the licensee;

(c) suspend the license for a period of not more than 3 months;

(d) refuse to grant a renewal of the license after its expiration; or

(e) impose a civil penalty not to exceed $1,500.

*(3) The department shall consider mitigating circumstances and may adjust penalties within penalty ranges based on its consideration of mitigating circumstances. Examples of mitigating circumstances are:*

*(a) there have been no violations by the licensee within the past 3 years;*

*(b) there have been good faith efforts by the licensee to prevent a violation;*

*(c) written policies exist that govern the conduct of the licensee's employees;*

*(d) there has been cooperation in the investigation of the violation that shows that the licensee, employee, or agent of the licensee accepts responsibility;*

*(e) the investigation was not based on complaints received or on observed misconduct, but was based solely on the investigating authority creating the opportunity for a violation; or*

*(f) the licensee has provided responsible alcohol server training to all of their employees.*

*(4) The department shall consider aggravating circumstances and may adjust penalties within penalty ranges based on its consideration of aggravating circumstances. Examples of aggravating circumstances are:*

*(a) prior warnings about compliance problems;*

*(b) prior violations within the past 3 years;*

*(c) lack of written policies governing employee conduct;*

*(d) multiple violations during the course of the investigation;*

*(e) efforts to conceal a violation;*

*(f) the intentional nature of the violation; or*

*(g) involvement of more than one patron or employee in a violation."*

Approved April 26, 2013

# CHAPTER NO. 328

[SB 325]

AN ACT REVISING THE DEFINITION OF "ELIGIBLE RENEWABLE RESOURCE" FOR THE PURPOSES OF ADMINISTERING THE RENEWABLE PORTFOLIO STANDARD; AMENDING SECTION 69-3-2003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 69-3-2003, MCA, is amended to read:

**"69-3-2003. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Ancillary services" means services or tariff provisions related to generation and delivery of electric power other than simple generation, transmission, or distribution. Ancillary services related to transmission services include energy losses, energy imbalances, scheduling and dispatching, load following, system protection, spinning reserves and nonspinning reserves, and reactive power.

(2) "Balancing authority" means a transmission system control operator who balances electricity supply and load at all times to meet transmission system operating criteria and to provide reliable electric service to customers.

(3) "Common ownership" means the same or substantially similar persons or entities that maintain a controlling interest in more than one community renewable energy project even if the ownership shares differ between two community renewable energy projects. Two community renewable energy projects may not be considered to be under common ownership simply because the same entity provided debt or equity or both debt and equity to both projects.

(4) "Community renewable energy project" means an eligible renewable resource that:

(a) is interconnected on the utility side of the meter in which local owners have a controlling interest and that is less than or equal to 25 megawatts in total calculated nameplate capacity; or

(b) is owned by a public utility and has less than or equal to 25 megawatts in total nameplate capacity.

(5) (a) "Competitive electricity supplier" means any person, corporation, or governmental entity that is selling electricity to small customers at retail rates in the state of Montana and that is not a public utility or cooperative.

(b) The term does not include governmental entities selling electricity produced only by facilities generating less than 250 kilowatts that were in operation prior to 1990.

(6) "Compliance year" means each calendar year beginning January 1 and ending December 31, starting in 2008, for which compliance with this part must be demonstrated.

(7) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(8) "Dispatch ability" means the ability of either a balancing authority or the owner of an electric generating resource to rapidly start, stop, increase, or decrease electricity production from that generating resource in order to respond to the balancing authority's need to match supply resources to loads on the transmission system.

(9) "Electric generating resource" means any plant or equipment used to generate electricity by any means.

(10) "Eligible renewable resource" means a facility either located within Montana or delivering electricity from another state into Montana that commences commercial operation after January 1, 2005, and that produces electricity from one or more of the following sources:

(a) wind;

(b) solar;

(c) geothermal;

(d) water power, in the case of a hydroelectric project that:

(i) does not require a new appropriation, diversion, or impoundment of water and that has a nameplate rating of 10 megawatts or less; or

(ii) is installed at an existing reservoir or on an existing irrigation system that does not have hydroelectric generation as of April 16, 2009, and has a nameplate capacity of 15 megawatts or less;

(e) landfill or farm-based methane gas;

(f) gas produced during the treatment of wastewater;

(g) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic fuels from wood, forest, or field residues~~, except that the term does not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic~~*, including wood pieces that have been treated with chemical preservatives, such as creosote, pentachlorophenol, or copper-chrome arsenic, and that are used at a facility that has a nameplate capacity of 5 megawatts or less*;

(h) hydrogen derived from any of the sources in this subsection (10) for use in fuel cells;

(i) the renewable energy fraction from the sources identified in subsections (10)(a) through (10)(j) of electricity production from a multiple-fuel process with fossil fuels; and

(j) compressed air derived from any of the sources in this subsection (10) that is forced into an underground storage reservoir and later released, heated, and passed through a turbine generator.

(11) "Local owners" means:

(a) Montana residents;

(b) general partnerships of which all partners are Montana residents;

(c) business entities organized under the laws of Montana that:

(i) have less than $50 million of gross revenue;

(ii) have less than $100 million of assets; and

(iii) have at least 50% of the equity interests, income interests, and voting interests owned by Montana residents;

(d) Montana nonprofit organizations;

(e) Montana-based tribal councils;

(f) Montana political subdivisions or local governments;

(g) Montana-based cooperatives other than cooperative utilities; or

(h) any combination of the individuals or entities listed in subsections (11)(a) through (11)(g).

(12) "Nonspinning reserve" means offline generation that can be ramped up to capacity and synchronized to the grid within 10 minutes and that is needed to maintain system frequency stability during emergency conditions, unforeseen load swings, and generation disruptions.

(13) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on January 1, 2005, including the public utility's successors or assignees.

(14) "Renewable energy credit" means a tradable certificate of proof of 1 megawatt hour of electricity generated by an eligible renewable resource that is tracked and verified by the commission and includes all of the environmental attributes associated with that 1 megawatt-hour unit of electricity production.

(15) "Seasonality" means the degree to which an electric generating resource is capable of producing electricity in each of the seasons of the year.

(16) "Small customer" means a retail customer that has an individual load with an average monthly demand of less than 5,000 kilowatts.

(17) "Spinning reserve" means the online reserve capacity that is synchronized to the grid system and immediately responsive to frequency control and that is needed to maintain system frequency stability during emergency conditions, unforeseen load swings, and generation disruptions.

(18) "Total calculated nameplate capacity" means the calculation of total nameplate capacity of the community renewable energy project and other eligible renewable resources that are:

(a) located within 5 miles of the project;

(b) constructed within the same 12-month period; and

(c) under common ownership."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 28, 2013

# CHAPTER NO. 329

[HB 39]

AN ACT GENERALLY REVISING SCHOOL FINANCE LAWS; CLARIFYING WHICH FUNDS MAY BE TRANSFERRED INTO THE INTERLOCAL COOPERATIVE FUND; REVISING THE ALLOCATION OF EXCESS FUND BALANCE FUNDS; PROHIBITING TRANSFERS FROM THE RETIREMENT FUND OR THE DEBT SERVICE FUND TO ANOTHER FUND; PROHIBITING THE TRANSFER OF STATE TRANSPORTATION REIMBURSEMENT PAYMENTS INTO A SCHOOL DISTRICT'S INVESTMENT ACCOUNT; CLARIFYING THE DISTRIBUTION OF FUNDS FROM THE COUNTY SCHOOL OIL AND NATURAL GAS IMPACT FUND; REVISING THE METHOD FOR ALLOCATING THE SCHOOL FACILITY AND TECHNOLOGY ACCOUNT FUNDS; AMENDING SECTIONS 20-3-363, 20-9-104, 20-9-208, 20-9-235, 20-9-517, 20-9-518, AND 20-9-534, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-3-363, MCA, is amended to read:

**"20-3-363. Multidistrict agreements — fund transfers.** (1) The boards of trustees of any two or more school districts may enter into a multidistrict agreement to create a multidistrict cooperative to perform any services, activities, and undertakings of the participating districts and to provide for the joint funding and operation and maintenance of all participating districts upon the terms and conditions as may be mutually agreed to by the districts subject to the conditions of this section. An agreement must be approved by the boards of trustees of all participating districts ~~by April 1 of the year in which the agreement is executed and by April 1 in any subsequent year to which the agreement applies.~~ *and must include a provision specifying terms upon which a district may exit the multidistrict cooperative. The agreement may be for a period of up to 3 years.*

(2) All expenditures in support of the multidistrict agreement may be made from the interlocal cooperative fund as specified in 20-9-703 and 20-9-704. Each participating district of the multidistrict cooperative may transfer funds into the interlocal cooperative fund from the *district's* general fund*,* ~~or any other budgeted fund of the district.~~ *budgeted funds other than the retirement fund or debt service fund, or nonbudgeted funds other than the compensated absence liability fund.* Transfers to the interlocal cooperative fund from each participating school district's general fund are limited to an amount not to exceed the direct state aid in support of the respective school district's general fund. ~~All transfers must be completed by April 1 of the year in which the agreement is executed and by April 1 in any subsequent year to which the agreement applies.~~ *Transfers from the retirement fund and debt service fund are prohibited. Transfers may not be made with funds restricted by federal law unless the transfer is in compliance with any restrictions or conditions imposed by federal law.*

(3) Expenditures from the interlocal cooperative fund under this section are limited to those expenditures that are permitted by law and that are within the final budget for the budgeted fund from which the transfer was made.

(4) The intent of this section is to increase the flexibility and efficiency of school districts without an increase in local taxes. In furtherance of this intent, if transfers of funds are made from any school district fund supported by a

nonvoted levy, the district may not increase its nonvoted levy for the purpose of restoring the amount of funds transferred.

(5) As used in this title, "multidistrict cooperative" means a public entity created by two or more school districts executing a multidistrict agreement under this section or any school district or other public entity participating in an interlocal cooperative agreement under the provisions of Title 20, chapter 9, part 7, as either a coordinating or a cooperating agency."

**Section 2.** Section 20-9-104, MCA, is amended to read:

**"20-9-104. (Temporary) General fund operating reserve.** (1) At the end of each school fiscal year, the trustees of each district shall designate the portion of the general fund end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. Except as provided in subsections ~~(7)~~ *(6)* and ~~(8)~~ *(7)*, the amount of the general fund balance that is earmarked as operating reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

(2) The amount held as operating reserve may not be used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts.

(3) Excess reserves as provided in subsection ~~(7)~~ *(6)* may be appropriated to reduce the BASE budget levy, the over-BASE budget levy, or the additional levy provided by 20-9-353.

(4) Any portion of the general fund end-of-the-year fund balance that is not reserved under subsection (2) or reappropriated under subsection (3) is fund balance reappropriated and must be used for property tax reduction as provided in 20-9-141(1)(b) up to an amount not exceeding 15% of a school district's maximum general fund budget.

~~(5) For fiscal year 2012, any unreserved fund balance in excess of 15% of a school district's maximum general fund budget must be remitted to the state to be deposited in the state general fund.~~

~~(6)~~*(5)* ~~Beginning in fiscal year 2013, any~~ *Any* unreserved fund balance in excess of 15% of a school district's maximum general fund budget must be remitted to the state and allocated ~~as follows:~~

~~(a) 70% of the excess amount must be remitted to the state to be deposited in the guarantee account provided for in 20-9-622;~~

~~(b) 5% of the excess amount must be remitted to the state to be deposited in the state school oil and natural gas impact account provided for in 20-9-517; and~~ *as follows:*

*(a) 70% of the excess amount must be remitted to the state to be deposited in the guarantee account provided for in 20-9-622; and*

*(b) 30% of the excess amount must be remitted to the school facility and technology account.*

~~(c) 25% of the excess amount must be deposited in the county school oil and natural gas impact fund provided for in 20-9-518.~~

~~(7)~~*(6)* The limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the unused balance of any amount:

(a) received in settlement of tax payments protested in a prior school fiscal year;

(b) received in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; or

(c) received in delinquent taxes from a prior school fiscal year.

~~(8)~~*(7)* The limitation of subsection (1) does not apply when the amount earmarked as operating reserve is $10,000 or less.

*(8) Any amounts remitted to the state under subsection (5) are not considered expenditures to be applied against budget authority.*

~~(9) Prior to June 30, 2011, a school district may transfer any general fund money in excess of 15% of the fiscal year 2011 general fund budget that is not needed to fund the budget to any budgeted fund considered appropriate by the trustees.~~ (Terminates June 30, 2016—sec. 29, Ch. 418, L. 2011.)

**20-9-104. (Effective July 1, 2016) General fund operating reserve.** (1) At the end of each school fiscal year, the trustees of each district shall designate the portion of the general fund end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. Except as provided in subsections ~~(5) and~~ (6) *and (7)*, the amount of the general fund balance that is earmarked as operating reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

(2) The amount held as operating reserve may not be used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts.

(3) Excess reserves as provided in subsection ~~(5)~~ *(6)* may be appropriated to reduce the BASE budget levy, the over-BASE budget levy, or the additional levy provided by 20-9-353.

(4) Any portion of the general fund end-of-the-year fund balance that is not reserved under subsection (2) or reappropriated under subsection (3) is fund balance reappropriated and must be used for property tax reduction as provided in 20-9-141(1)(b).

*(5) Any unreserved fund balance in excess of 15% of a school district's maximum general fund budget must be remitted to the state and allocated as follows:*

*(a) 70% of the excess amount must be remitted to the state to be deposited in the guarantee account provided for in 20-9-622; and*

*(b) 30% of the excess amount must be remitted to the school facility and technology account.*

~~(5)~~*(6)* The limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the unused balance of any amount:

(a) received in settlement of tax payments protested in a prior school fiscal year;

(b) received in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; or

(c) received in delinquent taxes from a prior school fiscal year.

~~(6)~~*(7)* The limitation of subsection (1) does not apply when the amount earmarked as operating reserve is $10,000 or less.

*(8) Any amounts remitted to the state under subsection (5) are not considered expenditures to be applied against budget authority.*"

**Section 3.** Section 20-9-208, MCA, is amended to read:

**"20-9-208. Transfers among appropriation items of fund — transfers from fund to fund.** (1) Whenever it appears to the trustees of a district that the appropriated amount of an item of a budgeted fund of the final budget or a budget amendment is in excess of the amount actually required during the

school fiscal year for the appropriation item, the trustees may transfer any of the excess appropriation amount to any other appropriation item of the same budgeted fund.

(2) Unless otherwise restricted by a specific provision in this title, transfers may be made between different funds of the same district or between the final budget and a budget amendment under one of the following circumstances:

(a) (i) Except as provided in ~~subsection~~ *subsections* (2)(a)(ii) *through (2)(a)(iv)*, transfers may be made from one budgeted fund to another budgeted fund or between the final budget and a budget amendment for a budgeted fund whenever the trustees determine, in their discretion, that the transfer of funds is necessary to improve the efficiency of spending within the district or when an action of the trustees results in savings in one budgeted fund that can be put to more efficient use in another budgeted fund. Transfers may not be made with funds approved by the voters or with funds raised by a nonvoted levy unless:

(A) the transfer is within or directly related to the purposes for which the funds were raised and the trustees hold a properly noticed hearing to accept public comment on the transfer; or

(B) the transfer is approved by the qualified electors of the district in an election called for the purpose of approving the transfer, in which case the funds may be spent for the purpose approved on the ballot.

(ii) Unless otherwise authorized by a specific provision in this title, transfers from the general fund to any other fund and transfers to the general fund from any other fund are prohibited.

*(iii) Unless otherwise authorized by a specific provision in this title, transfers from the retirement fund to any other fund are prohibited.*

*(iv) Unless otherwise authorized by a specific provision in this title, transfers from the debt service fund to any other fund are prohibited.*

(b) Transfers may be made from one nonbudgeted fund to another nonbudgeted fund whenever the trustees determine that the transfer of funds is necessary to improve the efficiency of spending within the district. Transfers may not be made with funds restricted by ~~state or~~ federal law unless the transfer is in compliance with any restrictions or conditions imposed by ~~state or~~ federal law. Before a transfer can occur, the trustees shall hold a properly noticed hearing to accept public comment on the transfer.

(3) The trustees shall enter the authorized transfers upon the permanent records of the district.

(4) The intent of this section is to increase the flexibility and efficiency of school districts without an increase in local taxes. In furtherance of this intent, if transfers of funds are made from any school district fund supported by a nonvoted levy, the district may not increase its nonvoted levy for the purpose of restoring the amount of funds transferred."

**Section 4.** Section 20-9-235, MCA, is amended to read:

**"20-9-235. Authorization for school district investment account.** (1) The trustees of a school district may establish investment accounts and may temporarily transfer into the accounts all or a portion of any of its budgeted or nonbudgeted funds.

(2) Money transferred into investment accounts established under this section may be expended from a subsidiary checking account under the conditions specified in subsection (3)(b).

(3) The district may either:

(a) establish and use the accounts as nonspending accounts to ensure that district funds remain in an interest-bearing status until money is reverted to the budgeted or nonbudgeted fund of original deposit as necessary for use by the county treasurer to pay claims against the district. The district shall ensure that sufficient money is reverted to the district's budgeted and nonbudgeted funds maintained by the county treasurer in sufficient time to pay all claims presented against the applicable funds of the district. The county treasurer shall accept all money that is reverted upon tendered transfer of the district.

(b) establish a subsidiary checking account for expenditures from the investment accounts. The district may write checks on or provide electronic payments from the account if:

(i) the payments made from the accounts representing budgeted funds are in compliance with the budget adopted by the trustees;

(ii) the accounts are subject to the audit of district finances completed for compliance with 2-7-503 and 20-9-503; and

(iii) the district complies with all accounting system requirements required by the superintendent of public instruction.

(4) (a) A district that chooses to establish a school district investment account described in this section shall enter into a written agreement with the county treasurer. The agreement must:

(i) establish specific procedures and reporting dates to comply with the requirements of subsection (3);

(ii) be binding upon the district and the county treasurer for a negotiated period of time;

(iii) be signed by the presiding officer of the board of trustees and the county treasurer; and

(iv) coincide with fiscal years beginning on July 1 and ending on June 30.

(b) The district and the county treasurer may renew an agreement, including terms and conditions on which they agree, provided that the terms and conditions comply with the provisions of this section.

(5) Except for debt service money that the county treasurer is required by law to collect and report to the districts *and state transportation reimbursement payments provided for in 20-10-141 and 20-10-142*, all other revenue may be sent directly to a participating district's investment account.

(6) The trustees shall implement an accounting system for the investment account pursuant to rules adopted by the superintendent of public instruction. The rules for the accounting system must include but are not limited to:

(a) providing for the internal control of deposits into and transfers between a district's investment accounts and budgeted and nonbudgeted funds of the district;

(b) requiring that the principal and interest earned on the principal is allocated to the budgeted or nonbudgeted fund from which the deposit was originally made; and

(c) ensuring that other proper accounting principles are followed.

(7) All interest earned on the district's general fund deposits must be allocated for district property tax reduction as required by 20-9-141.

(8) In making deposits to investment accounts under this section, a district shall comply with the requirements of Title 17, chapter 6, part 1, with respect to deposits in excess of the amount insured by the federal deposit insurance corporation or the national credit union administration, as applicable.

(9) A district establishing investment accounts under the section shall pay the automated clearinghouse system charges for all automated clearinghouse transfers made by the office of public instruction to the district's accounts."

**Section 5.** Section 20-9-517, MCA, is amended to read:

**"20-9-517. (Effective July 1, 2013) State school oil and natural gas impact account.** (1) There is a state school oil and natural gas impact account in the state special revenue fund provided for in 17-2-102. The purpose of the account is to provide money to schools that are not receiving oil and natural gas production taxes under 15-36-331 but are impacted by contiguous counties that are benefiting from receipt of oil and natural gas production taxes.

(2) There must be deposited in the account oil and natural gas production taxes, if any, pursuant to 20-9-310(7) and any amounts pursuant to 20-9-104(6).

(3) A school district may apply to the superintendent of public instruction for funds from the account for circumstances that are directly related to impacts resulting from the development or cessation of development of oil and natural gas as follows:

(a) an unusual enrollment increase as determined pursuant to *20-9-161 and* 20-9-314;

*(b) an unusual enrollment decrease;*

*(c) higher rates of student mobility;*

~~(b)~~*(d)* a district's need to hire new teachers or staff as a result of increased enrollment;

~~(c)~~*(e)* the opening or reopening of an elementary or high school approved by the superintendent of public instruction pursuant to 20-6-502 or 20-6-503; or

~~(d)~~*(f)* major maintenance for a school or district.

(4) In reviewing an applicant's request for funding, the superintendent of public instruction shall consider the following:

(a) the local district's or school's need;

(b) the severity of the energy development impacts;

(c) availability of funds in the account; and

(d) the applicant district's ability to meet the needs identified in subsection (3).

(5) The superintendent of public instruction shall adopt rules necessary to implement the application and distribution process.

(6) The amount in the account may not exceed $7.5 million. Any amount over $7.5 million must be deposited in the state general fund."

**Section 6.** Section 20-9-518, MCA, is amended to read:

**"20-9-518. ~~(Effective July 1, 2013)~~ County school oil and natural gas impact fund.** (1) The governing body of a county receiving an allocation under ~~20-9-104(6) and~~ 20-9-310~~(7)~~*(7)* shall establish a county school oil and natural gas impact fund.

(2) Money received by a county pursuant to ~~20-9-104(6) and~~ 20-9-310~~(7)~~*(7)* must remain in the fund and may not be appropriated by the governing body until:

(a) the amount of oil and natural gas production taxes received by a school district for the fiscal year is ~~30%~~ *50%* or less of the amount of the average received by the district in the previous 4 fiscal years; *or*

(b) the average price *for a barrel* of oil ~~is $50 a barrel or less for the fiscal year; or~~ *as reported in the Wall Street Journal for west Texas intermediate crude*

*oil during a calendar quarter is less than $65 a barrel. The average price for each barrel must be computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.*

~~(c) the production of oil in the county drops 50% or more below the average oil production in the county during the immediately preceding 5-year period.~~

*(3) Within 120 days following the end of the fiscal year, the superintendent of public instruction shall determine if the criteria in subsection (2)(a) have been met and the department of revenue shall determine if the criteria in subsection (2)(b) have been met.*

~~(3)~~*(4)* ~~Within 30 days of any of the circumstances described in subsections (2)(a) through (2)(c) occurring, the~~ *The* ~~governing body of the~~ county *treasurer* shall allocate 80% of the money proportionally to affected high school districts and elementary school districts in the county *based on the ratio that each district's average number belonging bears to the county average number belonging for the school year. A school district receiving this money may deposit the funds in any budgeted fund of the district at the discretion of the trustees*.

~~(4)~~*(5)* The governing body of the county may use 20% of the money in the fund to:

(a) pay for outstanding capital project bonds or other expenses incurred prior to the reduction in the price of oil ~~described in subsection (2)(b)~~ *or the receipt of the oil and natural gas production taxes described in subsection (2)*;

(b) offset property tax levy increases that are directly caused by the cessation or reduction of oil and natural gas activity;

(c) promote diversification and development of the economic base within the jurisdiction;

(d) attract new industry to the area impacted by ~~the~~ changes in oil and natural gas activity *leading to the reduction in the price of oil or the receipt of the oil and natural gas production taxes* described in subsection (2); or

(e) provide cash incentives for expanding the employment base of the area impacted by ~~the~~ changes in oil and natural gas activity *leading to the reduction in the price of oil or the receipt of the oil and natural gas production taxes* described in subsection (2).

~~(5)~~*(6)* Except as provided in subsection ~~(4)(b)~~ *(5)(b)*, money held in the fund may not be considered as fund balance for the purpose of reducing mill levies.

~~(6)~~*(7)* Money in the fund must be invested as provided by law. Interest and income from the investment of money in the fund must be credited to the fund."

**Section 7.** Section 20-9-534, MCA, is amended to read:

**"20-9-534. Statutory appropriation for school technology purposes.** (1) The amount of $1 million a year is statutorily appropriated, as provided in 17-7-502, from the school facility and technology account established in 20-9-516 for grants for school technology purposes.

(2) By the third Friday in July, the superintendent of public instruction shall allocate the annual statutory appropriation for school technology purposes to each district based on the ratio that each district's BASE budget bears to the statewide BASE budget amount for all school districts multiplied by the amount of money provided in 20-9-343 for the purposes of 20-9-533 ~~in the prior fiscal year~~."

**Section 8. Coordination instruction.** If both Senate Bill No. 175 and [this act] are passed and approved and if both contain a section that amends

20-9-518, then the sections amending 20-9-518 are void and 20-9-518 must be amended as follows:

**"20-9-518. (Effective July 1, 2013) County school oil and natural gas impact fund.** (1) The governing body of a county receiving an allocation under ~~20-9-104(6) and 20-9-310(7)~~ *20-9-310(4)(b)* shall establish a county school oil and natural gas impact fund.

(2) Money received by a county pursuant to ~~20-9-104(6) and 20-9-310(7)~~ *20-9-310(4)(b)* must remain in the fund and may not be appropriated by the governing body until:

(a) the amount of oil and natural gas production taxes received by a school district for the fiscal year is ~~30%~~ *50%* or less of the amount of the average received by the district in the previous 4 fiscal years; *or*

(b) the average price *for a barrel* of oil ~~is $50 a barrel or less for the fiscal year; or~~ *as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $65 a barrel. The average price for each barrel must be computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.*

~~(c) the production of oil in the county drops 50% or more below the average oil production in the county during the immediately preceding 5-year period.~~

*(3) (a) Within 120 days following the end of the fiscal year, the superintendent of public instruction shall determine if the criteria in subsection (2)(a) have been met and the department of revenue shall determine if the criteria in subsection (2)(b) have been met.*

*(b) If it is determined under subsection (3)(a) that the criteria in subsection (2)(a) or (2)(b) have been met, the superintendent of public instruction or the department of revenue shall notify the county treasurer.*

~~(3)~~*(4)* ~~Within 30 days of any of the circumstances described in subsections (2)(a) through (2)(c) occurring, the governing body of the county~~ *Upon notification under subsection (3)(b), the county treasurer* shall allocate 80% of the money proportionally to affected high school districts and elementary school districts in the county*, which must be calculated by dividing the total funds available for distribution by the total number of quality educators, as defined in 20-4-502, employed by the qualifying school districts in the county in the immediately preceding school fiscal year. The number of quality educators used for the calculation under this subsection in a district with territory in more than one county must be prorated based on the average number belonging of the district residing in school district territory located in each respective county. A school district receiving this money may deposit the funds in any budgeted fund of the district at the discretion of the trustees*.

~~(4)~~*(5)* The governing body of the county may use 20% of the money in the fund to:

(a) pay for outstanding capital project bonds or other expenses incurred prior to the reduction in the price of oil ~~described in subsection (2)(b)~~ *or the reduction in the receipt of oil and natural gas production taxes described in subsection (2)*;

(b) offset property tax levy increases that are directly caused by the cessation or reduction of oil and natural gas activity;

(c) promote diversification and development of the economic base within the jurisdiction;

(d) attract new industry to the area impacted by ~~the~~ changes in oil and natural gas activity *leading to the reduction in the price of oil or the reduction in the receipt of oil and natural gas production taxes* described in subsection (2); or

(e) provide cash incentives for expanding the employment base of the area impacted by the changes in oil and natural gas activity *leading to the reduction in the price of oil or the reduction in the receipt of oil and natural gas production taxes* described in subsection (2).

~~(5)~~*(6)* Except as provided in subsection ~~(4)(b)~~ *(5)(b)*, money held in the fund may not be considered as fund balance for the purpose of reducing mill levies.

~~(6)~~*(7)* Money in the fund must be invested as provided by law. Interest and income from the investment of money in the fund must be credited to the fund."

**Section 9. Effective date.** [This act] is effective July 1, 2013.

**Section 10. Applicability.** [This act] applies to school fiscal years beginning on or after July 1, 2013.

Approved April 30, 2013

# CHAPTER NO. 330

[HB 46]

AN ACT REVISING CAMPAIGN CONTRIBUTION LIMITATIONS FOR A CANDIDATE WHEN THE OFFICE FOR WHICH THE INDIVIDUAL WILL SEEK NOMINATION OR ELECTION IS NOT KNOWN; AND AMENDING SECTION 13-37-216, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Limitations on contributions to candidate when office sought is not known.** A candidate, as defined in 13-1-101(6)(b), who has not determined the office to which the individual will seek nomination or election is subject to the lowest contribution limitation of the offices the candidate is considering seeking.

**Section 2.** Section 13-37-216, MCA, is amended to read:

**"13-37-216. Limitations on contributions — adjustment.** (1) (a) Subject to adjustment as provided for in subsection (4) *and subject to [section 1]*, aggregate contributions for each election in a campaign by a political committee or by an individual, other than the candidate, to a candidate are limited as follows:

(i) for candidates filed jointly for the office of governor and lieutenant governor, not to exceed $500;

(ii) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed $250;

(iii) for a candidate for any other public office, not to exceed $130.

(b) A contribution to a candidate includes contributions made to the candidate's committee and to any political committee organized on the candidate's behalf.

(2) (a) A political committee that is not independent of the candidate is considered to be organized on the candidate's behalf. For the purposes of this section, an independent committee means a committee that is not specifically organized on behalf of a particular candidate or that is not controlled either directly or indirectly by a candidate or candidate's committee and that does not

act jointly with a candidate or candidate's committee in conjunction with the making of expenditures or accepting contributions.

(b) A leadership political committee maintained by a political officeholder is considered to be organized on the political officeholder's behalf.

(3) All political committees except those of political party organizations are subject to the provisions of subsections (1) and (2). For purposes of this subsection, "political party organization" means any political organization that was represented on the official ballot at the most recent gubernatorial election. Political party organizations may form political committees that are subject to the following aggregate limitations, adjusted as provided for in subsection (4) *and subject to [section 1]*, from all political party committees:

(a) for candidates filed jointly for the offices of governor and lieutenant governor, not to exceed $18,000;

(b) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed $6,500;

(c) for a candidate for public service commissioner, not to exceed $2,600;

(d) for a candidate for the state senate, not to exceed $1,050;

(e) for a candidate for any other public office, not to exceed $650.

(4) (a) The commissioner shall adjust the limitations in subsections (1) and (3) by multiplying each limit by an inflation factor, which is determined by dividing the consumer price index for June of the year prior to the year in which a general election is held by the consumer price index for June 2002.

(b) The resulting figure must be rounded up or down to the nearest:

(i) $10 increment for the limits established in subsection (1); and

(ii) $50 increment for the limits established in subsection (3).

(c) The commissioner shall publish the revised limitations as a rule.

(5) A candidate may not accept any contributions, including in-kind contributions, in excess of the limits in this section.

(6) For purposes of this section, "election" means the general election or a primary election that involves two or more candidates for the same nomination. If there is not a contested primary, there is only one election to which the contribution limits apply. If there is a contested primary, then there are two elections to which the contribution limits apply."

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 13, chapter 37, part 2, and the provisions of Title 13, chapter 37, part 2, apply to [section 1].

Approved April 30, 2013

# CHAPTER NO. 331

[HB 48]

AN ACT REVISING THE SMALL BUSINESS HEALTH INSURANCE POOL KNOWN AS INSURE MONTANA TO IMPROVE EFFICIENCY; REMOVING IMPEDIMENTS TO FUND TRANSFERS; BASING ELIGIBILITY FOR PREMIUM ASSISTANCE PAYMENTS ON FEDERAL POVERTY LEVELS; AMENDING SECTIONS 33-22-2004, 33-22-2006, 33-22-2007, AND 33-22-2008, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 33-22-2004, MCA, is amended to read:

**"33-22-2004. Powers and duties of board.** (1) The board shall:

(a) establish an operating plan that includes but is not limited to administrative and accounting procedures for the operation of the purchasing pool and a schedule for premium incentive *payments* and premium assistance payments and that complies with the powers and duties provided for in this section;

(b) require *eligible small* employers and employees to reapply for premium incentive payments or premium assistance payments on an annual basis;

(c) upon timely reapplication, give priority to *eligible small* employers and their employees who are already receiving the premium incentive payments and premium assistance payments. If the reapplication is more than 30 days late, the priority will not be given and the *eligible small* employer will be added to the waiting list provided for in 33-22-2008.

(d) upon timely reapplication as provided in subsection (1)(c), allow *eligible small* employers to retain eligibility to receive premium incentive payments and premium assistance payments on behalf of their employees if the number of their employees goes over the maximum number, not to exceed nine employees, established by the commissioner in administrative rule;

(e) renew purchasing pool group health plan coverage for all employer groups, even if the employer group no longer receives or is eligible for a premium incentive *payment* or premium assistance payment;

(f) adopt a premium incentive payment schedule that is based on a percentage of the *eligible small* employer's share of the premium and apply the schedule uniformly to all registered eligible small employers who join the purchasing pool or obtain qualified association health plan coverage;

(g) adopt premium assistance payment amounts that, in combination with the premium incentive payments, are consistent with the amounts provided for in 33-22-2006 and 33-22-2008 or, with the assistance of the department of public health and human services, adopt a premium assistance payment schedule that is equitably proportional to the income or wage level for employees;

(h) establish criteria for determining which employees will be eligible for a premium assistance payment and the amount that the employees will receive from among those eligible small employer groups that have registered with the commissioner pursuant to 33-22-2008 and applied for coverage under the purchasing pool group health plan or qualified association health plan. However, to the extent that federal funds are used to make some premium assistance payments, criteria for those payments must be consistent with any waiver requirements determined by the department of public health and human services pursuant to 53-2-216. Eligibility for employees is not limited to the waiver eligibility groups.

(i) make appropriate changes to eligibility or other elements in the operating plan as needed to reach the goal of expending 90% of the funding dedicated to premium incentive payments and premium assistance payments during the current biennium;

(j) limit the total amount of premium incentive payments and premium assistance payments paid to the amount of available state, federal, and private funding;

(k) approve no more than six fully insured group health plans with different benefit levels that will be offered to *eligible small* employers participating in the purchasing pool;

(l) prepare appropriate specifications and bid forms and solicit bids from health insurance issuers authorized to do business in this state;

(m) contract with no more than three health insurance issuers to underwrite the group health plans that will be offered through the purchasing pool;

(n) request that the department of public health and human services seek a federal waiver for medicaid matching funds for premium assistance payments based on the department's analysis, as provided in 53-2-216, if it is in the best interests of the purchasing pool;

(o) comply with the participation requirements provided for in 33-22-1811;

(p) meet at least four times annually; and

(q) within 2 years after the purchasing pool is established and considered stable by the board, examine the possibility of offering an opportunity for individual sole proprietors without employees to purchase insurance from the purchasing pool without premium incentive payments, premium assistance payments, or tax credits.

(2) The board may:

(a) borrow money;

(b) enter into contracts with insurers, administrators, or other persons;

(c) hire employees to perform the administrative tasks of the purchasing pool;

(d) assess its members for costs associated with administration of the purchasing pool and request that the commissioner transfer funds or request that the department of public health and human services transfer funds from the special revenue account, as provided in 53-6-1201, for that purpose;

(e) set contribution levels for *eligible small* employers;

(f) at least 30 days before the end of the current fiscal year, request that funds be transferred from the funds appropriated for premium incentive payments and premium assistance payments to the department of revenue for reimbursement of the general fund to offset tax credits if the number of eligible small employers seeking premium incentive payments and employees receiving premium assistance payments is insufficient to exhaust ~~at least 90% of~~ the appropriated funds for the premium incentive *payments* and *premium* assistance payments during a fiscal year;

(g) at least 90 days before the end of the current fiscal year, request that funds be transferred from the funds allocated for tax credits to the funds appropriated for premium incentive payments and premium assistance payments if the number of eligible small employers seeking tax credits is insufficient to exhaust ~~at least 90% of~~ the funds allocated for tax credits during a fiscal year;

(h) seek other federal, state, and private funding sources;

(i) accept all small ~~employer groups~~ *employers* who apply for coverage under the small business health insurance pool group health plan even if they are not eligible for any tax credit or premium incentive payment and have not been registered by the commissioner pursuant to 33-22-2008;

(j) receive from the commissioner's office or the department of public health and human services premium incentive payments on behalf of eligible small employers and premium assistance payments on behalf of employees, collect the employer or employee premiums from the *eligible small* employer or employees, and make premium payments to insurers on behalf of the eligible small employers and employees;

(k) request the commissioner to direct more than 30% of the available funding for premium ~~incentives~~ *incentive payments* and premium assistance payments to qualified association health plan coverage instead of purchasing pool coverage; and

(l) pay appropriate commissions to licensed insurance producers who market purchasing pool coverage."

**Section 2.** Section 33-22-2006, MCA, is amended to read:

**"33-22-2006. Premium incentive payments, premium assistance payments, and tax credits for small employer health insurance premiums paid — eligibility for small group coverage — amounts.** (1) An employer is eligible to apply for premium incentive payments and premium assistance payments or a tax credit under this part if the employer and any related employers:

(a) did not have more than the number of employees established for eligibility by the commissioner at the time of registering for premium incentive payments or premium assistance payments or a tax credit under 33-22-2008;

(b) provide or will provide a group health plan that meets the requirements of creditable coverage for the employer's and any related employer's employees;

(c) do not have delinquent state tax liability owing to the department of revenue from previous years; *and*

(d) have been registered as eligible small employer participants by the commissioner as provided in 33-22-2008~~; and~~.

~~(c)~~*(2) In addition to the requirements in subsection (1), a small employer is eligible to apply for a tax credit under this part if the small employer and any related employers* do not have any employees, not including an owner, partner, or shareholder of the business, who received more than $75,000 in wages, as defined in 39-71-123, from the small employer or related employer in the prior tax year.

~~(2)~~*(3)* ~~An~~ *In addition to the requirements of subsections (1) and (2), an* owner, partner, or shareholder of ~~a business~~ *an eligible small employer* who received more than $75,000 in wages, as defined in 39-71-123, and those individuals' spouses who are employees are not eligible under this chapter for~~:~~

~~(a) any premium assistance payment. However, a premium incentive payment may be made for the premium share paid by the business for group health insurance coverage for:~~

~~(i) the owner, partner, or shareholder;~~

~~(ii) a spouse of those listed in subsection (2)(a)(i) who is also an employee of the business; or~~

~~(iii) dependents of those listed in subsection (2)(a)(i).~~

~~(b)~~ a tax credit for group health ~~insurance~~ *plan* premiums paid by the ~~business or the owner, partner, or shareholder~~ *eligible small employer* for group health ~~insurance~~ *plan* coverage for the individual or the individual's dependents.

*(4) In addition to the requirements in subsection (1), an owner or employee is not eligible to apply for a premium assistance payment under this part if the owner or employee has a household income greater than 400% of the federal poverty level for the year in which an application or application renewal is made.*

*(5) Subject to the requirements of subsection (4), the small business health insurance pool may authorize a premium incentive payment for the premium*

*share paid by an eligible small employer and related employers for a group health plan for:*

*(a) the owner or employee of the eligible small employer and related employers;*

*(b) a spouse of an owner or employee provided for in subsection (5)(a); or*

*(c) dependents of the owner or employee provided for in subsection (5)(a).*

~~(3)~~*(6)* An employee, including an owner, partner, or shareholder or any dependent of an employee, who is also eligible for the children's health insurance program provided for under Title 53, chapter 4, part 10, or medicaid under Title XIX of the Social Security Act may become ineligible to receive a premium assistance payment.

~~(4)~~*(7)* The commissioner shall establish, by rule, the maximum number of employees that *an employer* may ~~be employed to qualify~~ *employ to be qualified* as ~~a~~ *an eligible* small employer under subsection (1). ~~However, the number may not be less than two employees or more than nine employees.~~ The maximum number may be different for *eligible small* employers seeking premium incentive payments and premium assistance payments than for *eligible small* employers seeking a tax credit. The number must be set to maximize the number of employees receiving coverage under this part. The commissioner may not change the maximum employee number more often than every 6 months. If the maximum number of allowable employees is changed, the change does not disqualify registered *eligible small* employers with respect to the tax year for which the *eligible small* employer has registered.

~~(5)~~*(8)* Except as provided in subsection ~~(6)~~ *(3)*, an eligible small employer may claim a tax credit in the following amounts:

(a) (i) not more than $100 each month for each employee and $100 each month for each employee's spouse, if the *eligible small* employer covers the employee's spouse, if the average age of the group is under 45 years of age; or

(ii) not more than $125 each month for each employee and $100 each month for each employee's spouse, if the *eligible small* employer covers the employee's spouse, if the average age of the group is 45 years of age or older; and

(b) not more than $40 each month for each dependent, other than the employee's spouse, if the *eligible small* employer is paying for coverage for the dependents, not to exceed two dependents of an employee in addition to the employee's spouse.

~~(6)~~*(9)* An *eligible small* employer may not claim a tax credit:

(a) in excess of 50% of the total premiums paid by the *eligible small* employer for the qualifying small group;

(b) for premiums paid from a medical care savings account provided for in Title 15, chapter 61; or

(c) for premiums for which a deduction is claimed under 15-30-2131 or 15-31-114.

~~(7)~~*(10)* An *eligible small* employer may not claim a premium incentive payment in excess of 50% of the total premiums paid by the *eligible small* employer for the qualifying small group."

**Section 3.** Section 33-22-2007, MCA, is amended to read:

**"33-22-2007. Filing for tax credit — filing for premium incentive payments and premium assistance payments.** (1) An eligible small employer may:

(a) apply the tax credit against taxes due for the current tax year on a return filed pursuant to Title 15, chapter 30 or 31; or

(b) ~~if the eligible small employer did not sponsor a group health plan that provides creditable coverage for employees during the 2 years prior to the first tax year of registration for the premium incentive payments or premium assistance payments or operates a new business that is less than 2 years old and has never sponsored a group health plan that provides creditable coverage,~~ apply to receive monthly premium incentive payments and premium assistance payments to be applied to coverage obtained through the purchasing pool or qualified association health plan coverage approved by the commissioner.

(2) An eligible small employer may not, in the same tax year, apply the tax credit against taxes due for the current tax year as provided for in subsection (1)(a) and receive premium incentive payments as provided for in subsection (1)(b).

(3) The premium incentive payments and premium assistance payments provided for in subsection (1)(b) must be paid pursuant to a plan of operation implemented by the board and any applicable administrative rules.

(4) (a) If an eligible small employer's tax credit as provided in subsection (1)(a) exceeds the employer's liability under 15-30-2103 or 15-31-121, the amount of the excess must be refunded to the eligible small employer. The tax credit may be claimed even if the eligible small employer has no tax liability under 15-30-2103 or 15-31-121.

(b) A tax credit is not allowed under 15-30-2367, 15-31-132, or any other provision of Title 15, chapter 30 or 31, with respect to any amount for which a tax credit is allowed under this part.

(5) The department of revenue or the commissioner may grant a reasonable extension for filing a claim for premium incentive payments or premium assistance payments or a tax credit whenever, in the department's or the commissioner's judgment, good cause exists. The department of revenue and the commissioner shall keep a record of each extension and the reason for granting the extension.

(6) (a) If an employer that would have a claim under this part ceases doing business before filing the claim, the representative of the employer who files the tax return or pays the premium may file the claim.

(b) If a corporation that would have a claim under this part merges with or is acquired by another corporation and the merger or acquisition makes the previously eligible corporation ineligible for the premium incentive payments, premium assistance payments, or tax credit in the future, the surviving or acquired corporation may file for the premium incentive payments, premium assistance payments, or tax credit for any claim period during which the former eligible corporation remained eligible.

(c) If an employer that would have a claim under this part files for bankruptcy protection, the receiver may file for the premium incentive payments, premium assistance payments, or tax credit for any claim period during which the employer was eligible."

**Section 4.** Section 33-22-2008, MCA, is amended to read:

**"33-22-2008. Registration — funding limitations — transfers — maximum number — waiting list — information transfer for tax credits.** (1) (a) Each eligible small employer that proposes to apply for premium incentive payments and premium assistance payments or a tax credit under this part must be registered each year with the commissioner.

(b) An eligible small employer may submit a new application for the premium incentive payments and premium assistance payments or the tax credit anytime during the year, but in order to maintain the employer's registration for the next year, the registration application must be renewed each year.

(c) The registration application must include the number of individuals covered, as of the date of the registration application, under the small group health plan for which the employer is seeking premium incentive payments and premium assistance payments or a tax credit. If, after the initial registration, the number of individuals increases, the employer may apply to register the additional individuals, but those additional individuals may be added only at the discretion of the commissioner, who shall limit enrollment based on available funds.

(d) A small employer is not eligible to apply for premium incentive payments and premium assistance payments or a tax credit for a number of employees, or the employees' spouses or dependents, over the number that has been established in 33-22-2006 as the maximum number of employees ~~an~~ *a small* employer may have in order to qualify for registration for the time period in question.

(e) ~~An~~ *A small* employer's ~~decision to apply~~ *registration* for premium incentive payments and premium assistance payments or a tax credit is irrevocable for 12 months or until the purchasing pool group health plan or qualified association health plan renews its registration, whichever time period is less. An *eligible small* employer may choose to discontinue receiving any premium incentive payments and premium assistance payments or tax credits at any time.

(2) The commissioner shall register qualifying eligible small employers in the order in which applications are received and according to whether ~~or not~~ the application is for premium incentive payments and premium assistance payments or a tax credit. Initially, 60% of the available funding must be dedicated to provide and maintain premium incentive payments and premium assistance payments for eligible small employers ~~who have not sponsored group health plans that provide creditable coverage in the previous 2 years and~~ who chose to join the purchasing pool or a qualified association health plan and 40% of the available funding must be dedicated to tax credits for eligible small employers who currently sponsor a small group health plan that provides creditable coverage. Funding may be transferred from the allocated fund for premium incentive payments and premium assistance payments to the general fund for tax credits or from the funds allocated for tax credits to the allocated fund for premium incentive payments and premium assistance payments if the board requests the transfer as provided in 33-22-2004 and the commissioner approves the request.

(3) (a) The maximum number of eligible small employers is reached when the anticipated amount of claims for premium incentive payments and premium assistance payments and tax credits has reached ~~95%~~ *100%* of the amount of money allocated for premium incentive payments and premium assistance payments and tax credits.

(b) The commissioner may establish a waiting list for applicants that are otherwise qualified for registration but cannot be registered because of a lack of money or because the maximum number of eligible small employers has been reached.

(c) The commissioner shall mail to each employer registered under this section a notice of registration containing a unique registration number and indicating eligibility for either premium incentive payments and premium assistance payments or a tax credit. The commissioner shall also issue to each employer that is eligible for premium incentive payments and premium assistance payments or the tax credit a certificate, placard, sticker, or other evidence of participation that may be publicly posted.

(d) The commissioner shall notify all persons who applied for registration and who were not accepted that they were not registered and the reason that they were not registered.

(4) A prospective participant shall apply for registration on a form provided by the commissioner. The prospective participant shall:

(a) provide the number of employees and whether the employer qualifies under 33-22-2006;

(b) provide information that is necessary to estimate the amount of the premium incentive payments and premium assistance payments payable to the applicant or the amount of the tax credit available to the applicant, such as the ages of employees or dependents, relationships of employees' dependents, and information required by the department of public health and human services for determination of eligibility for premium assistance payments matched by federal funds;

(c) indicate whether the prospective employer intends to pursue the claim as a tax credit through the income tax process or through premium incentive payments and premium assistance payments to be applied toward purchasing pool or eligible qualified association health plan coverage;

~~(d) indicate whether or not the employer previously sponsored a group health plan that provided creditable coverage and, if so, when and for how long;~~ and

~~(e)~~*(d)* provide any additional information determined by the commissioner to be necessary to support an application.

(5) Each year, *an eligible* small employer ~~participants~~ shall timely reregister with the commissioner in order to determine the participant's continued eligibility. The commissioner shall accept applications for continued registration:

(a) for purchasing pool participants at any time within 12 months of the initial registration approval or within the time period for renewal of the coverage under this part, whichever is longer;

(b) for tax credit participants on December 1 of each year. The commissioner shall stop accepting renewal applications for tax credit participants 60 calendar days later.

(6) The commissioner shall transmit to the department of revenue, at least annually, a list of eligible small employers that are taxpayers entitled to the tax credit and shall specify the taxpayer's name and tax identification number, the tax year to which the credit applies, the amount of the credit, and whether the credit is to be applied against taxes due on the taxpayer's return or paid as premium incentive payments or premium assistance payments. Unless there has been a finding of fraud or misrepresentation on the part of the taxpayer regarding issues relating to eligibility for the tax credit, the department of revenue may not redetermine or change the commissioner's determination regarding the taxpayer's entitlement to and amount of the tax credit.

(7) If the department of public health and human services receives approval for a section 1115 waiver as provided in 53-2-216, the commissioner shall work with the department of public health and human services with regard to eligibility determinations as required by federal law or waiver conditions."

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved April 30, 2013

# CHAPTER NO. 332

[HB 74]

AN ACT REQUIRING THE RELEASE OR DISCLOSURE OF RECORDS OF CHILD ABUSE OR NEGLECT TO CERTAIN LAW ENFORCEMENT, PROSECUTORIAL, AND CHILD WELFARE ENTITIES AND INDIVIDUALS; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT AN IMPLEMENTING RULE; AND AMENDING SECTIONS 41-3-205 AND 41-3-208, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 41-3-205, MCA, is amended to read:

**"41-3-205. Confidentiality — disclosure exceptions.** (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections ~~(7)~~ *(8)* and ~~(8)~~ *(9)*, a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a juvenile probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) ~~a county attorney, peace officer, or~~ *an* attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

*(4) (a) The records described in subsection (3) must be promptly released to any of the following individuals upon a written request by the individual to the department or the department's designee:*

*(i) the attorney general;*

*(ii) a county attorney or deputy county attorney of the county in which the alleged abuse or neglect occurred; or*

*(iii) a peace officer, as defined in 45-2-101, in the jurisdiction in which the alleged abuse or neglect occurred.*

*(b) The records described in subsection (3) must be promptly disclosed by the department to an appropriate individual described in subsection (4)(a) or to a county interdisciplinary child information team established pursuant to 52-2-211 upon the department's receipt of a report indicating that any of the following has occurred:*

*(i) the death of the child as a result of child abuse or neglect;*

*(ii) a sexual offense, as defined in 46-23-502, against the child;*

*(iii) exposure of the child to an actual and not a simulated violent offense as defined in 46-23-502; or*

*(iv) child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances constituting the criminal manufacture or distribution of dangerous drugs.*

~~(4)~~*(5)* A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's assigned attorney, guardian ad litem, or special advocate.

~~(5)~~*(6)* Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

~~(6)~~*(7)* The confidentiality provisions of this section must be construed to allow a court of this state to share information with other courts of this state or of another state when necessary to expedite the interstate placement of children.

~~(7)~~*(8)* A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in ~~subsection~~ *subsections*

(3)(a) *and (4)*. However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

~~(8)~~*(9)* A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection ~~(7)~~ *(8)* if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

~~(9)~~*(10)* This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

~~(10)~~*(11)* Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost."

**Section 2.** Section 41-3-208, MCA, is amended to read:

**"41-3-208. Rulemaking authority.** (1) The department of public health and human services shall adopt rules to govern the procedures used by department personnel in preparing and processing reports and in making investigations authorized by this chapter.

(2) The department may adopt rules to govern the disclosure of case records containing reports of child abuse and neglect.

*(3) The department shall adopt a rule specifying the procedure to be used for the release and disclosure of records as provided in 41-3-205(4). In adopting the rule, the department shall collaborate with the attorney general and appropriate county attorneys, law enforcement agencies, and county interdisciplinary child information teams established pursuant to 52-2-211.*"

Approved April 30, 2013

# CHAPTER NO. 333

[HB 76]

AN ACT CREATING AN INDEPENDENT OFFICE OF THE CHILD AND FAMILY OMBUDSMAN; DESCRIBING THE DUTIES AND POWERS OF THE OFFICE; AMENDING SECTION 41-3-205, MCA; PROVIDING FOR CONTINGENT VOIDNESS; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Office of child and family ombudsman established.** (1) There is an office of the child and family ombudsman within the department of justice provided for in 2-15-2001.

(2) As used in this part, "ombudsman" means the office of the child and family ombudsman.

**Section 2. Purpose and intent.** The legislature finds that:

(1) an independent, impartial, and confidential ombudsman can serve to protect the interests and rights of Montana's children and families; and

(2) an independent, impartial, and knowledgeable ombudsman can work collaboratively with the department to strengthen the department's child and family services.

**Section 3. Appointment.** (1) The attorney general shall appoint an individual who is a resident of this state and is qualified by training and experience to perform the duties of the ombudsman as provided in [section 6].

(2) The appointment must be made from a list of at least three persons prepared and submitted by a committee consisting of:

(a) one attorney appointed by the Montana bar association;

(b) one district court judge appointed by the chief justice of the Montana supreme court;

(c) one medical doctor appointed by the Montana medical association;

(d) one psychologist appointed by the Montana psychological association;

(e) one social worker appointed by the Montana chapter of the national association of social workers;

(f) one person appointed by the attorney general as a representative of private children's agencies;

(g) one person appointed by the attorney general as a representative of the general public; and

(h) one person appointed by the director of the department.

**Section 4. Staff.** Subject to available funding, the department of justice shall hire necessary staff to carry out the provisions of [sections 1 through 7]. Staff must be under the supervision of the ombudsman.

**Section 5. Independence.** The ombudsman acts independently of the department of public health and human services in the performance of the duties of the office.

**Section 6. Duties.** The duties of the ombudsman are to:

(1) ensure that each child under the jurisdiction of the department, and in appropriate cases an individual interested in the child's welfare, is apprised of the child's rights under the law;

(2) take all possible action, including but not limited to programs of public education and advocacy, to pursue the legal, civil, and special protections of children;

(3) help interested parties obtain any information pertaining to the case work and procedures of the department that they are entitled to under the law;

(4) review complaints and investigate, in accordance with the powers provided for in [section 7] and with procedures adopted and made publicly available by the ombudsman, those complaints that indicate, in the opinion of the ombudsman, that a child might be in need of assistance from the ombudsman;

(5) investigate, in accordance with the powers provided for in [section 7] and with procedures adopted and made publicly available by the ombudsman, the circumstances relating to the death of any child who has received services from the department;

(6) when the ombudsman's investigation related to a complaint or a death appears to warrant it, share the relevant findings, subject to the disclosure restrictions and confidentiality requirements provided in [section 7], with individuals or entities that are legally authorized to receive, inspect, or investigate reports of child abuse or neglect;

(7) periodically review the procedures used by the department with a view toward the rights of children;

(8) recommend to the department changes in its procedures; and

(9) annually submit to the attorney general a detailed report analyzing the work of the ombudsman and any recommendations resulting from it.

**Section 7. Powers of ombudsman.** (1) The ombudsman has, subject to subsection (2), the power to:

(a) inspect, copy, or subpoena department records, including case notes, correspondence, evaluations, videotapes, and interviews pertaining to any child under the jurisdiction of the department who is alleged to be abused or neglected;

(b) request that individuals or entities outside the department that are legally authorized to receive, inspect, or investigate reports of child abuse or neglect provide information related to a complaint or death that the ombudsman is investigating; and

(c) take appropriate steps to see that persons are made aware of the services and procedures of the office of the child and family ombudsman, its purpose, and how it can be contacted.

(2) The ombudsman is subject to the disclosure restrictions and confidentiality requirements provided in 41-3-205.

**Section 8.** Section 41-3-205, MCA, is amended to read:

**"41-3-205. Confidentiality — disclosure exceptions.** (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (7) and (8), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, *ombudsman,* or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a juvenile probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, *the office of the child and family ombudsman provided for in [section 1],* and the child's assigned attorney, guardian ad litem, or special advocate.

(5) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

(6) The confidentiality provisions of this section must be construed to allow a court of this state to share information with other courts of this state or of another state when necessary to expedite the interstate placement of children.

(7) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(8) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (7) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(9) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(10) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost."

**Section 9. Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 41, and the provisions of Title 41 apply to [sections 1 through 7].

**Section 10. Contingent voidness.** If House Bill No. 2 does not appropriate money to the department of justice for the purposes of [sections 1 through 7], then [this act] is void.

**Section 11. Effective date.** [This act] is effective July 1, 2013.

**Section 12. Termination.** [This act] terminates June 30, 2015.

Approved April 30, 2013

# CHAPTER NO. 334

[HB 87]

AN ACT REQUIRING THAT RATES FOR HEALTH INSURANCE COVERAGE BE FILED WITH THE COMMISSIONER OF INSURANCE FOR REVIEW; PROVIDING STANDARDS FOR REVIEW AND NOTICE OF DEFICIENCY; PROVIDING RULEMAKING AUTHORITY; APPROPRIATING AND AUTHORIZING THE USE OF FUNDS FOR IMPLEMENTATION OF THE REVIEW; AMENDING SECTION 33-31-111, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Health insurance rates — filing required — use.** (1) Each health insurance issuer that issues, delivers, or renews individual or small employer group health insurance coverage in the individual or small employer group market shall, at least 60 days before the rate goes into effect, file with the commissioner its rates, fees, dues, and other charges for each product form intended for use in Montana, together with sufficient information to support the premium to be charged as described in [sections 1 through 4]. This filing may be made simultaneously with a notice of premium increase to policyholders and certificate holders required by 33-22-107.

(2) A health insurance issuer may submit a single combined justification for rate increases subject to review affecting multiple products if the claims experience of all products has been aggregated to calculate the rate increases and the rate increases are the same for all products. Rate increases are determined by combining the total amount of increases taken on a single product form or market segment, if the rate increase is the same for all products, over a 12-month period. A market segment means the individual or small group market.

(3) The commissioner may waive the 60-day filing requirement under subsection (1) if the rate increase is implemented pursuant to 33-22-107(1)(b). However, the rates and justifications for the rate increase still must be filed.

(4) The health insurance issuer shall submit a new filing to reflect any material change to the previous rate filing. For all other changes, the insurer shall submit an amendment to a previous rate filing. The insurer may file an actuarial trend to phase in rate increases over a 12-month period. The insurer may file amendments to that trend within the 12-month period.

(5) The filing of rates for health plans must include:

(a) the product form number or numbers and approval date of the product form or forms to which the rate applies;

(b) a statement of actuarial justification; and

(c) information sufficient to support the rate as described in [section 2].

(6) The commissioner shall prescribe the form and content of the information required under this section.

(7) A rate filing required under this section must be submitted by a qualified actuary representing the health insurance issuer. The qualified actuary shall certify in a form prescribed by the commissioner that, to the best of the actuary's

knowledge and belief, the rates are not excessive, inadequate, unjustified, or unfairly discriminatory, as described in [section 2], and comply with the applicable provisions of Title 33 and rules adopted pursuant to Title 33.

(8) The rate filing must be delivered by the national association of insurance commissioners' system for electronic rate and form filing.

(9) An insurer may use a rate filing under this section 60 days after the date of filing with the commissioner unless the health insurance issuer fails to provide the minimum documentation required in [section 2].

(10) [Sections 1 through 4] do not apply to coverage consisting solely of excepted benefits as defined in 33-22-140.

**Section 2. Standards for review — notice of deficiency.** (1) (a) When reviewing a premium rate filing, the commissioner shall consider whether the proposed premium rate is excessive, inadequate, unjustified, or unfairly discriminatory. Rates may be considered excessive if they cause the premium charged for the health insurance coverage to be unreasonably high in relation to the benefits provided under the coverage. In order to determine if the rate is excessive, the commissioner shall consider whether:

(i) the assumptions on which the rate increase is based are reasonable; and

(ii) one or more of the assumptions is not supported by the evidence.

(b) Rates may be considered inadequate if the rate is unreasonably low for the coverage provided, and the commissioner may consider if the rate would endanger the solvency of the insurer or disrupt the insurance market in Montana.

(c) A rate increase may be considered unjustified if the health insurance issuer provides data or documentation in connection with the increase that is incomplete, inadequate, or otherwise does not provide a basis upon which the reasonableness of an increase may be determined.

(d) Rates may be considered unfairly discriminatory if they violate 33-18-206, 33-22-526, 49-2-309, or other applicable state laws prohibiting discrimination in health insurance.

(2) In order to determine whether the proposed premium rates for health insurance coverage are not excessive, inadequate, unjustified, or unfairly discriminatory, the commissioner may consider:

(a) the health insurance issuer's financial position, including but not limited to surplus, reserves, and investment savings;

(b) historical and projected administrative costs and medical and hospital expenses, including medical trends;

(c) the historical and projected medical loss ratio;

(d) changes to covered benefits or health plan design, along with actuarial projections concerning cost savings or additional expenses related to those changes;

(e) changes in the health insurance issuer's health care cost containment and quality improvement efforts following the health insurance issuer's last rate filing for the same category of health plan;

(f) product development and startup costs, drug and other benefit costs or expenses, and product age and credibility;

(g) whether the proposed change in the premium rate is necessary to maintain the health insurance issuer's solvency or to maintain rate stability and prevent excessive rate increases in the future;

(h) historical and projected claims experience;

(i) trend projections related to utilization and service or unit cost;

(j) allocation of the overall rate increase to claims and nonclaims costs;

(k) allocation of current and projected premium for each enrollee each month;

(l) the 3-year history of rate increases for the product or group of products associated with the rate increase if the product is 3 years old or older and otherwise any available rate history;

(m) employee and executive compensation data from the health insurance issuer's annual financial statements; and

(n) any other applicable information identified in administrative rules adopted pursuant to Title 33, except that the administrative rules may not include by reference any provisions of Public Law 111-148 and Public Law 111-152 or any regulations promulgated under those laws.

(3) The commissioner shall review rate filings and, if applicable, shall provide a notice of deficiencies containing detailed reasons describing why the commissioner finds that the proposed premium rate is excessive, inadequate, unjustified, or unfairly discriminatory. The notice must be provided within 60 days of receipt of filing.

(4) Within 30 days after receiving a notice of deficiencies alleging that a proposed rate is excessive, inadequate, unjustified, or unfairly discriminatory, the insurer may amend its rate filing, request reconsideration based upon additional information, or implement the proposed rate, unless the rate is unfairly discriminatory, pursuant to subsection (1)(d).

(5) At the end of the 30-day period described in subsection (4), if the insurer implements a rate that the commissioner has determined to be excessive, inadequate, unjustified, or unfairly discriminatory, the commissioner shall publish the finding on the commissioner's website indicating the commissioner's determination.

**Section 3. Trade secret disclosure exemption.** The commissioner, upon request by the health insurance issuer, may exempt from disclosure any part of a premium rate filing submitted pursuant to [section 1] that the commissioner determines to contain trade secrets as defined in 30-14-402. The commissioner may not disclose that part of a filing that is subject to a health insurance issuer's request until the commissioner makes a determination under this section. The commissioner shall provide the issuer with 30 days' advance notice of the determination before releasing the information to the public.

**Section 4. Rulemaking.** The commissioner may adopt rules necessary to implement the provisions of [sections 1 through 4], except that the administrative rules may not include by reference any provisions of Public Law 111-148 and Public Law 111-152 or any regulations promulgated under those laws.

**Section 5.** Section 33-31-111, MCA, is amended to read:

**"33-31-111. Statutory construction and relationship to other laws.** (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under *Title 33,* chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, part 19;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) Title 33, chapter 1, parts 12 and 13, Title 33, chapter 2, part 19, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-401, 33-3-422, 33-3-431, 33-15-308, Title 33, chapter 17, Title 33, chapter 19, 33-22-107, 33-22-129, 33-22-131, 33-22-136, 33-22-137, 33-22-141, 33-22-142, 33-22-152, *[sections 1 through 4],* 33-22-244, 33-22-246, 33-22-247, 33-22-514, 33-22-515, 33-22-521, 33-22-523, 33-22-524, 33-22-526, and 33-22-706 apply to health maintenance organizations."

**Section 6. Appropriation and authorization.** The commissioner is authorized to expend $204,000 in each of the fiscal years beginning July 1, 2013, and July 1, 2014, for a biennial total of $408,000. These funds are appropriated from the state special revenue fund credited to the state auditor's office and must be used exclusively for purposes of implementing [this act], including but not limited to the payment of contracting services to perform the rate review.

**Section 7. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 33, chapter 22, and the provisions of Title 33, chapter 22, apply to [sections 1 through 4].

**Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 9. Effective date — applicability.** [This act] is effective July 1, 2013, and applies to rate filings that affect health insurance coverage in the individual or small group market issued on or after January 1, 2014.

Approved April 30, 2013

# CHAPTER NO. 335

[HB 106]

AN ACT GENERALLY REVISING WATER LAWS; ELIMINATING REDUNDANT LANGUAGE; CLARIFYING THE PROCESS FOR A PERMIT OR A CHANGE IN APPROPRIATION RIGHT; STREAMLINING PERMIT REQUIREMENTS IN CLOSED BASINS; AMENDING SECTIONS 85-2-102, 85-2-302, 85-2-310, 85-2-311, 85-2-314, 85-2-320, 85-2-360, 85-2-361, 85-2-362, 85-2-369, 85-2-402, AND 85-2-424, MCA; AND REPEALING SECTION 85-2-363, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 85-2-102, MCA, is amended to read:

**"85-2-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to change an appropriation right to instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource in accordance with 85-2-436;

(d) in the case of the United States department of agriculture, forest service:

(i) instream flows and in situ use of water created in 85-20-1401, Article V; or

(ii) to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with 85-2-320;

(e) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(f) a use of water for aquifer recharge or mitigation; or

(g) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(2) "Aquifer recharge" means either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water.

(3) "Aquifer storage and recovery project" means a project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or another department-approved method. The stored water may be either pumped from the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use.

(4) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks through a change in an appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource authorized under 85-2-436;

(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(e) a use of water for aquifer recharge or mitigation; or

(f) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(5) "Certificate" means a certificate of water right issued by the department.

(6) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(7) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(8) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information for the department to begin evaluating the information.

(9) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(10) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(11) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(12) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(13) "Ground water" means any water that is beneath the ground surface.

(14) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(15) "Mitigation" means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water.

(16) "Municipality" means an incorporated city or town organized and incorporated under Title 7, chapter 2.

*(17) (a) "National forest system lands" means all lands within Montana that are owned by the United States and administered by the secretary of agriculture through the forest service.*

*(b) The term does not include any lands within the exterior boundaries of national forest system units that are not owned by the United States and administered by the secretary of agriculture through the forest service.*

~~(17)~~*(18)* "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

~~(18)~~*(19)* "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

~~(19)~~*(20)* (a) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water.

(b) The term does not mean a private corporation, association, or group.

~~(20)~~*(21)* "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

~~(21)~~*(22)* "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

~~(22)~~*(23)* "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

~~(23)~~*(24)* "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(24)~~*(25)* "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(25)~~*(26)* "Water division" means a drainage basin as defined in 3-7-102.

~~(26)~~*(27)* "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(27)~~*(28)* "Water master" means a master as provided for in Title 3, chapter 7.

~~(28)~~*(29)* "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

~~(29)~~*(30)* "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

**Section 2.** Section 85-2-302, MCA, is amended to read:

**"85-2-302. Application for permit ~~— definition~~ *or change in appropriation right*.** (1) Except as provided in 85-2-306 and 85-2-369, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works ~~except by applying for and receiving~~ *unless the person applies for and receives* a permit *or an authorization for a change in appropriation right* from the department.

(2) The department shall adopt rules that are necessary to determine whether or not an application is correct and complete, based on the provisions applicable to issuance of a permit under this part *or a change in appropriation right pursuant to Title 85, chapter 2, part 4*. The rules must be adopted in compliance with Title 2, chapter 4.

(3) The application must be made on a form prescribed by the department. The department shall make the forms available through its offices.

(4) (a) Subject to subsection (4)(b), the applicant shall submit a correct and complete application. The determination of whether an application is correct and complete must be based on rules adopted under subsection (2) that are in effect at the time the application is submitted.

(b) If an application is for a permit to appropriate water with a point of diversion, conveyance, or place of use on national forest system lands, the application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

~~(c) As used in this part, "national forest system lands" has the same meaning as that provided in 85-20-1401, Article I.~~

(5) The department shall notify the applicant of any defects in an application within 180 days. The defects must be identified by reference to the rules adopted under subsection (2). If the department does not notify the applicant of any defects within 180 days, the application must be treated as a correct and complete application.

(6) An application does not lose priority of filing because of defects if the application is corrected or completed within 30 days of the date of notification of the defects or within a further time as the department may allow, but not to exceed 90 days from the date of notification. If an application is made correct and complete after the mandated time period, but within 90 days of the date of notification of the defects, the priority date of the application is the date the application is made correct and complete.

(7) An application not corrected or completed within 90 days from the date of notification of the defects is terminated."

**Section 3.** Section 85-2-310, MCA, is amended to read:

**"85-2-310. Action on application for permit or change in appropriation right.** (1) (a) If the department proposes to deny an application for a permit or a change in appropriation right under 85-2-307, unless the applicant withdraws the application, the department shall hold a hearing pursuant to 2-4-604 after serving notice of the hearing by first-class mail upon the applicant for the applicant to show cause by a preponderance of the evidence as to why the permit or change in appropriation right should not be denied.

(b) (i) Upon request from the applicant, the department shall appoint a hearing examiner who did not participate in the preliminary determination.

(ii) The applicant may make only one request pursuant to this subsection (1)(b) for a different hearing examiner.

(2) A proposal to grant ~~an application~~ *a permit or change in appropriation right* with or without conditions following a hearing on a proposal to deny the application must proceed as if the department proposed to grant the ~~application~~ *permit or change in appropriation right* in its preliminary determination pursuant to 85-2-307.

(3) If valid objections are not received on an application or if valid objections are unconditionally withdrawn and the department preliminarily determined to grant the permit or change in appropriation right, the department shall grant the permit or change in appropriation right as proposed in the preliminary determination pursuant to 85-2-307.

(4) If valid objections to an application are received and withdrawn with conditions stipulated with the applicant and the department preliminarily determined to grant the permit or change in appropriation right, the department shall grant the permit or change in appropriation right subject to conditions as necessary to satisfy applicable criteria.

(5) The department shall deny or grant with or without conditions a permit under 85-2-311 or a change in appropriation right under 85-2-402 within 90 days after the administrative record is closed.

(6) If an application is to appropriate water with a point of diversion, conveyance, or place of use on national forest system lands, any application approved by the department is subject to any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of the water applied for and any terms, conditions, and limitations related to the use of water contained in any special use authorization required by federal law.

(7) *(a)* Except as provided in subsection (6), ~~an application may not be denied or approved in a modified form or upon terms, conditions, or limitations specified by the department unless the applicant is first granted an opportunity to be heard~~ *if the department proposes to grant a permit or change in appropriation right in modified form, the applicant must be given an opportunity to be heard. The addition of conditions or changes to conditions required for approval does not constitute a modification of the application.* ~~If an objection is not filed against the application but the department is of the opinion that the application should be denied or approved in a modified form or upon terms, conditions, or limitations specified by it, the department shall prepare a statement of its opinion and its reasons for the opinion.~~

*(b)* The department shall serve ~~a statement of its opinion~~ *notice of a preliminary determination to grant a permit or change in appropriation right in a modified form* by first-class mail upon the applicant, with a notice that the applicant may obtain a hearing *pursuant to 2-4-604 to show cause by a preponderance of the evidence as to why the permit or change in appropriation right should not be preliminarily determined to be granted in the modified form* by filing a request within 30 days after the notice is mailed. The notice must ~~further~~ state that the ~~application~~ *permit or change in appropriation right* will be *preliminarily determined to be granted as* modified ~~in a specified manner or denied~~ unless a hearing is requested.

(8) The department may cease action upon an application for a permit or change in appropriation right and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for either of these reasons must be accompanied by a statement of the reasons for which it was returned, and for a permit application there is not a right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection is a final decision of the department.

(9) For all applications filed after July 1, 1973, the department shall find that an application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use if:

(a) an application is not corrected and completed as required by 85-2-302;

(b) the appropriate filing fee is not paid;

(c) the application does not document:

(i) a beneficial use of water;

(ii) the proposed place of use of all water applied for;

(iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more, a detailed project plan describing when and how much water will be put to a beneficial use. The project plan must include a reasonable

timeline for the completion of the project and the actual application of the water to a beneficial use.

(iv) for appropriations not covered in subsection (9)(c)(iii), a general project plan stating when and how much water will be put to a beneficial use; and

(v) except as provided in subsection (10), if the water applied for is to be appropriated above that which will be used solely by the applicant or if it will be marketed by the applicant to other users, information detailing:

(A) each person who will use the water and the amount of water each person will use;

(B) the proposed place of use of all water by each person;

(C) the nature of the relationship between the applicant and each person using the water; and

(D) each firm contractual agreement for the specified amount of water for each person using the water; or

(d) the appropriate environmental impact statement costs or fees, if any, are not paid as required by 85-2-124.

(10) If water applied for is to be marketed by the applicant to other users for the purpose of aquifer recharge or mitigation, the applicant is exempt from the provisions of subsection (9)(c)(v). The applicant must provide information detailing the proposed place of use."

**Section 4.** Section 85-2-311, MCA, is amended to read:

**"85-2-311. Criteria for issuance of permit.** (1) A permit may be issued under this part prior to the adjudication of existing water rights in a source of supply. In a permit proceeding under this part, there is no presumption that an applicant for a permit cannot meet the statutory criteria of this section prior to the adjudication of existing water rights pursuant to this chapter. In making a determination under this section, the department may not alter the terms and conditions of an existing water right or an issued certificate, permit, or state water reservation. Except as provided in subsections (3) and (4), the department shall issue a permit if the applicant proves by a preponderance of evidence that the following criteria are met:

(a) (i) there is water physically available at the proposed point of diversion in the amount that the applicant seeks to appropriate; and

(ii) water can reasonably be considered legally available during the period in which the applicant seeks to appropriate, in the amount requested, based on the records of the department and other evidence provided to the department. Legal availability is determined using an analysis involving the following factors:

(A) identification of physical water availability;

(B) identification of existing legal demands on the source of supply throughout the area of potential impact by the proposed use; and

(C) analysis of the evidence on physical water availability and the existing legal demands, including but not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal demands on the supply of water.

(b) the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. In this subsection (1)(b), adverse effect must be determined based on a consideration of an applicant's plan for the exercise of the permit that demonstrates that the applicant's use of the water will be controlled so the water right of a prior appropriator will be satisfied;

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) the applicant has a possessory interest or the written consent of the person with the possessory interest in the property where the water is to be put to beneficial use, or if the proposed use has a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit;

(f) the water quality of a prior appropriator will not be adversely affected;

(g) the proposed use will be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); and

(h) the ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(2) The applicant is required to prove that the criteria in subsections (1)(f) through (1)(h) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (1)(f), (1)(g), or (1)(h), as applicable, may not be met. For the criteria set forth in subsection (1)(g), only the department of environmental quality or a local water quality district established under Title 7, chapter 13, part 45, may file a valid objection.

(3) The department may not issue a permit for an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the applicant proves by clear and convincing evidence that:

(a) the criteria in subsection (1) are met;

(b) the proposed appropriation is a reasonable use. A finding must be based on a consideration of the following:

(i) the existing demands on the state water supply, as well as projected demands, such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing beneficial uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(4) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under

appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the criteria in this subsection (4) must be met before out-of-state use may occur.

(b) The department may not issue a permit for the appropriation of water for withdrawal and transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (1) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(ii) and (4)(b)(iii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a permit or a lease to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, and use of water.

(5) Subject to 85-2-360, to meet the preponderance of evidence standard in this section, the applicant, in addition to other evidence demonstrating that the criteria of subsection (1) have been met, shall submit hydrologic or other evidence, including but not limited to water supply data, field reports, and other information developed by the applicant, the department, the U.S. geological survey, or the U.S. natural resources conservation service and other specific field studies.

(6) An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized appropriation, diversion, impoundment, use, or other restraint. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this section.

(7) The department may adopt rules to implement the provisions of this section.

(8) For an application for ground water in a basin closed pursuant to *85-2-319, 85-2-321,* 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344 ~~or during the period of closure for any basin that is administratively closed pursuant to 85-2-319~~, the applicant shall comply with the provisions of 85-2-360 in addition to the requirements of this section."

**Section 5.** Section 85-2-314, MCA, is amended to read:

**"85-2-314. Revocation or modification of permit or change in appropriation right.** *(1) (a)* If the work on an appropriation is not commenced, prosecuted, or completed within the time stated in the permit or an extension of the time stated in the permit, if the water is not being applied to the beneficial use contemplated in the permit or change in appropriation right, or if the permit or change in appropriation right is otherwise not being followed, the department may, after notice, require the permittee or the holder of the change in appropriation right to show cause why the permit or change in appropriation right should not be modified or revoked.

*(b)* If the permittee or holder of the change in appropriation right fails to show sufficient cause, the department may modify or revoke the permit or change in appropriation right.

*(2) (a) A permittee or holder of a change in appropriation right may petition the department to modify or remove a condition of approval or reduce the amount of the permit or change authorization.*

*(b) The petition must be submitted on a form designated by the department, is subject to the criteria of 85-2-311 and 85-2-402, and must be processed in the same manner as an application made pursuant to 85-2-302, 85-2-307 through 85-2-309, and 85-2-310(1) through (5) except that:*

*(i) the department may waive the public notice of a preliminary determination to grant the petition if the department finds, on the basis of information reasonably available to it, that the petition as proposed in the application will not adversely affect the rights of other appropriators;*

*(ii) if the department issues a preliminary determination to grant the petition and waives public notice, the determination becomes final;*

*(iii) the department may condition a preliminary determination to grant the petition in order to meet the criteria under 85-2-311 and 85-2-402; and*

*(iv) a preliminary determination to deny a petition is final. Denial of a petition does not affect the permit or change authorization."*

**Section 6.** Section 85-2-320, MCA, is amended to read:

**"85-2-320. Change in appropriation right authorization for instream flow — United States department of agriculture, forest service.** (1) (a) The department shall accept and process an application by the United States department of agriculture, forest service for a change in appropriation right under the provisions of 85-2-402 and this section to protect, maintain, or enhance streamflows to benefit the fishery or other resources on national forest system lands.

~~(b) As used in this section, "national forest system lands" has the same meaning as that provided in 85-20-1401, Article I.~~

~~(c)~~*(b)* To change an appropriation right, the United States department of agriculture, forest service must own the appropriation right that it seeks to change to an instream flow right, the diversion or withdrawal that is to be changed to instream flow must be located within or immediately adjacent to the exterior boundaries of national forest system lands on the date provided in 85-20-1401, Article IV.B.2., and the stream reach in which the streamflow is to be protected, maintained, or enhanced must be located within or immediately adjacent to the exterior boundaries of national forest system lands as of the date provided in 85-20-1401, Article IV.B.2. The application for a change in appropriation right must:

(i) include specific information on the length and location of the stream reach in which the streamflow is to be protected, maintained, or enhanced; and

(ii) provide a detailed streamflow measuring plan that describes the point where and the manner in which the streamflow must be measured.

(2) In addition to the requirements of 85-2-402, when applying for a change in appropriation right pursuant to this section, the United States department of agriculture, forest service, shall prove by a preponderance of the evidence that:

(a) the change in appropriation right authorization to protect, maintain, or enhance streamflows to benefit the fishery or other resources, as measured at a specific point, will not adversely affect the water rights of other persons; and

(b) the amount of water for the proposed instream flow use is needed to protect, maintain, or enhance streamflows to benefit the fishery or other resources.

(3) The proposed method of measurement of the water to protect, maintain, or enhance streamflows to benefit the fishery or other resources must be approved by the department before a change in appropriation right may be approved.

(4) The department is not responsible for costs associated with installing devices or providing personnel to measure streamflows according to the measurement plan submitted under this section.

(5) If an appropriation right is changed pursuant to this section, the priority of the appropriation right remains the same as the appropriation right that was changed.

(6) A change in appropriation right authorization under this section does not create a right of access across private property or allow any infringement of private property rights.

(7) The maximum quantity of water that may be subject to a change in appropriation right authorization to protect, maintain, or enhance streamflows to benefit the fishery or other resources is the amount historically diverted. However, only the amount historically consumed or a smaller amount if specified by the department in the change in appropriation right authorization may be used to protect, maintain, or enhance streamflows to benefit the fishery or other resources below the existing point of diversion.

(8) The department may modify or revoke the change in appropriation right up to 10 years after it is approved if an appropriator with a priority of appropriation that is earlier than the change in appropriation right that was granted submits new evidence that was not available at the time the change in appropriation right was approved that proves by a preponderance of evidence that the appropriator's water right is adversely affected."

**Section 7.** Section 85-2-360, MCA, is amended to read:

**"85-2-360. Ground water appropriation right in closed basins.** (1) An application for a ground water appropriation right in a basin closed pursuant to *85-2-319, 85-2-321,* 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344 ~~or administratively closed pursuant to 85-2-319~~ must be accompanied by a hydrogeologic ~~assessment~~ *report* ~~that has been~~ conducted pursuant to 85-2-361*, an aquifer recharge or mitigation plan if required, and an application for a change in appropriation right or rights if necessary.* ~~to predict whether the proposed appropriation right will result in a net depletion of surface water and must be accompanied by a plan as provided in 85-2-362, if necessary.~~

~~(2) If the hydrogeologic assessment conducted pursuant to 85-2-361 predicts that the proposed appropriation right will not result in a net depletion of surface water, the department shall proceed under the criteria provided in 85-2-311.~~

~~(3) (a) If the hydrogeologic assessment predicts that the proposed appropriation right will result in a net depletion of surface water, the applicant shall analyze whether the net depletion results in an adverse effect on a prior appropriator. If the applicant provides a correct and complete application, the department shall proceed to process the application as provided in 85-2-363.~~

~~(b) If the applicant has used the water for the purpose of conducting the hydrogeologic assessment, the applicant shall terminate the use of the water. Failure to terminate use of the water must result in a fine of not more than $1,000 for each day of the violation.~~

~~(4) If the hydrogeologic assessment predicts that there will be net depletion as provided in subsection (3)(a), the department may proceed to process the application pursuant to 85-2-363 if, in addition to other applicable criteria, the applicant complies with 85-2-362.~~

*(2) The department shall use the hydrogeologic report to determine if the proposed appropriation right could result in a net depletion of surface water.*

~~(5)~~*(3) (a)* For the purposes of 85-2-360 through 85-2-362, the prediction of net depletion does not mean that an adverse effect on a prior appropriator will occur or if an adverse effect does occur that the entire amount of net depletion is the cause of the adverse effect. *A determination of whether or not there is an adverse effect on a prior appropriator as the result of a new appropriation right is a determination that must be made by the department based on the rate, location, and timing of the net depletion that causes the adverse effect relative to the historic beneficial use of the appropriation right that may be adversely affected.* ~~A determination of whether or not there is an adverse effect on a prior appropriator as the result of a new appropriation right is a determination that must be made by the department based on the amount, location, and duration of the amount of net depletion that causes the adverse effect relative to the historic beneficial use of the appropriation right that may be adversely affected.~~

~~(6) The priority date for an appropriation right that is granted to an entity whose permit application was returned after April 11, 2006, and before May 3, 2007, because of the department's interpretation of a court decision is the date of the initial application to the department.~~

*(b) The department may grant a permit for a new appropriation only if the applicant proves by a preponderance of the evidence that the adverse effect would be offset through an aquifer recharge or mitigation plan that meets the requirements of 85-2-362.*"

**Section 8.** Section 85-2-361, MCA, is amended to read:

**"85-2-361. Hydrogeologic ~~assessment — definition~~ *report* — minimum requirements.** ~~(1) (a) For the purposes of 85-2-360 through 85-2-362, "hydrogeologic assessment" means a report for the project for or through which water will be put to beneficial use, the point of diversion, and the place of use that describes the geology, hydrogeologic environment, water quality with regard to the provisions of 75-5-410 and 85-2-364, and predicted net depletion, if any, including the timing of any net depletion, for surface water within the area described in subsection (2)(a)(i) within the closed basins that are subject to an appropriation right, including but not limited to rivers, streams, irrigation canals, or drains that might be affected by the new appropriation right and any predicted water quality changes that may result.~~

~~(b) In predicting net depletion of surface water from a proposed use, consideration must be given, at a minimum, to~~ *(1) A hydrogeologic report must include*:

~~(i)~~*(a) a description of the proposed appropriation, including the point of diversion, the place of use, the area affected by the proposed appropriation, and aquifers and surface waters that may be affected by the proposed appropriation right;*

*(b)* the ~~actual~~ amount *of water* diverted ~~for like beneficial uses~~ *and the amount of water consumed by the proposed appropriation right*;

~~(ii)~~*(c)* ~~any amounts~~ *the amount of water* that will likely be lost in conveyance, ~~if any, and whether any lost amounts~~ *the amount of conveyance losses that would return to the system, and the location where conveyance losses would return to the system* ~~are lost to the system through evaporation or other means or whether those amounts are returned to the system through percolation or other means~~; ~~and~~

~~(iii)~~*(d)* ~~any~~ *the amount, timing, and location of* return flows from the proposed use~~, including but not limited to any treated wastewater return flows if the treated wastewater that is considered effluent meets the requirements of 75-5-410 and 85-2-364~~.

*(e) the geology of the affected area, including stratigraphy and structure;*

*(f) the parameters of the aquifer system within the affected area to include estimates for:*

*(i) the lateral and vertical extent of the aquifer;*

*(ii) an analysis of whether the aquifer is confined or unconfined; and*

*(iii) the transmissivity and storage coefficient related to the aquifer;*

*(g) the locations of surface waters within the affected area that are subject to an appropriation right that may show a net depletion;*

*(h) an analysis of whether there may be a net depletion of surface water in the affected area and the rate, location, and timing of the depletion, if any; and*

*(i) a description of any water treatment method used at the time of any type of injection or introduction of water to the aquifer to ensure compliance with 75-5-410, 85-2-364, and the water quality laws under Title 75, chapter 5.*

(2) ~~(a)~~ A hydrogeologic ~~assessment that will be used to predict net depletion of surface water resulting from a new appropriation right must include hydrogeologic data or a model developed by~~ *report must be prepared by* a hydrogeologist, a qualified scientist, or a qualified licensed professional engineer~~. that incorporates for the new appropriation:~~

~~(i) the area or estimated area of ground water that will be affected, not to exceed the boundaries of the drainage subdivisions established by the office of water data coordination, United States geological survey, and used by the water court, unless the applicant chooses to expand the boundaries;~~

~~(ii) the geology in the area identified in subsection (2)(a)(i), including stratigraphy and structure;~~

~~(iii) the parameters of the aquifer system within the area identified in subsection (2)(a)(i) to include, at a minimum, estimates for:~~

~~(A) the lateral and vertical extent of the aquifer;~~

~~(B) whether the aquifer is confined or unconfined;~~

~~(C) the effective hydraulic conductivity of the aquifer;~~

~~(D) transmissivity and storage coefficient related to the aquifer; and~~

~~(E) the estimated flow direction or directions of ground water and the rate of movement;~~

~~(iv) the locations of surface waters within the area described in subsection (2)(a)(i) that are subject to an appropriation right, including but not limited to springs, creeks, streams, or rivers that may or may not show a net depletion;~~

~~(v) evidence of water availability; and~~

~~(vi) the locations of all wells or other sources of ground water of record within the area identified in subsection (2)(a)(i).~~

~~(b) A hydrogeologic assessment must also include a water quality report that includes:~~

~~(i) the location of existing documented hazards that could be affected or exacerbated by the appropriation right, such as areas of subsidence, along with a plan to mitigate any conditions or impacts;~~

~~(ii) other water quality information necessary to comply with 75-5-410 and 85-2-364; and~~

~~(iii) a description of any water treatment method that will be used at the time of any type of injection or introduction of water to the aquifer to ensure compliance with 75-5-410 and 85-2-364 and the water quality laws under Title 75, chapter 5.~~

~~(3) The hydrogeologic assessment must include an analysis of whether the information required by subsection (2) predicts that there may be a net depletion of surface water in the area described in subsection (2)(a)(i) and the extent of the depletion, if any.~~

~~(4)~~*(3)* The hydrogeologic ~~assessment~~ *report*, ~~the model if provided,~~ the test well data, the monitoring well data, and other related information must be submitted to the department. The department shall submit this information to the bureau of mines and geology. The bureau of mines and geology shall ~~ensure that information submitted pursuant to this section is entered into the~~ *make the information available through the* ground water information center database ~~as part of the ground water assessment program~~.

~~(5) An entity that has previously conducted some type of hydrogeologic assessment may submit the information from that assessment as the hydrogeologic assessment required by this section if the information meets the criteria and requirements of this section.~~"

**Section 9.** Section 85-2-362, MCA, is amended to read:

**"85-2-362. Aquifer recharge or mitigation plans in closed basins — minimum requirements.** ~~(1) An applicant whose hydrogeologic assessment conducted pursuant to 85-2-361 predicts that there will be a net depletion of surface water shall offset the net depletion that results in the adverse effect through a mitigation plan or an aquifer recharge plan.~~

~~(2)~~*(1) An applicant whose hydrogeologic report conducted pursuant to 85-2-361 predicts that there will be a net depletion of surface water shall submit an aquifer recharge or mitigation plan. An aquifer recharge or mitigation plan* ~~A mitigation plan~~ must include:

(a) where and how the water in the plan will be put to beneficial use;

(b) when and where, generally, water ~~reallocated through exchange or substitution~~ *for aquifer recharge or mitigation* will be required;

(c) the amount of water ~~reallocated through exchange or substitution~~ that is required *for aquifer recharge or mitigation*;

(d) how the proposed project or beneficial use for which the *aquifer recharge or* mitigation plan is required will be operated;

(e) evidence that an application for a change in appropriation right, if necessary, has been submitted;

(f) evidence of water availability;

(g) evidence of how the *aquifer recharge or* mitigation plan will offset the required amount of net depletion of surface water in a manner that will offset an adverse effect on a prior appropriator; and

(h) evidence that the appropriate water quality permits have been granted pursuant to Title 75, chapter 5, as required by 75-5-410 and 85-2-364.

~~(3)~~*(2)* ~~An~~ *In addition to the requirements of subsection (1), an* aquifer recharge plan must include~~:~~

~~(a) evidence that the appropriate water quality permits have been granted pursuant to Title 75, chapter 5, as required by 75-5-410 and 85-2-364;~~

~~(b) where and how the water in the plan will be put to beneficial use;~~

~~(c) when and where, generally, water reallocated through exchange or substitution will be required;~~

~~(d) the amount of water reallocated through exchange or substitution that is required;~~

~~(e) how the proposed project or beneficial use for which the aquifer recharge plan is required will be operated;~~

~~(f) evidence that an application for a change in appropriation right, if necessary, has been submitted;~~

~~(g)~~ a description of the process by which water will be reintroduced to the aquifer~~;~~

~~(h) evidence of water availability; and~~

~~(i) evidence of how the aquifer recharge plan will offset the required amount of net depletion of surface water in a manner that will offset any adverse effect on a prior appropriator~~.

~~(4)~~*(3)* The department may not require an applicant, through ~~a mitigation plan or~~ an aquifer recharge *or mitigation* plan, to provide more water than the quantity needed to offset the adverse effects on a prior appropriator caused by the net depletion.

~~(5)~~*(4)* An appropriation right that relies on ~~a mitigation plan or~~ *an* aquifer recharge *or mitigation* plan ~~to offset net depletion of surface water that results in an adverse effect on a prior appropriator must be issued as a conditional permit that requires~~ *must require* that the ~~mitigation plan or~~ aquifer recharge *or mitigation* plan ~~must~~ be exercised when the appropriation right is exercised."

**Section 10.** Section 85-2-369, MCA, is amended to read:

**"85-2-369. ~~Aquifer testing, test well, or monitoring well data submission -- not beneficial use~~ *Permit not required for testing.*** ~~(1) All aquifer testing data and other related information from test wells, monitoring wells, or other sources that is collected for the purpose of obtaining a new appropriation right or a change in appropriation right pursuant to 85-2-360 through 85-2-362 must be submitted to the department and the bureau of mines and geology in a form prescribed by the department and the bureau of mines and geology. The bureau of mines and geology shall ensure that information submitted pursuant to this section is entered into the ground water information center database as part of the ground water assessment program.~~

~~(2) (a)~~*(1)* Water testing or monitoring is not a beneficial use of water requiring the filing of a permit application.

~~(b)~~*(2)* A permit is not required if the intent of a person is to conduct aquifer tests, water quality tests, water level monitoring, or other testing or monitoring of a water source."

**Section 11.** Section 85-2-402, MCA, is amended to read:

**"85-2-402. Changes in appropriation rights — definition.** (1) (a) The right to make a change in appropriation right subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change in appropriation right proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and subsections (15) and (16) of this section, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(b) If an application involves a change in a point of diversion, conveyance, or place of use located on national forest system lands, the application is not correct and complete until the applicant has submitted proof to the department of any written special use authorization required by federal law for the proposed change in occupancy, use, or traverse of national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.

~~(c) As used in this part, "national forest system lands" has the same meaning as that provided in 85-20-1401, Article I.~~

(2) Except as provided in subsections (4) through (6), (15), (16), and (18) and, if applicable, subject to subsection (17), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate, except for:

(i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436;

(ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or

(iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

(c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use or, if the proposed change involves a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water. This subsection (2)(d) does not apply to:

(i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436;

(ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or

(iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change in appropriation right is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in appropriation right in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change in appropriation right. The department shall provide notice and may hold one or more hearings upon any other proposed change in appropriation right if it determines that the proposed change in appropriation right might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change in appropriation right subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change in appropriation right. The department may extend time limits specified in the change in

appropriation right approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change in appropriation right is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change in appropriation right approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change in appropriation right approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change in appropriation right approval.

(11) The original of a change in appropriation right approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change in appropriation right approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change in appropriation right pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area; or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the rule establishing the controlled ground water area do not restrict a change in appropriation right;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed:

(A) 450 gallons a minute for a municipal well; or

(B) 35 gallons a minute and 10 acre-feet a year for all other wells;

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) (A) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.

(B) If the replacement well is located on national forest system lands, the notice is not correct and complete under this subsection (15) until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the replacement well.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

(A) cease appropriation of water from the replacement well pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.

(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).

(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:

(i) withdraws water from the same ground water source as the original well; and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion. If the redundant water supply well is located on national forest system lands, the notice is not correct and complete under this subsection until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the redundant water supply well.

(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this subsection (16).

(17) The department shall accept and process an application for a change in appropriation right for instream flow to protect, maintain, or enhance streamflows pursuant to 85-2-320 and this section and to benefit the fishery resource pursuant to 85-2-436 and this section.

(18) (a) An appropriator may change an appropriation right for a replacement point of diversion without the prior approval of the department if:

(i) the existing point of diversion is inoperable due to natural causes or deteriorated infrastructure;

(ii) there are no other changes to the water right;

(iii) the capacity of the diversion is not increased;

(iv) there are no points of diversion or intervening water rights between the existing point of diversion and the replacement point of diversion or the appropriator obtains written waivers from all intervening water right holders;

(v) the replacement point of diversion is on the same surface water source and is located as close as reasonably practicable to the existing point of diversion;

(vi) the replacement point of diversion replaces an existing point of diversion and the existing point of diversion will no longer be used;

(vii) the appropriator can show that the existing point of diversion has been used in the 10 years prior to the notice for change of appropriation right for a replacement point of diversion;

(viii) the appropriator can show the change will not increase access to water availability, change the method of irrigation, if applicable, or increase the amount of water diverted, used, or consumed; and

(ix) a timely, correct and complete notice of replacement point of diversion is submitted to the department as provided in subsection (18)(b).

(b) (i) Within 60 days after completion of a replacement point of diversion, the appropriator shall file a notice of replacement point of diversion with the department on a form provided by the department.

(ii) The department shall review the notice of replacement point of diversion and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (18)(a) have been met and the notice is correct and complete. The department may inspect the diversion to confirm that the criteria under subsection (18)(a) have been met. If the department issues an authorization of a change in an appropriation right for a replacement point of diversion, the department shall prepare a notice of the authorization and provide notice of the authorization in the same manner as required in 85-2-307 for applications.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement point of diversion has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement point of diversion within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement point of diversion is not filed and completed within the time allowed or if the department determines the criteria under subsection (18)(a) have not been met, the appropriator shall:

(A) cease appropriation of water from the replacement point of diversion pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (18) do not apply to an appropriation right abandoned under 85-2-404.

(d) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (18)(a).

(e) (i) An appropriator may file a correct and complete objection with the department alleging that the change in appropriation right for a replacement point of diversion will adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under Title 85, chapter 2, part 3.

(ii) If the department determines after a contested case hearing between the appropriator and the objector that the rights of other appropriators have been or will be adversely affected, it may revoke the change or make the change subject to terms, conditions, restrictions, or limitations necessary to protect the rights of other appropriators.

(iii) The burden of proof to prove lack of adverse effect at the hearing is on the appropriator changing the point of diversion."

**Section 12.** Section 85-2-424, MCA, is amended to read:

**"85-2-424. Filing.** (1) Except in the case of a transfer of real property served by a public service water supply, when a person presents for recording a deed or other instrument evidencing a transfer of real property, the realty transfer certificate must contain a water rights disclosure in which the transferor shall acknowledge, at or before closing or transfer of real property, whether or not any water rights are associated with the property to be transferred and whether or not any water rights will transfer with the real property.

(2) (a) If the realty transfer certificate discloses that the water rights will transfer with the property, the department's records must be updated to reflect the purchaser of the property as the new owner of the water right based on information received from the department of revenue. The appropriate fee must be paid at closing or upon completion of the transfer of real property as provided in 85-2-426.

(b) The transferee of a water right, after receiving notice provided in subsection (2)(c), is responsible for compliance with this section.

(c) If the department receives notice from the department of revenue that a property transfer has occurred and the proper fee was not received by the department, the department shall send a notice to the transferee requesting payment of the fee. If the transferee does not pay the fee within 60 days, the department may assess a penalty against the transferee pursuant to 85-2-431.

(3) If the realty transfer certificate discloses the division of a water right among parcels, the person dividing the water right shall complete and file with the department a water right ownership update form, a map, and the required fee.

(4) If a person exempts a water right pursuant to 85-2-403, the person shall file with the department, on a form provided by the department, information describing the exempting of the water right and the appropriate fee.

(5) If a person severs a water right from appurtenant property without selling the property, the person shall file with the department, on a form provided by the department, information describing the severance and the appropriate fee.

(6) If the realty transfer certificate submitted with a deed or other instrument indicates that a water right is being severed, divided, or exempted, the clerk and recorder may not record the deed or instrument unless there is submitted with the deed or instrument a certification under penalty of false swearing, on a form provided by the department and signed by the transferor and transferee, that states either:

(a) that the documents and fee necessary to comply with this section are held in escrow, in which case the certification must also be signed by the escrow agent; or

(b) if there is no escrow, that the transferor and transferee certify that they have prepared the required documents and will send the required documents and fee to the department within ~~5 business~~ *60 business* days of recording, in which case the certification must also require the transferee to acknowledge that failure to file the appropriate documents and fee with the department will result in the department assessing the penalty in 85-2-431 against the transferee.

(7) Any written agreement to transfer land that has appurtenant water rights on record with the department must contain the following disclosure or words of a similar nature:

"WATER RIGHT OWNERSHIP UPDATE DISCLOSURE:

By Montana law, failure of the parties at closing or transfer of real property to pay the required fee to the Montana Department of Natural Resources and Conservation for updating water right ownership may result in the transferee of the property being subject to a penalty. Additionally, in the case of water rights being exempted, severed, or divided, the failure of the parties to comply with section 85-2-424, MCA, could result in a penalty against the transferee and rejection of the deed for recording.""

**Section 13. Repealer.** The following section of the Montana Code Annotated is repealed:

85-2-363. Process for combining decisions on ground water permit applications in closed basins.

Approved April 30, 2013

# CHAPTER NO. 336

[HB 120]

AN ACT GENERALLY REVISING ELECTION LAWS; CLARIFYING PROCEDURES FOR REGISTERING FOR, VOTING BY, AND COUNTING AN ABSENTEE BALLOT; CLARIFYING THE LATE REGISTRATION PROCESS; REQUIRING AN OATH TO BE PLACED IN THE DECLARATION FOR NOMINATION FOR A CANDIDATE IN A PRIMARY CONTEST; REVISING THE BALLOT REQUIREMENTS AND SELECTION PROCESS FOR PRECINCT COMMITTEE POSITIONS; REVISING THE PROCESS FOR COLLECTING A BALLOT FROM CERTAIN DISABLED ELECTORS; REVISING THE PROVISIONS FOR POSTING BONDS REQUIRED FOR CERTAIN RECOUNTS; ELIMINATING THE PROVISION THAT

PROHIBITS CERTAIN RELIGIOUS OFFICIALS AND CORPORATE OFFICERS FROM PARTICIPATING IN CERTAIN ELECTION ACTIVITIES; REQUIRING TIE VOTES IN PRECINCT COMMITTEE ELECTIONS TO BE DETERMINED BY THE COUNTY CENTRAL COMMITTEE; AMENDING SECTIONS 5-2-402, 13-1-101, 13-1-210, 13-2-107, 13-2-108, 13-2-112, 13-2-115, 13-2-122, 13-2-207, 13-2-220, 13-2-301, 13-2-304, 13-10-201, 13-10-203, 13-10-209, 13-10-211, 13-10-302, 13-10-404, 13-10-405, 13-10-503, 13-10-507, 13-13-112, 13-13-118, 13-13-201, 13-13-204, 13-13-211, 13-13-212, 13-13-213, 13-13-214, 13-13-225, 13-13-226, 13-13-227, 13-13-228, 13-13-229, 13-13-230, 13-13-241, 13-13-244, 13-13-245, 13-13-301, 13-13-602, 13-13-603, 13-14-112, 13-14-113, 13-15-107, 13-15-108, 13-15-201, 13-15-206, 13-15-401, 13-16-201, 13-16-211, 13-16-417, 13-17-203, 13-17-211, 13-19-102, 13-19-106, 13-19-304, 13-21-210, 13-21-212, 13-35-218, 13-37-126, AND 13-38-201, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 5-2-402, MCA, is amended to read:

**"5-2-402. Appointment by board of county commissioners — county central committee role — timeframes.** (1) Except as provided in subsection (5) or as otherwise provided by law, whenever a vacancy occurs in the legislature, the vacancy must be filled by appointment by the board of county commissioners or, in the event of a multicounty district, the boards of county commissioners of the counties comprising the district sitting as one appointing board.

(2) (a) Whenever a vacancy is within a single county, the board of county commissioners shall make the appointment as described in 5-2-403, 5-2-404, or 5-2-406.

(b) Whenever a vacancy is within a multicounty district, the boards of county commissioners shall sit as one appointing board. The selection of an individual to fill the vacancy must be as follows:

(i) The presiding officer of the board of county commissioners of the county in which the person resided whose vacancy is to be filled shall call a meeting for the purpose of appointing the member of the legislature and shall preside at the meeting.

(ii) Each commissioner's vote is determined by the following formula: 100 multiplied by (A divided by B) multiplied by (1 divided by C), where:

(A) A is the total votes cast in the respective county for the person vacating the legislative seat or, if the vacating person was not elected, the votes cast for the last person to be elected for the current term;

(B) B is the total votes cast for that person in the legislative district; and

(C) C is the number of authorized commissioners on the board of the commissioner whose vote is being determined.

(iii) The person selected to fill the vacancy is the one who receives the highest number above 50 that results from the calculation in subsection (2)(b)(ii). If none of the candidates receives a number higher than 50 from that calculation, the selection board shall cast its votes again in the same manner for the persons receiving the two highest numbers. If neither vote results in a candidate receiving a number higher than 50 from the calculation provided in subsection (2)(b)(ii), then 5-2-404 applies.

(c) If a vacancy occurs in a holdover senate seat after holdover senators have been assigned to new districts under each reapportionment, the formula in subsection (2)(b)(ii) must be applied using the votes cast for the senatorial

candidates at the last election in which votes were cast for a senate candidate. Only the number of votes cast by electors residing in the new senate district for senate candidates of the party to which the person vacating the seat belonged may be counted. The secretary of state shall provide an estimate of the number of votes cast for each party by county or portion of a county. The selection process is the same as provided in subsection (2)(b)(iii).

(3) The appointment process to fill a vacant legislative seat under this section is as follows:

(a) Within 7 days of being notified of a vacancy as described in 2-16-501, the secretary of state shall notify the board of county commissioners and the *state party that is responsible for notifying the* county central committee of the county where the vacating legislator is a resident, if the legislative seat is within one county, or the boards of county commissioners and the corresponding county central committees if the legislative seat is in a multicounty district. If the legislator is an independent or belongs to a party for which there is no county central committee, the notification of county commissioners suffices.

(b) The county central committee or committees, upon receipt of notification of a vacancy, have 45 days to propose a list of prospective appointees, pursuant to 5-2-403(1). The county central committee or the county central committees, acting together, shall forward the list of names to the appointing board within the 45-day period.

(c) The appointing board shall make and confirm an appointment and notify the secretary of state within 15 days:

(i) after receiving the list of prospective appointees from the county central committee or committees;

(ii) after 45 days have expired after the notification of vacancy if the county central committee or committees have not provided a list of prospective appointees; or

(iii) after notification of a vacancy if the legislator vacating the seat is an independent.

(4) If the legislature is in session, the notification process in subsection (3)(a) must be followed within 5 days. The process described in subsection (3)(b) must take place in 5 days. The process described in subsection (3)(c) must take place in 5 days.

(5) Notwithstanding subsection (6), if a vacancy occurs prior to a primary election, 13-10-326 applies. If a vacancy occurs after a primary and prior to a general election, 13-10-327 applies.

(6) If the legislature is called into special session within 85 days of a general election, a person must be appointed to fill a legislative vacancy pursuant to subsections (1) through (4)."

**Section 2.** Section 13-1-101, MCA, is amended to read:

**"13-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Active elector" means an elector whose name has not been placed on the inactive list due to failure to respond to confirmation notices pursuant to 13-2-220 or 13-19-313.

(2) "Active list" means a list of active electors maintained pursuant to 13-2-220.

(3) "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(4) "Application for voter registration" means a voter registration form prescribed by the secretary of state that is completed and signed by an elector, submitted to the election administrator, and contains voter registration information subject to verification as provided by law.

(5) "Ballot" means a paper ballot counted manually or a paper ballot counted by a machine, such as an optical scan system or other technology that automatically tabulates votes cast by processing the paper ballots.

(6) "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office as required by law;

(b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; or

(c) an officeholder who is the subject of a recall election.

(7) (a) "Contribution" means:

(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(ii) a transfer of funds between political committees;

(iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residences for a candidate or other individual;

(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees; or

(iv) filing fees paid by the candidate.

(8) "Election" means a general, regular, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

(9) "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections not administered by the county, the term means the school district clerk.

(10) "Elector" means an individual qualified to vote under state law.

(11) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (7);

(ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

(iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees.

(12) "Federal election" means a general or primary election in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

(13) "General election" or "regular election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted as a constitutional initiative at a regular election, regular election means an election held at the time provided in 13-1-104(1).

(14) "Inactive elector" means an individual who failed to respond to confirmation notices and whose name was placed on the inactive list pursuant to 13-2-220 or 13-19-313.

(15) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220 or 13-19-313.

(16) "Individual" means a human being.

(17) (a) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question.

(b) For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes a "ballot issue" upon preparation and transmission by the secretary of state of the form of the petition or referral to the person who submitted the proposed issue.

(18) "Legally registered elector" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.

(19) "Mail ballot election" means any election that is conducted under Title 13, chapter 19, by mailing ballots to all active electors.

(20) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (6).

(21) "Place of deposit" means a location designated by the election administrator pursuant to 13-19-307 for a mail ballot election conducted under Title 13, chapter 19.

(22) "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

(a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or

(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(c) as an earmarked contribution.

(23) "Political subdivision" means a county, consolidated municipal-county government, municipality, special district, or any other unit of government, except school districts, having authority to hold an election for officers or on a ballot issue.

(24) "Polling place election" means an election primarily conducted at polling places rather than by mail under the provisions of Title 13, chapter 19.

(25) "Primary" or "primary election" means an election held throughout the state to nominate candidates for public office at times specified by law, including nominations of candidates for offices of political subdivisions when the time for nominations is set on the same date for all similar subdivisions in the state.

(26) "Provisional ballot" means a ballot cast by an elector whose identity or eligibility to vote has not been verified as provided by law.

(27) "Provisionally registered elector" means an individual whose application for voter registration was accepted but whose identity or eligibility has not yet been verified as provided by law.

(28) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(29) "Random-sample audit" means an audit involving a manual count of ballots from designated races and ballot issues in precincts selected through a random process as provided in 13-17-503.

(30) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

*(31) "Signature envelope" means an envelope that contains a secrecy envelope and ballot and that is designed to:*

*(a) allow election officials, upon examination of the outside of the envelope, to determine that the ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and*

*(b) allow it to be used in the United States mail.*

~~(31)~~*(32)* "Special election" means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.

~~(32)~~*(33)* "Statewide voter registration list" means the voter registration list established and maintained pursuant to 13-2-107 and 13-2-108.

~~(33)~~*(34)* "Transfer form" means a form prescribed by the secretary of state that may be filled out by an elector to transfer the elector's registration when the elector's residence address has changed within the county.

~~(34)~~*(35)* "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in 13-15-206.

~~(35)~~*(36)* "Voted ballot" means a ballot that is:

(a) deposited in the ballot box at a polling place;

(b) received at the election administrator's office; or

(c) returned to a place of deposit.

~~(36)~~*(37)* "Voting system" or "system" means any machine, device, technology, or equipment used to automatically record, tabulate, or process the vote of an elector cast on a paper ballot."

**Section 3.** Section 13-1-210, MCA, is amended to read:

**"13-1-210. Standard application form for voter registration and absentee ballot requests.** (1) The secretary of state shall establish by rule a standard application form, to be used by each election administrator, that allows an individual to apply for voter registration and to request to be added to the absentee ballot list in order to receive ballots for subsequent elections.

(2) Pursuant to 13-13-212~~(4)~~*(3)*, the absentee ballot application portion of the standard form must include substantially the following language and options:

Optional: I request an absentee ballot to be mailed to me for as long as I reside at the address listed:

[] for each subsequent election in which I am eligible to vote~~; or~~

~~[] for each subsequent federal election in which I am eligible to vote~~.

I understand that in order to continue to receive an absentee ballot, I must complete, sign, and return a confirmation form that will be mailed to me in January of each year."

**Section 4.** Section 13-2-107, MCA, is amended to read:

**"13-2-107. Statewide voter registration ~~database~~ *system* — information-sharing agreements.** (1) The secretary of state shall establish, in a uniform and nondiscriminatory manner, a single official, centralized, and interactive computerized statewide voter registration ~~database~~ *system* that meets the requirements of 42 U.S.C. 15483.

(2) (a) The statewide voter registration ~~database~~ *system* must be used as the official list of registered electors for the conduct of all elections subject to this title.

(b) The ~~database~~ *system* must contain the name and registration information of each registered elector.

(c) Each election administrator must be provided with immediate electronic access to the ~~database~~ *system*.

(d) The secretary of state shall provide the technical support required to assist election administrators to enter, maintain, and access information in the statewide voter registration ~~database~~ *system*.

(3) As provided in 42 U.S.C. 15483:

(a) the secretary of state and the attorney general shall enter into an agreement to match information in the statewide voter registration list with information in the motor vehicle licensing database to the extent required to verify voter registration information; and

(b) the attorney general shall enter into an agreement with the United States commissioner of social security for the purpose of verifying voter registration information."

**Section 5.** Section 13-2-108, MCA, is amended to read:

**"13-2-108. Rulemaking for statewide voter registration list.** (1) The secretary of state shall adopt rules to implement the provisions of 42 U.S.C. 15483 and this chapter.

(2) The rules must include but are not limited to:

(a) a list of maintenance procedures, including new data entry, updates, registration transfers, and other procedures for keeping information current and accurate;

(b) proper maintenance and use of active and inactive lists;

(c) proper maintenance and use of lists for legally registered electors and provisionally registered electors;

(d) technical security of the statewide voter registration ~~database~~ *system*;

(e) information security with respect to keeping from general public distribution driver's license numbers, whole or partial social security numbers, and address information protected from general disclosure pursuant to 13-2-115; and

(f) quality control measures for the system and system users.

(3) The rules adopted by the secretary of state must reflect that an elector who was properly registered prior to January 1, 2003, is considered a legally registered elector."

**Section 6.** Section 13-2-112, MCA, is amended to read:

**"13-2-112. Register of electors to be kept.** Each election administrator shall keep an official register of electors in the statewide voter registration ~~database~~ *system*. The original signed registration form for each elector must be scanned, and the scanned copy must be retained in the statewide voter registration ~~database~~ *system*. The original paper copy must be kept according to the state records retention schedule for such records. The information recorded in the official register of electors and the design of the registration forms must be prescribed by the secretary of state in the statewide voter registration ~~database~~ *system*."

**Section 7.** Section 13-2-115, MCA, is amended to read:

**"13-2-115. Certification of statewide voter registration list — local lists to be prepared.** (1) No later than 5 working days after the deadline prescribed in 13-2-301(3), election administrators shall enter all voter registration applications that were submitted within the deadline for regular registration into the statewide voter registration ~~database~~ *system*.

(2) The secretary of state shall certify the official statewide voter registration list by utilizing the information in the statewide voter registration ~~database~~ *system*.

(3) Each election administrator shall have printed from the certified statewide voter registration ~~database~~ *system* lists of all registered electors in each precinct in the county. Except as provided in subsections (6) and (7), names of electors must be listed alphabetically, with their residence address or with a mailing address if located where street numbers are not used.

(4) A copy of the list of registered electors in a precinct must be displayed at the precinct's polling place. Extra copies of the lists must be retained by the election administrator and furnished to an elector upon request.

(5) Lists of registered electors need not be printed if the election will not be held.

(6) If a law enforcement officer or reserve officer, as defined in 7-32-201, requests in writing that, for security reasons, the officer's and the officer's spouse's residential address, if the same as the officer's, not be disclosed, the secretary of state or an election administrator may not include the address on any generally available list of registered electors but may list only the electors' names.

(7) (a) Upon the request of an individual, the secretary of state or an election administrator may not include the individual's residential address on any generally available list of registered electors but may list only the elector's name if the individual:

(i) proves to the election administrator, as provided in subsection (7)(b), that the individual, or a minor in the custody of the individual, has been the victim of partner or family member assault, stalking, custodial interference, or other offense involving bodily harm or threat of bodily harm to the individual or minor; or

(ii) proves to the election administrator, as provided in subsection (7)(c), that a temporary restraining order or injunction has been issued by a judge or magistrate to restrain another person's access to the individual or minor.

(b) Proof of the victimization is conclusive upon exhibition to the election administrator of a criminal judgment, information and judgment, or affidavit of a county attorney clearly indicating the conviction and the identity of the victim.

(c) Proof of the issuance of a temporary restraining order or injunction is conclusive upon exhibition to the election administrator of the temporary restraining order or injunction."

**Section 8.** Section 13-2-122, MCA, is amended to read:

**"13-2-122. Charges for registers, elector lists, and mailing labels made available to public.** (1) Except as provided in subsection (2), upon request, the secretary of state shall furnish to any individual, for noncommercial use, available extracts and reports from the statewide voter registration ~~database~~ *system*. Upon request, a local election administrator shall furnish to an individual, for noncommercial use, a copy of the official precinct registers, a current list of legally registered electors, mailing labels for registered electors, or other available extracts and reports. Upon delivery, the secretary of state or the local election administrator may collect a charge not to exceed the actual cost of the register, list, mailing labels, or available extracts and reports.

(2) For an elector whose address information is protected from general distribution under 13-2-115 (6) or (7), the secretary of state or a local election administrator may not include the elector's residential address on any register, list, mailing labels, or available extracts and reports but may list only the elector's name."

**Section 9.** Section 13-2-207, MCA, is amended to read:

**"13-2-207. Confirmation of registration.** (1) The election administrator shall give or mail to each elector a notice, confirming registration and giving the location of the elector's polling place. A notice sent to an elector to whom the notice is not personally given must be sent by nonforwardable, first-class mail, which must conform to postal regulations to ensure address corrections are received. ~~If the notice is returned undeliverable the application for voter registration may not be placed on the register of electors kept by the election administrator.~~

(2) ~~The~~ *If the notice confirming registration is returned as undeliverable, the* election administrator shall investigate the reason for the return of any mailed notices and mail a confirmation notice to the elector. The notice must conform to postal regulations to ensure return, not forwarding, of undelivered notices."

**Section 10.** Section 13-2-220, MCA, is amended to read:

**"13-2-220. Maintenance of active and inactive voter registration lists for elections — rules by secretary of state.** (1) The rules adopted by the secretary of state under 13-2-108 must include the following procedures, at least one of which an election administrator shall follow in every odd-numbered year:

(a) compare the entire list of registered electors against the national change of address files and provide appropriate confirmation notice to those individuals whose addresses have apparently changed;

(b) mail a nonforwardable, first-class, "return if undeliverable—address correction requested" notice to all registered electors of each jurisdiction to confirm their addresses and provide the appropriate confirmation notice to those individuals who return the notices;

(c) mail a targeted mailing to electors who failed to vote in the preceding federal general election, applicants who failed to provide required information on registration cards, and provisionally registered electors by:

(i) sending the list of nonvoters a nonforwardable notice, followed by the appropriate forwardable confirmation notice to those electors who appear to have moved from their addresses of record;

(ii) comparing the list of nonvoters against the national change of address files, followed by the appropriate confirmation notices to those electors who appear to have moved from their addresses of record;

(iii) sending forwardable confirmation notices; or

(iv) making a door-to-door canvass.

(2) An individual who submits an application for an absentee ballot for a federal general election or who completes and returns the address confirmation notice specified in 13-13-212~~(4)~~*(3)* during the calendar year in which a federal general election is held is not subject to the procedure in subsection (1)(c) unless the individual's ballot for a federal general election is returned as undeliverable and the election administrator is not able to contact the elector through the most expedient means available to resolve the issue.

(3) Any notices returned as undeliverable to the election administrator or any notices to which the elector fails to respond after the election administrator uses the procedures provided in subsection (1) must be followed within 30 days by an appropriate confirmation notice that is a forwardable, first-class, postage-paid, self-addressed, return notice. If the elector fails to respond within 30 days of the final confirmation notice, the election administrator shall move the elector to the inactive list.

(4) A procedure used by an election administrator pursuant to this section must be completed at least 90 days before a primary or general election for federal office.

(5) An elector's registration may be reactivated pursuant to 13-2-222 or may be canceled pursuant to 13-2-402."

**Section 11.** Section 13-2-301, MCA, is amended to read:

**"13-2-301. Close of regular registration — notice — changes.** (1) The election administrator shall:

(a) close regular registrations for 30 days before any election; and

(b) publish a notice specifying the day regular registrations will close and the availability of the late registration option provided for in 13-2-304 in a newspaper of general circulation in the county at least three times in the 4 weeks preceding the close of registration or broadcast a notice on radio or television as provided in 2-3-105 through 2-3-107, using the method the election administrator believes is best suited to reach the largest number of potential electors. The provisions of this subsection (1)(b) are fulfilled upon the third publication or broadcast of the notice.

(2) Information to be included in the notice must be prescribed by the secretary of state.

(3) An application for voter registration properly executed and postmarked on or before the day regular registration is closed must be accepted as a regular registration for 3 days after regular registration is closed under subsection (1)(a).

~~(4) An individual who submits a completed registration form to the election administrator before the deadlines provided in this section is allowed to correct a mistake on the completed registration form until 5 p.m. on the 10th day following the close of regular registration, and the qualified elector is then eligible to vote in the election.~~

~~(5)~~*(4)* An elector who misses the deadlines provided for in this section may register to vote or change the elector's voter information and vote in the election, except as otherwise provided in 13-2-304."

**Section 12.** Section 13-2-304, MCA, is amended to read:

**"13-2-304. Late registration — late changes — nonapplicability for school elections.** (1) Except as provided in subsections (2) and (3), the following provisions apply:

(a) An elector may register or change the elector's voter registration information after the close of regular registration in 13-2-301 and vote in the election if the election administrator in the county where the elector resides receives and verifies the elector's voter registration information prior to the close of the polls on election day.

(b) Late registration is closed from noon to 5 p.m. on the day before the election.

(c) Except as provided in 13-2-514(2)(a), an elector who registers or changes the elector's voter information pursuant to this section may vote in the election only if the elector obtains the ballot from and returns it to the location designated by the county election administrator.

(2) If an elector has already been issued a ballot for the election, the elector may change the elector's voter registration information only if the original voted ballot has not been received at the county election office and if the original ballot that was issued is marked by the issuing county as void in the statewide voter registration ~~database~~ *system* prior to the change.

(3) The provisions of subsection (1) do not apply with respect to an elector's registration to vote in a school election held pursuant to Title 20 *unless the county election administrator is conducting the school election and an election other than a school election on the same day*."

**Section 13.** Section 13-10-201, MCA, is amended to read:

**"13-10-201. Declaration for nomination — term limitations.** (1) Each candidate in the primary election, except nonpartisan candidates filing under the provisions of Title 13, chapter 14, shall file a declaration for nomination with the secretary of state or election administrator. Except for a candidate who files

under 13-38-201, a candidate may not file for more than one public office. Each candidate for governor shall file a joint declaration for nomination with a candidate for lieutenant governor.

(2) A declaration for nomination must be filed in the office of:

(a) the secretary of state for placement of a name on the ballot for the presidential preference primary, a congressional office, a state or district office to be voted for in more than one county, a member of the legislature, or a judge of the district court;

(b) the election administrator for a county, municipal, precinct, or district office (other than a member of the legislature or judge of the district court) to be voted for in only one county.

(3) Each candidate shall sign the declaration and send with it the required filing fee or, in the case of an indigent candidate, send with it the documents required by 13-10-203. Unless filed electronically with the secretary of state, the declaration for nomination must be acknowledged by an officer empowered to acknowledge signatures or by the officer of the office at which the filing is made.

*(4) The declaration for nomination must include an oath of the candidate that includes wording substantially as follows: "I hereby affirm that I possess, or will possess within constitutional and statutory deadlines, the qualifications prescribed by the Montana constitution and the laws of the United States and the state of Montana." The candidate affirmation included in this oath is presumed to be valid unless proven otherwise in a court of law.*

~~(4)~~*(5)* The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by the elector's party. For a partisan election, an elector may not file a declaration for more than one party's nomination.

~~(5)~~*(6)* (a) The declaration for nomination must be in the form and contain the information prescribed by the secretary of state.

(b) A person seeking nomination to the legislature shall provide the secretary of state with a street address, legal description, or road designation to indicate the person's place of residence. If a candidate for the legislature changes residence, the candidate shall, within 15 days after the change, notify the secretary of state on a form prescribed by the secretary of state.

(c) The secretary of state and election administrator shall furnish declaration for nomination forms to individuals requesting them.

~~(6)~~*(7)* (a) Except as provided in 13-10-211 and subsection ~~(6)(b)~~ *(7)(b)* of this section, a candidate's declaration for nomination must be filed no sooner than 135 days before the election in which the office first appears on the ballot and no later than 5 p.m., 75 days before the date of the primary election.

(b) For an election held pursuant to 13-1-104(1)(a) or 13-1-107(1) or for a political subdivision that holds an election on the date of either of those elections, a candidate's declaration for nomination must be filed no sooner than 145 days before the election in which the office first appears on the ballot and no later than 5 p.m., 85 days before the date of the primary election.

~~(7)~~*(8)* A *properly completed and signed* declaration for nomination form may be sent by facsimile transmission ~~if a facsimile facility is available for use by the election administrator or by the secretary of state~~, *electronically mailed,* delivered in person, or mailed to the election administrator or to the secretary of state.

~~(8)~~*(9)* For the purposes of implementing Article IV, section 8, of the Montana constitution, the secretary of state shall apply the following conditions:

(a) A term of office for an official serving in the office or a candidate seeking the office is considered to begin on January 1 of the term for which the official is elected or for which the candidate seeks election and end on December 31 of the term for which the official is elected or for which the candidate seeks election.

(b) A year is considered to start on January 1 and end on the following December 31.

(c) "Current term", as used in Article IV, section 8, of the Montana constitution, has the meaning provided in 2-16-214."

**Section 14.** Section 13-10-203, MCA, is amended to read:

**"13-10-203. Indigent candidates.** If an individual is unable to pay a filing fee, the filing officer shall accept the following documents in lieu of a filing fee:

(1) from a successful write-in candidate, a statement that the candidate is unable to pay the filing fee;

(2) from a candidate for nomination, a statement that the candidate is unable to pay the filing fee and a written petition for nomination as a candidate that meets the following requirements:

(a) the petition contains the name of the office to be filled and the candidate's name and residence address;

(b) the petition contains signatures numbering 5% or more of the total vote cast for the successful candidate for the same office at the last general election;

(c) the signatures are those of electors residing within the political subdivision of the state in which the candidate petitions for nomination; and

(d) the signatures have been submitted to the appropriate election administrator at least 1 week prior to the applicable deadline in 13-10-201~~(6)~~*(7)* and have been certified by the appropriate election administrator by the procedure provided in 13-27-303 and 13-27-304."

**Section 15.** Section 13-10-209, MCA, is amended to read:

**"13-10-209. Arrangement and preparing of primary ballots.** (1) (a) Ballots for a primary election must be arranged and prepared in the same manner and number as provided in chapter 12 for general election ballots, except that there must be separate ballots for each political party entitled to participate. The name of the political party must appear at the top of the separate ballot for that party and need not appear ~~opposite~~ *with* each candidate's name.

(b) Nonpartisan offices and ballot issues may be prepared on separate ballots or may appear on the same ballot as partisan offices if:

(i) each section is clearly identified as separate; *and*

(ii) the nonpartisan offices and ballot issues appear on each party's ballot~~; and~~

~~(iii) with respect to ballot issues, written approval is obtained as provided in 13-27-502~~.

(2) ~~An~~ *Except as provided in subsection (3), an* election administrator does not need to prepare a primary ballot for a political party if:

(a) the party does not have candidates for more than half of the offices to appear on the ballot; ~~or~~ *and*

(b) no more than one candidate files for nomination by that party for any of the offices to appear on the ballot.

*(3) Subsection (2) does not apply to elections for precinct committee offices. If more than one candidate files for a precinct committee office from a party that*

*will not have a primary ballot prepared, that party shall select the candidate to fill the office.*

~~(3)~~*(4)* If, pursuant to subsection (2), in a primary election held under 13-1-107(1) a primary ballot for a political party is not prepared, the secretary of state shall certify that a primary election is unnecessary for that party and shall instruct the election administrator to certify the names of the candidates for that party for the general election ballot only.

~~(4)~~*(5)* The separate ballots for each party must have the same appearance. Each set of party ballots must bear the same number. If prepared as a separate ballot, the nonpartisan ballot may have a different appearance than the party ballots but must be numbered in the same order as the party ballots.

~~(5)~~*(6)* If a ballot issue is to be voted on at a primary election, it may be placed on the nonpartisan ballot or a separate ballot. A separate ballot may have a different appearance than the other ballots in the election but must be numbered in the same order.

~~(6)~~*(7)* Each elector must receive a set of ballots that includes the party, nonpartisan, and ballot issue choices."

**Section 16.** Section 13-10-211, MCA, is amended to read:

**"13-10-211. Declaration of intent for write-in candidates.** (1) Except as provided in subsection (8), a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. Except for a candidate who files under 13-38-201, a candidate may not file for more than one public office. The declaration of intent must be filed with the secretary of state or election administrator, depending on where a declaration of nomination for the desired office is required to be filed under 13-10-201, or with the school district clerk for a school district office. When a county election administrator is conducting the election for a school district, the school district clerk or school district office that receives the declaration of intent shall notify the county election administrator of the filing. Except as provided in subsections (2) and (3), the declaration must be filed no later than 5 p.m. on the 10th day before the date established under 13-13-205 on which a ballot must be available for absentee voting for the election and must contain:

(a) (i) the candidate's first and last names;

(ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the candidate's last name;

(iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and

(iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;

(b) the candidate's mailing address;

(c) a statement declaring the candidate's intention to be a write-in candidate;

(d) the title of the office sought;

(e) the date of the election;

(f) the date of the declaration; and

(g) the candidate's signature.

(2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than 5 p.m. on the day before the election if, after the deadline prescribed in subsection (1), a candidate for the office that the write-in

candidate is seeking dies or is charged with a felony offense *and if the election has not been canceled as provided by law*.

(3) A person seeking to become a write-in candidate in a mail ballot election or for a trustee position in a school board election shall file a declaration of intent no later than 5 p.m. on the 26th day before the election.

(4) The secretary of state shall notify each election administrator of the names of write-in candidates who have filed a declaration of intent with the secretary of state. Each election administrator and school district clerk shall notify the election judges in the county or district of the names of write-in candidates who have filed a declaration of intent.

(5) A *properly completed and signed* declaration of intent may be provided to the election administrator or secretary of state:

(a) by facsimile transmission ~~if a facsimile facility is available for receipt~~;

(b) in person; ~~or~~

(c) by mail*; or*

*(d) by electronic mail*.

(6) A declaration is not valid until the filing fee required pursuant to 13-10-202 is received by the secretary of state or the election administrator.

(7) A write-in candidate who files a declaration of intent for a general election may not file with a partisan, nonpartisan, or independent designation.

(8) Except as provided in 13-38-201(5), the requirements in subsection (1) do not apply if:

(a) an election is held;

(b) a person's name is written in on the ballot;

(c) the person is qualified for and seeks election to the office for which the person's name was written in; and

(d) no other candidate has filed a declaration or petition for nomination or a declaration of intent."

**Section 17.** Section 13-10-302, MCA, is amended to read:

**"13-10-302. Write-in votes for previously nominated candidates.** (1) Subject to subsection (2), if an elector casts a write-in vote for a candidate on a primary party ballot when the candidate's name also appears *or is written in* for the same office on another party's ballot, the write-in vote counts only with respect to the party on whose ballot the write-in vote was cast and the write-in votes*, if on multiple parties' ballots,* and the votes cast for the candidate on the other party's ballots may not be added together.

(2) A write-in vote must be counted as provided in 13-15-206(5)."

**Section 18.** Section 13-10-404, MCA, is amended to read:

**"13-10-404. Placement of candidate on primary ballot — methods of qualification.** Before an individual intending to qualify as a presidential candidate may qualify for placement on the ballot, the individual shall qualify by one or more of the following methods:

(1) The individual has submitted a declaration for nomination *that is signed by the candidate or an authorized election official* to the secretary of state pursuant to 13-10-201(2) and has been nominated on petitions with the verified signatures of at least 500 qualified electors. The secretary of state shall prescribe the form and content of the petition.

(2) The individual has submitted a declaration for nomination to the secretary of state pursuant to 13-10-201, and the secretary of state has

determined, by the time that declarations for nomination are to be filed, that the individual is eligible to receive payments pursuant to the federal Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031, et seq."

**Section 19.** Section 13-10-405, MCA, is amended to read:

**"13-10-405. Submission and verification of petition.** Petitions of nomination for the presidential preference primary election and the affidavits of circulation required by 13-27-302 must be presented to the election administrator of the county in which the signatures are gathered at least 1 week before the primary election filing deadline prescribed in 13-10-201~~(6)(b)~~*(7)(b)*. A filing fee is not required. The election administrator shall verify the signatures in the manner prescribed in 13-27-303 through 13-27-308 and must forward the petitions to the secretary of state by the filing deadline prescribed in 13-10-201~~(6)(b)~~*(7)(b)*."

**Section 20.** Section 13-10-503, MCA, is amended to read:

**"13-10-503. Filing deadlines.** (1) A petition for nomination*,* ~~and~~ the affidavits of circulation required by 13-27-302, ~~accompanied by~~ *and* the required filing fee~~,~~ must be filed with the same officer with whom other nominations for the office sought are filed. Petitions must be submitted, at least 1 week before the deadline for filing, to the election administrator in the county where the signer resides for verification and certification by the procedures provided in 13-27-303 through 13-27-306. ~~If there are insufficient signatures on the petition, additional signatures may be submitted before the deadline for filing.~~ If sufficient signatures are verified and certified pursuant to 13-10-502, the county election administrator shall file the petition for nomination with the same officer with whom other nominations for the office sought are filed.

(2) Except as provided in 13-10-504, each petition for nomination~~,~~ ~~accompanied by~~ *and* the required filing fee~~,~~ must be filed ~~by the applicable deadline established in 13-10-201(6)(a) or (6)(b)~~ *before the scheduled primary election or the filing deadline for the special or general election if a primary election is not scheduled*."

**Section 21.** Section 13-10-507, MCA, is amended to read:

**"13-10-507. Independent candidates — association with political parties not allowed.** (1) A person seeking office as an independent candidate may not be associated with a political party for 1 year prior to the submission of the person's nomination petition.

(2) For the purposes of subsection (1), "associated with a political party" means having run for office *in Montana* as a partisan candidate or having held ~~an~~ *a public* office *in Montana or a precinct committee representative office in Montana* with a political party designation."

**Section 22.** Section 13-13-112, MCA, is amended to read:

**"13-13-112. Display of instructions for electors.** (1) Except as provided in subsection (3), instructions for electors on how to prepare their ballots or use a voting system must be posted in each voting station provided for the preparation of ballots ~~and elsewhere in the polling place~~.

(2) The instructions must be in easily read type, 18 point or larger, and explain:

(a) how to obtain ballots for voting;

(b) how to prepare ballots, including how to:

(i) cast a valid vote, including a valid vote for a write-in candidate;

(ii) correct a mistake; and

(iii) ensure the proper disposition of the ballot after the elector is finished voting;

(c) how to obtain a new ballot in place of one spoiled by accident; *and*

(d) how to vote provisionally pursuant to 13-13-601~~;~~.

*(3) The information required in subsection (2) must also be posted at each polling place along with*

~~(c)~~ the election date*,* ~~and~~ the hours the polls are open~~;~~*,* and

~~(f)~~ instructions for *mail-in registrants and* first-time voters ~~who registered by mail~~.

~~(3)~~*(4)* If the instructions for use of a voting system are printed on the system or are part of a ballot package given to each elector, separate instructions need not be posted in the voting station.

~~(4)~~*(5)* Sample ballots, clearly marked "sample" across the face, must be posted at each voting station and in conspicuous places around the polling place."

**Section 23.** Section 13-13-118, MCA, is amended to read:

**"13-13-118. Taking ballot to disabled elector.** (1) The chief election judge may appoint two election judges who represent different political parties to take a ballot to an elector able to come to the premises where a polling place is located but unable to enter the polling place because of a disability. If election judges who represent different political parties are not available, the chief election judge shall appoint two election judges to assist the elector. The elector may request assistance in marking the ballot as provided in 13-13-119.

(2) The judges shall have the elector sign an oath form stating that the elector is entitled to vote and shall write in the precinct register by the elector's name "voted on the premises by oath" and sign their names.

(3) When the ballot or ballots are marked and folded, the judges shall immediately take them into the polling place and give them to the judge at the ballot box. ~~The judge receiving the voted ballots shall distinctly announce that the judge has "a ballot offered by ..... (name), an elector physically unable to enter the room. Does anyone object to the reception of the ballot?" If an objection is not heard, the judge shall remove the stub and place the ballot and stub in the proper boxes.~~ Any challenge to the elector's right to vote must be resolved as provided in Title 13, chapter 13, part 3."

**Section 24.** Section 13-13-201, MCA, is amended to read:

**"13-13-201. Voting by absentee ballot — procedures.** (1) A legally registered elector or provisionally registered elector is entitled to vote by absentee ballot as provided for in this part.

(2) The elector may vote absentee by:

(a) marking the ballot in the manner specified;

(b) placing the marked ballot in the secrecy envelope, free of any identifying marks;

(c) placing the secrecy envelope containing one ballot for each election being held in the ~~return~~ *signature* envelope;

(d) executing the affirmation printed on the ~~return~~ *signature* envelope; and

(e) returning the ~~return~~ *signature* envelope with all appropriate enclosures by regular mail, postage paid, or by delivering it to:

(i) the election office;

(ii) a polling place within the elector's county;

(iii) pursuant to 13-13-229, the ~~special~~ absentee election board *or an authorized election official*; or

(iv) in a mail ballot election held pursuant to Title 13, chapter 19, a designated place of deposit within the elector's county.

(3) Except as provided in 13-21-206 and 13-21-207, in order for the ballot to be counted, each elector shall return it in a manner that ensures the ballot is received prior to 8 p.m. on election day.

(4) A provisionally registered elector may also enclose in the outer ~~return~~ *signature* envelope a copy of the elector's photo identification showing the elector's name. The photo identification may be but is not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification. If the provisionally registered elector does not enclose a photo identification, the elector may enclose a copy of a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address."

**Section 25.** Section 13-13-204, MCA, is amended to read:

**"13-13-204. Authority to vote in person — printing error or ballot destroyed — replacement ballot — effect of absentee elector's death.** (1) (a) If an elector has received but not voted an absentee ballot and the absentee ballot contains printing errors or omissions, the elector may receive a replacement or corrected ballot.

(b) The death of a candidate after the printing of the ballot constitutes a printing error or omission on the ballot.

(2) ~~(a)~~ An elector may*:*

*(a)* request a replacement ballot from the election administrator pursuant to subsection (1) or if the original ballot is destroyed, spoiled, lost, or not received by the elector~~.~~*; or*

(b) ~~An elector whose original ballot is destroyed, spoiled, lost, or not received by the elector may~~ appear at the appropriate polling place on election day and vote in person after being issued a provisional ballot.

(3) A request for a replacement ballot *submitted to the election administrator* must be made on a form prescribed by the secretary of state and ~~submitted to the election administrator~~ *must be made* in person, by regular or electronic mail, or by facsimile no later than 8 p.m. on election day.

(4) Upon receiving a request for a replacement ballot pursuant to subsection (3), the election administrator shall mark the original issued ballot as void in the statewide voter registration ~~database~~ *system* and issue a replacement regular ballot to the elector.

(5) A replacement ballot may also be issued pursuant to 13-13-245.

(6) If an elector votes by absentee ballot and the ballot has been mailed *to* or ~~otherwise returned to~~ *received by* the election administrator but the elector dies between the time of balloting and election day, the deceased elector's ballot must be counted."

**Section 26.** Section 13-13-211, MCA, is amended to read:

**"13-13-211. Time period for application.** (1) Except as provided in 13-13-222, 13-21-210, and subsection (2) of this section, an application for an absentee ballot must be made before noon on the day before the election.

(2) A qualified elector who is prevented from voting at the polls as a result of illness or health emergency occurring between 5 p.m. of the Friday preceding

the election ~~and noon~~ *and before the close of polls* on election day may request to vote by absentee ballot as provided in 13-13-212(2).

*(3) An absentee ballot cast pursuant to subsection (2) must be received prior to 8 p.m. on election day pursuant to 13-13-201.*"

**Section 27.** Section 13-13-212, MCA, is amended to read:

**"13-13-212. Application for absentee ballot — special provisions — annual absentee ballot list.** (1) (a) Except as provided in subsection (1)(b), an elector may apply for an absentee ballot by using a standard application form provided by rule by the secretary of state pursuant to 13-1-210 or by making a written request, which must include the applicant's birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in 13-13-211.

(b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the ~~special~~ absentee election board *or by an authorized election official as* provided ~~for~~ in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the ~~special~~ absentee election board *or by an authorized election official* at the elector's place of confinement, hospitalization, or residence within the county.

(c) A request under ~~this~~ subsection (2)*(a)* must be received by the election administrator ~~within the time period specified in 13-13-211(2)~~ *within the time period specified in 13-13-211(2).*

~~(3) An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator.~~

~~(4)~~*(3)* (a) An elector may at any time request to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote ~~or only for each subsequent federal election in which the elector is eligible to vote for~~ as long as the elector remains qualified to vote and resides at the address provided in the initial application. The request may be made when the individual applies for voter registration using the standard application form provided for in 13-1-210.

(b) The election administrator shall annually mail a forwardable address confirmation form to each elector who has requested an absentee ballot for subsequent elections. *The address confirmation form must request the elector's driver's license number or the last four digits of the elector's social security number.* The address confirmation form must be mailed in January. The address confirmation form is for elections to be held between February 1 following the mailing through January of the succeeding year. The elector shall sign the form, indicate the address to which the absentee ballot should be sent, *provide the elector's driver's license number or the last four digits of the elector's social security number,* and return the form to the election administrator. If the

form is not completed and returned, the election administrator shall remove the elector from the annual absentee ballot list.

(c) An elector who has been removed from the annual absentee ballot list may subsequently request to be mailed an absentee ballot for each subsequent election.

~~(5)~~*(4)* In a mail ballot election, ballots must be sent under mail ballot procedures rather than under the absentee ballot procedures set forth in subsection ~~(4)~~ *(3)*."

**Section 28.** Section 13-13-213, MCA, is amended to read:

**"13-13-213. Transmission of application to election administrator — delivery of ballot.** (1) All absentee ballot application forms must be addressed to the appropriate *county* election ~~official~~ *office*.

(2) Except as provided in subsection (4), the elector may mail the *signed* application directly to the election administrator or deliver the application in person to the election administrator. An agent designated pursuant to 13-1-116 or a third party may collect the elector's application and forward it to the election administrator.

(3) (a) The election administrator shall compare the signature on the application with the applicant's signature on the registration card or the agent's signature on the agent designation form. If convinced that the individual making the application is the same as the one whose name appears on the registration card or the agent designation form, the election administrator shall deliver the ballot to the elector in person or as otherwise provided in 13-13-214, subject to 13-13-205.

(b) If no signature is provided or the election administrator is not convinced that the individual signing the application is the same person whose name appears on the registration card or agent designation form, the election administrator shall notify the elector as provided in 13-13-245.

(4) In lieu of the requirement provided in subsection (2), an elector who requests an absentee ballot pursuant to 13-13-212(2) may return the application to the ~~special~~ absentee election board *or an authorized election official*. Upon receipt of the application, the ~~special~~ absentee election board *or authorized election official* shall examine the signatures on the application and a copy of the voting registration card or agent designation form to be provided by the election administrator. If the ~~special~~ absentee election board ~~believes~~ *or an authorized election official believes* that the applicant is the same person as the one whose name appears on the registration card or agent designation form, the ~~special~~ absentee election board *or authorized election official* shall provide a ballot to the elector when the ballot is available pursuant to 13-13-205."

**Section 29.** Section 13-13-214, MCA, is amended to read:

**"13-13-214. Mailing absentee ballot to elector — delivery to person other than elector.** (1) (a) Except as provided in 13-13-213 and in subsection (1)(c) of this section, the election administrator shall mail, postage prepaid, to each legally registered elector and provisionally registered elector from whom the election administrator has received a valid absentee ballot application under 13-13-211 and 13-13-212 whatever official ballots are necessary *in a manner that conforms to postal regulations to require the return rather than forwarding of ballots*.

(b) The election administrator shall mail the ballots in a manner that conforms to the deadlines established for ballot availability in 13-13-205.

(c) The election administrator may deliver a ballot in person to an individual other than the elector if:

(i) the elector has designated the individual, either by a signed letter or by making the designation on the application form in a manner prescribed by the secretary of state or pursuant to 13-1-116;

(ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt of the ballot;

(iii) the election administrator believes that the individual receiving the ballot is the designated person; and

(iv) the designated person has not previously picked up ballots for four other electors.

(2) The election administrator shall enclose with the ballots:

(a) a secrecy envelope, free of any marks that would identify the voter; and

(b) ~~an~~ *a signature* envelope for the return of the ballots. The *signature* envelope must be self-addressed by the election administrator and an affirmation in the form prescribed by the secretary of state must be printed on the back of the *signature* envelope.

(3) The election administrator shall ensure that the ballots provided to an absentee elector are marked as provided in 13-13-116 and shall remove the stubs from the ballots, keeping the stubs in numerical order with the application for absentee ballots, if applicable, or in a precinct envelope or container for that purpose.

(4) If the ballots sent to the elector are for a primary election, the election administrator shall enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or marked in any way so that it can be identified as being used by any one elector.

(5) Instructions for voting must be enclosed with the ballots. Instructions for primary elections must include use of the envelope for unvoted ballots. The instructions must include information concerning the type or types of writing instruments that may be used to mark the absentee ballot. The instructions must include information regarding use of the secrecy envelope and use of the ~~return~~ *signature* envelope. The election administrator shall include a voter information pamphlet with the instructions if:

(a) a statewide ballot issue appears on the ballot mailed to the elector; and

(b) the elector requests a voter information pamphlet."

**Section 30.** Section 13-13-225, MCA, is amended to read:

**"13-13-225. ~~Special absentee~~ *Absentee* election boards — members — appointment.** (1) The election administrator ~~shall~~ *may* designate and appoint ~~a number of special~~ absentee election boards as needed *or authorize one or more election officials* to serve in various places to deliver ballots to electors who are entitled to vote by absentee ballot as provided in 13-13-229.

(2) In a partisan election, each ~~special~~ absentee election board *or the authorized election officials who are appointed* must consist of two members, one from each of the two political parties receiving the highest number of votes in the state during the last preceding general election, if possible. Board members *and authorized election officials* shall reside in the county in which they serve.

(3) A member of ~~a special~~ *an* absentee election board *or an authorized election official* may not be a candidate or a spouse, ascendant, descendant,

brother, or sister of a candidate or of a candidate's spouse or the spouse of any one of these if the candidate's name appears on a ballot in the county."

**Section 31.** Section 13-13-226, MCA, is amended to read:

**"13-13-226. Manner of selection.** The election administrator ~~shall~~ *may* make appointments to ~~the special~~ *an* absentee election board from lists of qualified electors prepared in substantially the same manner as provided in 13-4-102. If the list is insufficient to make all the appointments required, the election administrator may appoint any qualified registered elector from the county. The election administrator may refuse for cause to appoint or may for cause remove a member of ~~a special~~ *an* absentee election board."

**Section 32.** Section 13-13-227, MCA, is amended to read:

**"13-13-227. Oath of board members.** Before assuming any of the responsibilities under this part, each member of ~~a special~~ *an* absentee election board shall take and subscribe the official oath in the same manner as prescribed for an election judge in 13-4-105."

**Section 33.** Section 13-13-228, MCA, is amended to read:

**"13-13-228. Compensation.** (1) Each member of ~~a special~~ *an* absentee election board is entitled to compensation for the number of hours worked.

(2) Each member of ~~a special~~ *an* absentee election board is entitled to full reimbursement for actual travel expenses incurred while delivering ballots on election day.

(3) The election administrator shall pay each member the same compensation and certify amounts due in the same manner as for an election judge as provided for in 13-4-106(1)."

**Section 34.** Section 13-13-229, MCA, is amended to read:

**"13-13-229. Voting performed before ~~special~~ absentee election board *or authorized election official.*** (1) Pursuant to 13-13-212(2), the elector may request that ~~a special~~ *an* absentee election board *or an authorized election official* personally deliver a ballot to the elector.

(2) The manner and procedure of voting by use of an absentee ballot under this section must be the same as provided in 13-13-201, except that the elector shall hand the marked ballot in the sealed ~~return~~ *signature* envelope to the ~~special~~ absentee election board *or authorized election official*, and the board *or official* shall deliver the sealed ~~return~~ *signature* envelope to the election administrator or to the election judges of the precinct in which the elector is registered.

(3) An absentee ballot cast by a qualified elector pursuant to this section may not be rejected by the election administrator if the ballot was in the possession of the board *or an authorized election official* before the time designated for the closing of the polls.

(4) An elector who needs assistance in marking the elector's ballot because of physical incapacity or inability to read or write may receive assistance from the ~~special~~ absentee election board *or authorized election official* appointed to personally deliver the ballot. Any assistance given an elector pursuant to this section must be provided in substantially the same manner as required in 13-13-119."

**Section 35.** Section 13-13-230, MCA, is amended to read:

**"13-13-230. Authorization to increase county mill levy.** Subject to 15-10-420, a county may levy an amount necessary to finance the additional cost of administering ~~a special~~ *an* absentee election board program pursuant to

13-13-225 through 13-13-229. The mill levy may not be included as part of any existing mill levy or special mill levy assessed by the county. The amount of any mill levy adopted under this section must be reasonably related to the actual cost of providing services as required by 13-13-225 through 13-13-229."

**Section 36.** Section 13-13-241, MCA, is amended to read:

**"13-13-241. Examination of absentee ballot ~~return~~ *signature* envelopes — deposit of absentee and unvoted ballots — rulemaking.** (1) (a) Upon receipt of each absentee ballot signature envelope, an election administrator shall compare the signature of the elector or elector's agent on the absentee ballot request or on the elector's voter registration card with the signature on the ~~return~~ *signature* envelope.

(b) If the elector is legally registered and the signature on the ~~return~~ *signature* envelope matches the signature on the absentee ballot application or on the elector's voter registration card, the election administrator or an election judge shall handle the ballot as a regular ballot.

(c) (i) If the elector is provisionally registered and the signature on the ~~return~~ *signature* envelope matches the signature on the absentee ballot application or on the elector's voter registration card, the election administrator or an election judge shall open the outer ~~return~~ *signature* envelope and determine whether the elector's voter identification and eligibility information, if enclosed pursuant to 13-13-201, is sufficient pursuant to rules adopted under 13-2-109 to legally register the elector.

(ii) If the voter identification and eligibility information is sufficient to legally register the elector, the ballot must be handled as a regular ballot.

(iii) If voter identification or eligibility information was not enclosed or the information enclosed is insufficient to legally register the elector, the ballot must be handled as a provisional ballot under 13-15-107.

(2) If a voted absentee ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot.

(3) In a primary election, unvoted party ballots must be separated from the secrecy envelopes and handled without being removed from their enclosure envelopes. If an unvoted party ballot is not received, the election administrator shall process the voted party ballot as if the unvoted party ballot had been received.

(4) If an elector's ballot is to be handled as a provisional ballot, the election administrator shall notify the absentee elector as provided in 13-13-245.

(5) If the signature on the absentee ballot ~~return~~ *signature* envelope does not match the signature on the absentee ballot request form or on the elector's voter registration card or if there is no signature on the absentee ballot ~~return~~ *signature* envelope, the election administrator shall notify the elector as provided in 13-13-245.

(6) If at any point there is a question concerning the validity of a particular ballot, the question must be resolved as provided in 13-13-245.

(7) After receiving an absentee ballot secrecy envelope and if the validity of the ballot is confirmed pursuant to 13-13-245, then no sooner than 1 business day before election day, the election official may, in the presence of a poll watcher, open the secrecy envelope and place the ballot in the proper, secured ballot box until tabulation occurs on election day.

(8) The election administrator shall safely and securely keep the absentee ballots in the election administrator's office until delivered by the election administrator to the election judges.

(9) The secretary of state shall develop administrative rules to establish the process and procedures to be used during the early preparation of ballots to ensure the security of the ballots and the secrecy of the votes during the early preparation period. The rules must include but are not limited to:

(a) the allowable distance from the observers to the judges and ballots;

(b) the security in the observation area;

(c) secrecy of votes during the preparation of the ballots; and

(d) security of the secured ballot boxes in storage until tabulation procedures begin on election day."

**Section 37.** Section 13-13-244, MCA, is amended to read:

**"13-13-244. Opening of ~~return~~ *signature* envelopes after deposit.** If a ~~return~~ *signature* envelope containing an absentee ballot has been deposited unopened in the ballot box and the envelope has not been marked rejected, the ~~return~~ *signature* envelope must be processed as provided in 13-13-241."

**Section 38.** Section 13-13-245, MCA, is amended to read:

**"13-13-245. Notice to elector — opportunity to resolve questions.** (1) As soon as possible after receipt of an elector's absentee ballot application or ~~return~~ *signature* envelope, the election administrator shall give notice to the elector by the most expedient method available if the election administrator ~~has not received or is unable to verify the elector's or agent's signature under 13-13-213 or 13-13-241.~~ *determines that:*

*(a) the elector's ballot is to be handled as a provisional ballot;*

*(b) the validity of the ballot is in question; or*

*(c) the election administrator has not received or is unable to verify the elector's or agent's signature under 13-13-213 or 13-13-241.*

(2) The election administrator shall inform the elector that, prior to 8 p.m. on election day, the elector may:

(a) by mail, facsimile, electronic means, or in person, *resolve the issue that resulted in the ballot being handled as a provisional ballot, confirm the validity of the ballot, or* verify the elector's or agent's signature or provide a signature, after proof of identification, by affirming that the signature is in fact the elector's, by completing a new registration card containing the elector's current signature, or by providing a new agent designation form; or

(b) if necessary, request and receive a replacement ballot pursuant to 13-13-204.

(3) The ballot of an elector who fails to provide information pursuant to subsection (2) must be handled as a provisional ballot pursuant to 13-15-107.

(4) (a) If a ballot is returned as undeliverable, the election administrator shall investigate the reason for the return.

(b) An elector must be provided with:

(i) the elector's undeliverable ballot upon notification by the elector of the elector's correct mailing address; or

(ii) a replacement ballot if a request has been made pursuant to 13-13-204."

**Section 39.** Section 13-13-301, MCA, is amended to read:

**"13-13-301. Challenges.** (1) An elector's right to vote may be challenged at any time by any registered elector by the challenger filling out and signing an

affidavit stating the grounds of the challenge and providing any evidence supporting the challenge to the election administrator or, on election day, to an election judge.

(2) A challenge may be made on the grounds that the elector:

(a) is of unsound mind, as determined by a court;

(b) has voted before in that election;

(c) has been convicted of a felony and is serving a sentence in a penal institution;

(d) is not registered as required by law;

(e) is not 18 years of age or older;

(f) has not been, for at least 30 days, a resident of the county in which the elector is offering to vote, except as provided in 13-2-514;

(g) is a provisionally registered elector whose status has not been changed to a legally registered voter; or

(h) does not meet another requirement provided in the constitution or by law.

(3) When a challenge has been made under this section, unless the election administrator determines *without the need for further information* that the challenge is insufficient~~, then without the need for further information~~:

(a) prior to the close of registration under 13-2-301, the election administrator shall question the challenger and the challenged elector and may question other persons to determine whether the challenge is sufficient or insufficient to cancel the elector's registration under 13-2-402; or

(b) after the close of registration or on election day, the election administrator or, on election day, the election judge shall allow the challenged elector to cast a provisional paper ballot, which must be handled as provided in 13-15-107.

(4) (a) In response to a challenge, the challenged elector may fill out and sign an affidavit to refute the challenge and swear that the elector is eligible to vote.

(b) If the challenge was not made in the presence of the elector being challenged, the election administrator or election judge shall notify the challenged elector of who made the challenge and the grounds of the challenge and explain what information the elector may provide to respond to the challenge. The notification must be made:

(i) within 5 days of the filing of the challenge if the election is more than 5 days away; or

(ii) on or before election day if the election is less than 5 days away.

(c) The election administrator or, on election day, the election judge shall also provide to the challenged elector a copy of the challenger's affidavit and any supporting evidence provided.

(5) The secretary of state shall adopt rules to implement the provisions of this section and shall provide standardized affidavit forms for challengers and challenged electors."

**Section 40.** Section 13-13-602, MCA, is amended to read:

**"13-13-602. Fail-safe and provisional voting by mail.** (1) To ensure the election administrator has information sufficient to determine the elector's eligibility to vote, an elector voting by mail may enclose in the outer ~~return~~ *signature* envelope, together with the voted ballot in the secrecy envelope, a copy of a current and valid photo identification with the elector's name or a copy of a

current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address or other information necessary to determine the elector's eligibility to vote.

(2) The elector's ballot must be handled as a provisional ballot under 13-15-107 if:

(a) a provisionally registered elector voting by mail does not enclose with the ballot the information described in subsection (1);

(b) the information provided under subsection (1) is invalid or insufficient to verify the elector's eligibility; or

(c) the elector's name does not appear on the precinct register."

**Section 41.** Section 13-13-603, MCA, is amended to read:

**"13-13-603. Rulemaking on provisional voting, absentee ballots, and challenged ballots.** (1) The secretary of state shall adopt rules to:

(a) implement the provisions of 13-13-114 and this part concerning verification of voter identification and eligibility;

(b) establish standards for determining the sufficiency of information provided on absentee ballot ~~return~~ *signature* envelopes pursuant to 13-13-241;

(c) implement the provisions of 13-15-107 on the handling and counting of provisional and challenged ballots, including the establishment of procedures for verifying voter registration and eligibility information with respect to the ballots.

(2) The rules may not conflict with rules established under 13-2-109."

**Section 42.** Section 13-14-112, MCA, is amended to read:

**"13-14-112. Declarations for nomination — fee — filing.** (1) Nonpartisan candidates shall file declarations for nomination as required by the primary election laws in a form prescribed by the secretary of state except as provided in 13-14-113. A candidate may not file for more than one public office.

(2) Declarations may not indicate political affiliation. The candidate may not state in the declaration any principles or measures that the candidate advocates or any slogans.

(3) Each individual filing a declaration shall pay the fee prescribed by law for the office that the individual seeks.

(4) Declarations must be filed:

(a) in the office of the secretary of state or the appropriate election administrator as provided in 13-10-201; and

(b) within the applicable filing period provided in 13-10-201~~(6)(a)~~*(7)(a)* or ~~(6)(b)~~ *(7)(b)* for the office that the individual seeks."

**Section 43.** Section 13-14-113, MCA, is amended to read:

**"13-14-113. Filing for offices without salary or fees.** (1) Candidates for nonpartisan offices for which a salary or fees are not paid shall file with the appropriate official a petition for nomination *or a declaration for nomination* containing the information and the oath of the candidate required for a declaration of nomination in a form prescribed by the secretary of state.

(2) Petitions for nomination *or declarations for nomination* must be filed within the applicable filing period provided in 13-10-201~~(6)(a)~~*(7)(a)* or ~~(6)(b)~~ *(7)(b)*.

(3) A candidate may not file for more than one public office."

**Section 44.** Section 13-15-107, MCA, is amended to read:

**"13-15-107. Handling and counting provisional and challenged ballots.** (1) To verify eligibility to vote, a provisionally registered ~~elector~~ *individual* who casts a provisional ballot has until 5 p.m. on the day after the election to provide valid identification or eligibility information either in person, by facsimile, by electronic means, or by mail postmarked no later than the day after the election.

(2) (a) If a legally registered ~~elector~~ *individual* casts a provisional ballot because the ~~elector~~ *individual* failed to provide sufficient identification as required pursuant to 13-13-114(1)(a), the election administrator shall compare the signature of the ~~elector~~ *individual* or the ~~elector's~~ *individual's* agent designated pursuant to 13-1-116 on the affirmation required under 13-13-601 to the signature on the ~~elector's~~ *individual's* voter registration card or the agent's designation form.

(b) If the signatures match, the election administrator shall handle the ballot as provided in subsection (5).

(c) If the signatures do not match and the ~~elector~~ *individual* or the ~~elector's~~ *individual's* agent fails to provide valid identification information by the deadline, the ballot must be rejected and handled as provided in 13-15-108.

(3) A provisional ballot must be counted if the election administrator verifies the ~~elector's~~ *individual's* identity or eligibility pursuant to rules adopted under 13-13-603. However, if the election administrator cannot verify the ~~elector's~~ *individual's* identity or eligibility under the rules, the ~~elector's~~ *individual's* provisional ballot must be rejected and handled as provided in 13-15-108. If the ballot is provisional because of a challenge and the challenge was made on the grounds that the ~~elector~~ *individual* is of unsound mind or serving a felony sentence in a penal institution, the ~~elector's~~ *individual's* provisional ballot must be counted unless the challenger provides documentation by 5 p.m. on the day after the election that a court has established that the ~~elector~~ *individual* is of unsound mind or that the ~~elector~~ *individual* has been convicted and sentenced and is still serving a felony sentence in a penal institution.

(4) The election administrator shall provide an ~~elector~~ *individual* who cast a provisional ballot but whose ballot was or was not counted with the reasons why the ballot was or was not counted.

(5) A provisional ballot must be removed from its provisional envelope, grouped with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other provisional ballot if the ~~elector's~~ *individual's* voter information is:

(a) verified before 5 p.m. on the day after the election; or

(b) postmarked by 5 p.m. on the day after election day and received and verified by 3 p.m. on the sixth day after the election.

(6) Provisional ballots that are not resolved by the end of election day may not be counted until after 3 p.m. on the sixth day after the election."

**Section 45.** Section 13-15-108, MCA, is amended to read:

**"13-15-108. Rejected ballots — handling provided by rule.** (1) All rejected absentee ballots, the absentee ballot applications, and all absentee ballot ~~return~~ *signature* envelopes must be handled and marked as provided under rules adopted by the secretary of state.

(2) After being handled and marked as provided in this section, all rejected ballots must be placed in a package or container in which the voted ballots are to be placed and the package or container must be sealed, dated, and marked as provided under rules adopted by the secretary of state. After a package or

container is sealed pursuant to this subsection ~~(3)~~ *(2)*, a package or container may not be opened without a court order."

**Section 46.** Section 13-15-201, MCA, is amended to read:

**"13-15-201. Preparation for count — absentee ballot count procedures.** (1) Subject to 13-10-311, to prepare for a count of ballots, the counting board or, if appointed, the absentee counting board shall take ballots out of the box to determine whether each ballot is single.

(2) The board shall count all ballots to ensure that the total number of ballots corresponds with the total number of names in the pollbook.

(3) If the board cannot reconcile the total number of ballots with the pollbook, the board shall submit to the election administrator a written report stating how many ballots were missing or in excess and any reason of which they are aware for the discrepancy. Each judge on the board shall sign the report.

(4) A ballot that is not marked as official is void and may not be counted unless all judges on the board agree that the marking is missing because of an error by election officials, in which case the ballot must be marked "unmarked by error" on the back and must be initialed by all judges.

(5) If two or more ballots are folded or stuck together to look like a single ballot, they must be laid aside until the count is complete. The counting board shall compare the count with the pollbooks, and if a majority believes that the ballots folded together were ~~voted~~ *marked* by one elector, the ballots must be rejected and handled as provided in 13-15-108, otherwise they must be counted.

(6) Only valid absentee ballots may be counted in an election conducted under this chapter.

(7) For the purpose of this chapter, a ~~voted~~ *marked* absentee ballot is valid only if:

(a) the elector's signature on the affirmation on the ~~return~~ *signature* envelope is verified pursuant to 13-13-241; and

(b) it is received before 8 p.m. on election day, except as provided in 13-21-206 and 13-21-207.

(8) (a) A ballot is invalid if:

(i) problems with the ballot have not been resolved pursuant to 13-13-245;

(ii) any identifying marks are placed on the ballot by the elector*, which must result in the immediate rejection of the ballot without notice to the elector*; or

(iii) except as provided in subsection (8)(b), more than one ballot is enclosed in a single ~~return~~ *signature* or secrecy envelope.

(b) The provisions of subsection (8)(a)(iii) do not apply if:

(i) there are multiple elections being held at the same time and the envelope contains only one ballot for each election; or

(ii) the ~~return~~ *signature* envelope contains ballots from the same household, each ballot is in its own secrecy envelope, and the ~~return~~ *signature* envelope contains a valid signature for each elector who has returned a ballot."

**Section 47.** Section 13-15-206, MCA, is amended to read:

**"13-15-206. Counting votes — uniformity — rulemaking — definitions.** (1) When conducting vote counts as provided by law, a counting board, absentee ballot counting board, or recount board shall count and determine the validity of each vote in a uniform manner as provided in this section.

(2) A manual count or recount of votes must be conducted as follows:

(a) One election judge on the board shall read the ballot while the two other judges on the board shall each record on an official tally sheet the number of valid votes cast for each individual or ballot issue. Write-in votes must be counted in accordance with subsection (5) and rules adopted pursuant to subsection (7). If a vote has not been cast according to instructions, the vote must be considered questionable and the entire ballot must be set aside and votes on the ballot must be handled as provided in subsection (4).

(b) (i) After the vote count is complete, the tally sheets of the two judges recording the votes must be compared.

(ii) If the two tallies match, the judges shall record in the ~~pollbook~~ *official results records*:

(A) the names of all individuals who received votes;

(B) the offices for which individuals received votes;

(C) the total votes received by each individual as shown by the tally sheets; and

(D) the total votes received for or against each ballot issue, if any.

(iii) If the tallies do not match, the count must be conducted again as provided in this subsection (2) until the two tallies match.

(3) (a) When a voting system is counting votes:

(i) if a vote is recognized and counted by the system, it is a valid vote;

(ii) if a vote is not recognized and counted by the system, it is not a valid vote;

(iii) write-in votes must be counted in accordance with rules adopted pursuant to subsection (7).

(b) If the voting system cannot process the ballot because of the ballot's condition or if the voting system registers an ~~unvoted~~ *unmarked* ballot or an overvote, which must be considered a questionable vote, the entire ballot must be set aside and the votes on the ballot must be counted as provided in subsection (4).

(c) If an election administrator or counting board has reason to believe that a voting system is not functioning correctly, the election administrator shall follow the procedures prescribed in 13-15-209.

(d) After all valid votes have been counted and totaled, the judges shall record in the ~~pollbook~~ *official results records* the information specified in subsection (2)(b)(ii).

(4) (a) (i) Before being counted, each questionable vote on a ballot set aside under subsection (2)(a) or (3)(b) must be reviewed by the counting board. The counting board shall evaluate each questionable vote according to rules adopted by the secretary of state.

(ii) If a majority of the counting board members agree that under the rules the voter's intent can be clearly determined, the vote is valid and must be counted according to the voter's intent.

(iii) If a majority of the counting board members do not agree that the voter's intent can be clearly determined under the rules, the vote is not valid and may not be counted.

(b) If a ballot was set aside under subsection (3)(b) because it could not be processed by the voting system due to the ballot's condition, the counting board shall transfer all valid votes to a new ballot that can be processed by the voting system.

(5) A write-in vote may be counted *only* if:

(a) (i) the write-in vote identifies an individual by a designation filed pursuant to 13-10-211(1)(a); or

(ii) pursuant to 13-10-211(8), a declaration of nomination was not filed and the write-in vote identifies an individual who is qualified for the office; and

(b) the oval, box, or other designated voting area on the ballot is marked.

(6) A vote is not valid and may not be counted if the elector's choice cannot be determined as provided in this section.

(7) The secretary of state shall adopt rules defining a valid vote and a valid write-in vote for each type of ballot and for each type of voting system used in the state. The rules must provide a sufficient guarantee that all votes are treated equally among jurisdictions using similar ballot types and voting systems.

(8) Local election administrators shall adopt policies to govern local processes that are consistent with the provisions of this title and that provide for:

(a) the security of the counting process against fraud;

(b) the place and time and public notice of each count or recount;

(c) public observance of each count or recount, including observance by representatives authorized under 13-16-411;

(d) the recording of objections to determinations on the validity of an individual vote or to the entire counting process; and

(e) the keeping of a public record of count or recount proceedings.

(9) For purposes of this section, "overvote" means an elector's vote that has been interpreted by the voting system as an elector casting more votes than allowable for a particular office or ballot issue."

**Section 48.** Section 13-15-401, MCA, is amended to read:

**"13-15-401. Governing body as board of county canvassers.** (1) The governing body of a county or consolidated local government is ex officio a board of county canvassers and shall meet as the board of county canvassers at the usual meeting place of the governing body within ~~3 to~~ 14 days after each election, at a time determined by the board, to canvass the returns.

(2) If one or more of the members of the governing body cannot attend the meeting, the member's place must be filled by one or more county officers chosen by the remaining members of the governing body so that the board of county canvassers' membership equals the membership of the governing body.

(3) The governing body of any political subdivision in the county that participated in the election may join with the governing body of the county or consolidated local government in canvassing the votes cast at the election.

(4) The election administrator is secretary of the board of county canvassers and shall keep minutes of the meeting of the board and file them in the official records of the administrator's office."

**Section 49.** Section 13-16-201, MCA, is amended to read:

**"13-16-201. Conditions under which recount to be conducted.** (1) A recount must be conducted if:

(a) a candidate for a precinct office or for a county, municipal, or district office voted for in only one county, other than a legislator or a judge of the district court, is defeated by a margin not exceeding 1/4 of 1% of the total votes cast or by a margin not exceeding 10 votes, whichever is greater, and the defeated candidate, within 5 days after the official canvass, files with the election administrator a verified petition stating that the candidate believes that a

recount will change the result and that a recount of the votes for the office or nomination should be conducted;

(b) a candidate for a congressional office, a state or district office voted on in more than one county, the legislature, or judge of the district court is defeated by a margin not exceeding 1/4 of 1% of the total votes cast for all candidates for the same position and the defeated candidate, within 5 days after the official canvass, files a petition with the secretary of state as set forth in subsection (1)(a). The secretary of state shall immediately notify ~~by certified mail~~ each election administrator whose county includes any precincts that voted for the office, and a recount must be conducted in those precincts.

(c) a question submitted to the vote of the people of a county, municipality, or district within a county is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed with the election administrator. This petition must be signed by not less than 10 electors of the jurisdiction and must be filed within 5 days after the official canvass.

(d) a question submitted to the vote of the people of the state is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed with the secretary of state. This petition must be signed by not less than 100 electors of the state, representing at least five counties of the state, and must be filed within 5 days after the official canvass.

(e) a question submitted to the vote of the people of a multicounty district is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed with the secretary of state. This petition must be signed by not less than 25 electors of the district, representing at least two counties, and must be filed within 5 days after the official canvass.

(f) a canvassing board petitions for a recount as provided in 13-15-403.

(2) If the election is a school election, the petition is filed with the filing officer with whom the declarations for nomination for school district office were filed or with whom the school ballot issue was filed.

(3) When a recount is required under subsection (1)(b), (1)(d), or (1)(e), the secretary of state shall immediately notify each election administrator of the filing of the petition, and a recount must be conducted in all precincts in each affected county."

**Section 50.** Section 13-16-211, MCA, is amended to read:

**"13-16-211. Recounts allowed if bond posted to cover all costs.** (1) If a candidate for a public office is defeated by a margin exceeding 1/4 of 1% but not exceeding 1/2 of 1% of the total votes cast for all candidates for the same position, the candidate may, within 5 days after the official canvass, file with the officer with whom the candidate's declaration or petition for nomination was filed a petition stating that the candidate believes a recount will change the result of the election.

(2) The unsuccessful candidate shall post a bond with the ~~clerk and recorder~~ *election administrator* of the county in which the candidate resides. The bond must be in an amount set by the ~~clerk and recorder~~ *election administrator* sufficient to cover all costs of the recount incurred by each county in which a recount is sought, ~~including loss of time of regular employees caused by absence from their regular duties~~ *which may include the following:*

*(a) compensation for the county recount board, the election administrator, and any additional personnel needed to participate in the recount; and*

*(b) necessary supplies and travel related to the recount*.

(3) Upon the filing of a petition and posting of a bond under this section, the ~~board of county canvassers~~ *county recount board, as designated in 13-16-101,* in each county affected shall meet and recount the ballots specified in the petition."

**Section 51.** Section 13-16-417, MCA, is amended to read:

**"13-16-417. Sealing ballots ~~and voting systems~~.** (1) When a recount of paper ballots ~~that was conducted using a voting system~~ is finished, each ballot must again be sealed in the same package or envelope in the presence of the election administrator and the county recount board and must be delivered to the election administrator for custody.

~~(2) All voting systems must be secured as provided in rules adopted under 13-17-211.~~

~~(3)~~*(2)* All other materials used in the recount that are required to be sealed must be resealed in the same manner and delivered to the election administrator for custody."

**Section 52.** Section 13-17-203, MCA, is amended to read:

**"13-17-203. Publication of information concerning voting systems.** (1) Not more than 10 or less than 2 days before an election at which a voting system will be used *by voters*, the election administrator shall broadcast on radio or television, as provided in 2-3-105 through 2-3-107, or publish in a newspaper of general circulation in the county:

(a) a diagram showing the voting system *to be used by voters* and a sample of the ballot layout (in newspaper only);

(b) a statement of the locations where voting systems *to be used by voters* are on public exhibition; and

(c) instructions on how to vote.

(2) The election administrator shall select the method of notification that the election administrator believes is best suited to reach the largest number of potential electors."

**Section 53.** Section 13-17-211, MCA, is amended to read:

**"13-17-211. Uniform procedures for using voting systems.** (1) For each voting system approved under 13-17-101, the secretary of state shall adopt rules specifying the procedures to be uniformly applied in elections conducted with the voting system.

(2) The rules must, at a minimum, specify procedures that address the following:

(a) performance testing and certification under 13-17-212;

(b) how electors ensure the proper disposition of a ballot pursuant to 13-13-117(2);

(c) the procedures to be followed if the comparison under 13-15-206(2)(b) reveals discrepancies;

(d) how to operate and test the system during counts; and

(e) the security measures necessary to secure the voting system before, during, and after an election~~, including security following a recount under 13-16-417~~."

**Section 54.** Section 13-19-102, MCA, is amended to read:

**"13-19-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Ballot" means the ballot or set of ballots that is to be returned by a specified election day.

(2) "Election day" is the date established by law on which a particular election would be held if that election were being conducted by means other than a mail ballot election.

(3) "Political subdivision" means a political subdivision of the state, including a school district.

(4) "Secrecy envelope" means an envelope used to contain the elector's ballot and that is designed to conceal the elector's ballot and to prevent that elector's ballot from being distinguished from the ballots of other electors.

~~(5) "Signature envelope" means an envelope that contains a secrecy envelope and ballot and that is designed to:~~

~~(a) allow election officials, upon examination of the outside of the envelope, to determine that the ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and~~

~~(b) allow it to be used in the United States mail.~~"

**Section 55.** Section 13-19-106, MCA, is amended to read:

**"13-19-106. General requirements for mail ballot election.** A mail ballot election must be conducted substantially as follows:

(1) Subject to 13-12-202, official mail ballots must be prepared and all other initial procedures followed as provided by law, except that mail ballots must be paper ballots and are not required to have stubs.

(2) An official ballot must be mailed to every qualified elector of the political subdivision conducting the election.

(3) Each signature envelope must contain a form that is the same as the form for absentee ballot ~~return~~ *signature* envelopes and that is prescribed by the secretary of state for the elector to verify the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address and to return the corrected address with the voted ballot in the manner provided by 13-19-306.

(4) The elector shall mark the ballot and place it in a secrecy envelope.

(5) (a) The elector shall then place the secrecy envelope containing the elector's ballot in a signature envelope and mail it or deliver it in person to a place of deposit designated by the election administrator.

(b) Except as provided in 13-21-206 and 13-21-207, the voted ballot must be received before 8 p.m. on election day.

(6) Election officials shall first qualify the voted ballot by examining the signature envelope to determine whether it is submitted by a qualified elector who has not previously voted in the election.

(7) If the voted ballot qualifies and is otherwise valid, officials shall then open the signature envelope and remove the secrecy envelope, which must be deposited unopened in an official ballot box.

(8) Except as provided in 13-19-312, after the close of voting on election day, voted ballots must be counted and canvassed as provided in Title 13, chapter 15."

**Section 56.** Section 13-19-304, MCA, is amended to read:

**"13-19-304. Voting by nonregistered electors.** (1) For any election being conducted under this chapter by a political subdivision that allows individuals to vote who are not registered electors, the individual may vote by appearing in person at the election administrator's office or by providing materials by mail, facsimile, or electronic means and demonstrating that the individual possesses the qualifications required for voting.

(2) An individual complying with subsection (1) before official ballots are available may provide a card to the election administrator containing the signature of the individual or the individual's agent designated pursuant to 13-1-116 and the address to which the ballot is to be mailed. The signature provided must be used for verification when the mail ballot is returned.

(3) An individual complying with subsection (1) after official ballots are available and before ~~the close of the polls~~ *8 p.m.* on election day must be permitted to vote at that time."

**Section 57.** Section 13-21-210, MCA, is amended to read:

**"13-21-210. Application for absentee ballots.** (1) (a) A United States elector may apply for a regular absentee ballot as follows:

(i) by making a written request, which must include the elector's birth date and signature;

(ii) by properly completing, signing, and returning to the election administrator the federal post card application;

(iii) by making an electronic request that includes the elector's birth date and affirmation of the voter's eligibility to vote under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff, et seq.; or

(iv) by submitting to the election administrator the standard application form provided for in 13-1-210 when registering to vote.

(b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) An application for a regular absentee ballot must be received by the appropriate county election administrator by the time specified in 13-2-304 for late registration.

(3) An application under this section is valid for all federal, state, and local elections in the calendar year in which the application is made unless an elector requests to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote ~~or only for each subsequent federal election in which the elector is eligible to vote~~ for as long as the elector remains eligible to vote and resides at the address provided in the initial application.

(4) If an elector fails to provide the address confirmation required by 13-13-212, the elector must be removed from the annual absentee ballot list. An elector who is removed from the annual absentee ballot list will continue to receive absentee ballots during the period covered in the elector's initial application under this section.

(5) The elector's county election administrator shall provide the elector with a regular absentee ballot for the elections described in subsection (3) as soon as the ballots are printed, but not later than 45 days before either a federal primary election, federal general election, or federal special election."

**Section 58.** Section 13-21-212, MCA, is amended to read:

**"13-21-212. Mailing ballots to United States elector.** Ballots mailed to a United States elector must be handled as prescribed in 13-13-214, except that both the envelope in which a ballot is mailed to the elector and the ~~return~~ *signature* envelope for the ballot must have printed across its face the information and graphics and be of the color prescribed by the secretary of state consistent with the regulations established by the federal election commission, the U.S. postal service, or other federal agency."

**Section 59.** Section 13-35-218, MCA, is amended to read:

**"13-35-218. Coercion or undue influence of voters.** (1) A person, directly or indirectly, individually or through any other person, in order to induce or compel a person to vote or refrain from voting for any candidate, the ticket of any political party, or any ballot issue before the people, may not:

(a) use or threaten to use any force, coercion, violence, restraint, or undue influence against any person; or

(b) inflict or threaten to inflict, individually or with any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person.

~~(2) A person who is a minister, preacher, priest, or other church officer or who is an officer of any corporation or organization, religious or otherwise, may not, other than by public speech or print, urge, persuade, or command any voter to vote or refrain from voting for or against any candidate, political party ticket, or ballot issue submitted to the people because of the person's religious duty or the interest of any corporation, church, or other organization.~~

~~(3)~~*(2)* A person may not, by abduction, duress, or any fraudulent contrivance, impede or prevent the free exercise of the franchise by any voter at any election or compel, induce, or prevail upon any elector to give or to refrain from giving the elector's vote at any election.

~~(4)~~*(3)* A person may not, in any manner, interfere with a voter lawfully exercising the right to vote at an election in order to prevent the election from being fairly held and lawfully conducted.

~~(5)~~*(4)* A person on election day may not obstruct the doors or entries of any polling place or engage in any solicitation of a voter within the room where votes are being cast or elsewhere in any manner that in any way interferes with the election process or obstructs the access of voters to or from the polling place."

**Section 60.** Section 13-37-126, MCA, is amended to read:

**"13-37-126. Names not to appear on ballot.** (1) The name of a candidate may not appear on the official ballot for an election if the candidate or a treasurer for a candidate fails to file any statement or report as required by this chapter.

(2) A vacancy on an official ballot under this section may be filled in the manner provided by law, but not by the name of the same candidate.

(3) (a) In carrying out the mandate of this section, the commissioner shall, by a written statement, notify the secretary of state or the election administrator that a candidate or a candidate's treasurer has not complied with the provisions of this chapter, as described in subsection (1), and that a candidate's name may not appear on the official ballot.

(b) The commissioner shall provide the notification:

(i) within 8 calendar days after the ~~close of the~~ *earliest* certification deadline provided in 13-10-208(1) for primary elections held pursuant to 13-1-107(1); or

(ii) by the earliest date specified under 13-10-208(2) for the county election administrator to certify the ballot for primary elections held pursuant to 13-1-107(2) or (3); and

(iii) by no later than 7 days before the ballot certification deadline provided in 13-12-201 for general elections."

**Section 61.** Section 13-38-201, MCA, is amended to read:

**"13-38-201. Election of committee representatives at primary — vacancies — *tie votes.*** (1) Except as provided in subsection (4), each political party shall elect at each primary election one person of each sex to serve as committee representatives for each election precinct. The committee representatives must be residents and registered voters of the precinct.

(2) An elector may be placed in nomination for precinct committee representative by a declaration of nomination, signed by the elector, notarized, and filed in the office of the county election administrator within the time for filing declarations naming candidates for nomination at the regular biennial primary election.

(3) Except as provided in subsection (4), the names of candidates for precinct committee representative of each political party must appear on the party ticket in the same manner as other candidates and are voted for in the same manner as other candidates.

(4) If the number of candidates nominated for a party's precinct committee representatives is less than or equal to the number of positions to be elected, the election administrator may give notice that a party's precinct committee election will not be held in that precinct.

(5) If a party precinct committee election is not held pursuant to subsection (4), the election administrator shall declare elected by acclamation the candidate who filed for the position or who filed a declaration of intent to be a write-in candidate. The election administrator shall issue a certificate of election to the designated party.

(6) Write-in votes for precinct committee representatives may be counted as specified in 13-15-206(5) only if the individual whose name is written in has filed a declaration of intent as a write-in candidate by the deadline prescribed in 13-10-211(1).

*(7) In the case of a tie vote for a precinct committee representative position, the county central committee shall determine a winner.*

~~(7)~~*(8)* Pursuant to 13-38-101, a vacancy in a precinct committee representative position must be filled by the party governing body as provided in its rules."

**Section 62. Directions to code commissioner.** (1) Whenever the phrase "statewide voter registration database" or the word "database" meaning the statewide voter registration database appears in the Montana Code Annotated or in legislation enacted during the 63rd legislative session, the code commissioner shall change the phrase to "statewide voter registration system" and the word to "system".

(2) Whenever the words "return envelope" appear in Title 13 of the Montana Code Annotated or in legislation enacted in Title 13 during the 63rd legislative session, the code commissioner shall change the words to "signature envelope".

**Section 63. Coordination instruction.** If both House Bill No. 126 and [this act] are passed and approved and if both contain sections amending 13-10-209, then the sections amending 13-10-209 are void and 13-10-209 must be amended as follows:

**"13-10-209. Arrangement and preparing of primary ballots.** (1) (a) Ballots for a primary election must be arranged and prepared in the same manner and number as provided in chapter 12 for general election ballots, except that there must be separate ballots for each political party entitled to participate. The name of the political party must appear at the top of the separate ballot for that party and need not appear ~~opposite~~ *with* each candidate's name.

(b) Nonpartisan offices and ballot issues may be prepared on separate ballots or may appear on the same ballot as partisan offices if:

(i) each section is clearly identified as separate; *and*

(ii) the nonpartisan offices and ballot issues appear on each party's ballot; and

(iii) ~~with respect to ballot issues, written approval is obtained as provided in~~ *ballot issues are prepared in accordance with* 13-27-502.

(2) ~~An~~ *Except as provided in subsection (3), an* election administrator does not need to prepare a primary ballot for a political party if:

(a) the party does not have candidates for more than half of the offices to appear on the ballot; ~~or~~ *and*

(b) no more than one candidate files for nomination by that party for any of the offices to appear on the ballot.

*(3) Subsection (2) does not apply to elections for precinct committee offices. If more than one candidate files for a precinct committee office from a party that will not have a primary ballot prepared, that party shall select the candidate to fill the office.*

~~(3)~~*(4)* If, pursuant to subsection (2), in a primary election held under 13-1-107(1) a primary ballot for a political party is not prepared, the secretary of state shall certify that a primary election is unnecessary for that party and shall instruct the election administrator to certify the names of the candidates for that party for the general election ballot only.

~~(4)~~*(5)* The separate ballots for each party must have the same appearance. Each set of party ballots must bear the same number. If prepared as a separate ballot, the nonpartisan ballot may have a different appearance than the party ballots but must be numbered in the same order as the party ballots.

~~(5)~~*(6)* If a ballot issue is to be voted on at a primary election, it may be placed on the nonpartisan ballot or a separate ballot. A separate ballot may have a different appearance than the other ballots in the election but must be numbered in the same order.

~~(6)~~*(7)* Each elector must receive a set of ballots that includes the party, nonpartisan, and ballot issue choices."

**Section 64. Coordination instruction.** If either House Bill No. 30 or Senate Bill No. 405, or both, and [this act] are passed and approved, then [section 12 of this act] amending 13-2-304 is void.

**Section 65. Effective date.** [This act] is effective January 1, 2014.

Approved April 30, 2013

# CHAPTER NO. 337

[HB 131]

AN ACT AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO SHARE LIMITED INFORMATION ABOUT AN INVESTIGATION INTO A REPORT OF CHILD ABUSE OR NEGLECT WITH A MANDATORY REPORTER WHO MADE A REQUIRED REPORT OF ALLEGED CHILD ABUSE OR NEGLECT OR INDIVIDUALS DESIGNATED BY THE MANDATORY REPORTER; AND AMENDING SECTIONS 41-3-201 AND 41-3-205, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 41-3-201, MCA, is amended to read:

**"41-3-201. Reports.** (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected by anyone regardless of whether the person suspected of causing the abuse or neglect is a parent or other person responsible for the child's welfare, they shall report the matter promptly to the department of public health and human services.

(2) Professionals and officials required to report are:

(a) a physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, staff of a resource and referral grant program organized under 52-2-711 or of a child and adult food care program, or an operator or employee of a child-care facility;

(f) a foster care, residential, or institutional worker;

(g) a peace officer or other law enforcement official;

(h) a member of the clergy, as defined in 15-6-201(2)(b);

(i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of alleged abuse or neglect; or

(j) an employee of an entity that contracts with the department to provide direct services to children.

(3) A professional listed in subsection (2)(a) or (2)(b) involved in the delivery or care of an infant shall report to the department any infant known to the professional to be affected by a dangerous drug, as defined in 50-32-101.

(4) Any person may make a report under this section if the person knows or has reasonable cause to suspect that a child is abused or neglected.

*(5) (a) When a professional or official required to report under subsection (2) makes a report, the department may share information with:*

*(i) that professional or official; or*

*(ii) other individuals with whom the professional or official works in an official capacity if the individuals are part of a team that responds to matters involving the child or the person about whom the report was made and the*

*professional or official has asked that the information be shared with the individuals.*

*(b) The department may provide information in accordance with 41-3-202(8) [as amended by Ch. 61, L. 2013] and also share information about the investigation, limited to its outcome and any subsequent action that will be taken on behalf of the child who is the subject of the report.*

*(c) Individuals who receive information pursuant to this subsection (5) shall maintain the confidentiality of the information as required by 41-3-205.*

~~(5)~~*(6)* (a) Except as provided in subsection ~~(5)(b) or (5)(c)~~ *(6)(b) or (6)(c)*, a person listed in subsection (2) may not refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

(b) A member of the clergy or a priest is not required to make a report under this section if:

(i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the member of the clergy or the priest in that person's capacity as a member of the clergy or as a priest;

(ii) the statement was intended to be a part of a confidential communication between the member of the clergy or the priest and a member of the church or congregation; and

(iii) the person who made the statement or confession does not consent to the disclosure by the member of the clergy or the priest.

(c) A member of the clergy or a priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice.

~~(6)~~*(7)* The reports referred to under this section must contain:

(a) the names and addresses of the child and the child's parents or other persons responsible for the child's care;

(b) to the extent known, the child's age and the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible for the injury or neglect; and

(d) the facts that led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter."

**Section 2.** Section 41-3-205, MCA, is amended to read:

**"41-3-205. Confidentiality — disclosure exceptions.** (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (7) and (8), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another

person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, *grandparent, aunt, uncle, brother, sister,* guardian, *mandatory reporter provided for in 41-3-201(2) and (5),* or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment

or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a juvenile probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; ~~or~~

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department~~.~~*; or*

(4) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's assigned attorney, guardian ad litem, or special advocate.

(5) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

(6) The confidentiality provisions of this section must be construed to allow a court of this state to share information with other courts of this state or of another state when necessary to expedite the interstate placement of children.

(7) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(8) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (7) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(9) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(10) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost."

Approved April 30, 2013

# CHAPTER NO. 338

[HB 147]

AN ACT REVISING PENALTIES FOR FAILURE TO OBTAIN A LANDOWNER'S PERMISSION FOR HUNTING; AND AMENDING SECTION 87-6-415, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 87-6-415, MCA, is amended to read:

**"87-6-415. Failure to obtain landowner's permission for hunting.** (1) A resident or nonresident shall obtain permission of the landowner, the lessee, or their agents before taking or attempting to take nongame wildlife, ~~or predatory animals or~~ *predatory animals, game animals, or wolves while* hunting on private property.

(2) ~~Except as provided in subsection (3), a~~ *A* person who violates this section shall, upon conviction for a first offense, be fined ~~an amount not to exceed $25~~ *$135*.

(3) A person convicted of a ~~violation of this section for~~ *second offense of* hunting ~~a big game animal~~ on private property without obtaining permission of the landowner *within 5 years* shall be fined not less than ~~$50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both~~ *$500 or more than $1,000*.

*(4)* In addition, the person, upon conviction *under subsection (3)* or forfeiture of bond or bail~~,~~*:*

*(a)* may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for ~~a period of time set by the court~~ *a period of time set by the court; and*

*(b) may be ordered to make restitution for property damage resulting from the violation in an amount and manner to be set by the court. The court shall determine the manner and amount of restitution after full consideration of the convicted person's ability to pay the restitution. Upon good cause shown by the convicted person, the court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered must be made prior to the release of state jurisdiction over the person convicted*."

Approved April 30, 2013

# CHAPTER NO. 339

[HB 206]

AN ACT INCREASING FEES IN JUSTICE'S COURT AND SMALL CLAIMS COURT; AMENDING SECTIONS 25-31-112 AND 25-35-608, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 25-31-112, MCA, is amended to read:

**"25-31-112. Fees.** The following is the schedule of fees ~~which~~ *that*, except as provided in 25-35-605, ~~shall~~ *must* be paid in every civil action in a justice's court:

(1) ~~$25 when complaint is filed, to be paid by the plaintiff;~~ *when a complaint is filed, the following fee to be paid by the plaintiff:*

*(a) $30 beginning July 1, 2013;*

*(b) $35 beginning July 1, 2014; and*

*(c) $40 beginning July 1, 2015;*

(2) ~~$10~~ *$20* when the defendant appears, to be paid by the defendant;

(3) ~~$10~~ *$20* to be paid by the prevailing party when judgment is rendered. *In cases in which judgment is entered by default, no charge except the fee provided in subsection (1) for the filing of the complaint may be made for any services, including issuing and return of execution.* ~~In cases where judgment is entered by default, no charge except the $25 for the filing of the complaint shall be made for any services, including issuing and return of execution.~~

(4) ~~$10~~ *$20* for all services in an action ~~where~~ *in which* judgment is rendered by confession;

(5) ~~$10~~ *$20* for filing *a* notice of appeal and transcript on appeal, justifying and approving *an* undertaking on appeal, and transmitting papers to the district court with *a* certificate."

**Section 2.** Section 25-35-608, MCA, is amended to read:

**"25-35-608. Fees.** (1) The clerk of the justice's court shall collect a fee of:

(a) ~~$10~~ *$20* from the plaintiff upon the filing of the sworn complaint; and

(b) ~~$5~~ *$10* from the defendant upon the defendant's appearance and contesting of the complaint or execution of a counterclaim.

(2) The laws relating to paupers' affidavits apply to actions before the small claims court."

**Section 3. Effective date.** [This act] is effective July 1, 2013.

**Section 4. Applicability.** [This act] applies to proceedings begun on or after [the effective date of this act].

Approved April 30, 2013

# CHAPTER NO. 340

[HB 254]

AN ACT REQUIRING A DISCLAIMER ON ELECTION MATERIALS DISTRIBUTED BY A POLITICAL COMMITTEE THAT CLAIMS TO BE EXEMPT FROM DISCLOSING THE NAMES OF CONTRIBUTORS.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Disclaimer on election materials funded by anonymous donors.** If a political committee claims to be exempt from disclosing the name of

a person making a contribution to the political committee, the committee shall clearly and conspicuously include in all communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, internet website, or other form of general political advertising or issue advocacy the following disclaimer: "This communication is funded by anonymous sources. The voter should determine the veracity of its content."

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 13, chapter 35, part 2, and the provisions of Title 13, chapter 35, part 2, apply to [section 1].

Approved April 30, 2013

# CHAPTER NO. 341

[HB 274]

AN ACT REVISING LAWS RELATED TO THE LICENSING OF OUTFITTERS AND GUIDES; ELIMINATING THE PROFESSIONAL GUIDE LICENSE; REVISING POWERS AND DUTIES OF THE BOARD OF OUTFITTERS; REVISING REPORTING REQUIREMENTS; REVISING QUALIFICATIONS AND APPLICATION AND EXAM REQUIREMENTS; CLARIFYING THE LIMIT ON ONE LICENSE PER INDIVIDUAL; REVISING PENALTIES; REVISING RULEMAKING AUTHORITY; AMENDING SECTIONS 37-47-101, 37-47-201, 37-47-301, 37-47-302, 37-47-303, 37-47-304, 37-47-305, 37-47-306, 37-47-307, 37-47-310, 37-47-311, 37-47-341, 37-47-343, 37-47-401, 37-47-402, 37-47-403, 37-47-404, AND 87-6-702, MCA; AND REPEALING SECTIONS 37-47-103, 37-47-316, AND 37-47-318, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 37-47-101, MCA, is amended to read:

**"37-47-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Accompany" means to go with or be together with a participant as an escort, companion, or other service provider, with an actual physical presence in the area where the activity is being conducted and within sight or sound of the participant at some time during the furnishing of service.

~~(2) "Base of operations" means the primary physical location where an outfitter receives mail and telephone calls, conducts regular daily business, and bases livestock, equipment, and staff during the hunting season.~~

~~(3)~~*(2)* "Board" means the board of outfitters provided for in 2-15-1773.

~~(4) "Camp" means each individual facility or group of facilities that an outfitter uses to lodge a client for a client's trip or uses to lodge a client in the operating area designated in the outfitter's operations plan, including a motel, campground, bed and breakfast, lodge, tent camp, cabin, camper, trailer, or house.~~

*(3) "Business entity" means any version of a proprietorship, partnership, corporation, or limited liability company.*

~~(5)~~*(4)* "Consideration" means something of value given or done in exchange for something of value given or done by another.

~~(6)~~*(5)* "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

~~(7)~~*(6)* "Guide" means a person who is employed by or who has contracted independently with a licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly related to activities for which the outfitter is licensed.

~~(8)~~*(7)* "License year" means the period indicated on the face of the license for which the license is valid.

~~(9)~~*(8)* "Net client hunter use" or "NCHU" means the ~~most actual~~ *number of* clients *authorized to be* served by an outfitter ~~in any NCHU license category in any license year, as documented by verifiable client logs or other documents maintained by the board pursuant to 37-47-201~~ *on private and state land and on any federal land where an outfitter's use of the federal land is not limited by some means other than NCHU*.

~~(10) "Nonresident" means a person other than a resident.~~

~~(11)~~*(9)* "Outfitter" means any person, except a person providing services on real property that the person owns for the primary pursuit of bona fide agricultural interests, who for consideration provides any saddle or pack animal~~;~~*,* facilities~~;~~*,* camping equipment~~;~~*,* vehicle, watercraft, or other conveyance~~;~~*,* or personal service for any person to hunt, trap, capture, take, kill, or pursue any game, including fish, and who accompanies that person, either part or all of the way, on an expedition for any of these purposes or supervises a licensed guide ~~or professional guide~~ in accompanying that person.

~~(12)~~*(10)* "Participant" means a person using the services offered by a licensed outfitter.

~~(13) "Professional guide" means a guide who meets experience, training, and testing qualifications for designation as a professional guide, as set by board rule.~~

~~(14) "Resident" means a person who qualifies for a resident Montana hunting or fishing license under 87-2-102.~~"

**Section 2.** Section 37-47-201, MCA, is amended to read:

**"37-47-201. Powers and duties of board relating to outfitters~~, guides,~~ and ~~professional~~ guides.** The board shall:

(1) cooperate with the federal government in matters of mutual concern regarding the business of outfitting and guiding in Montana;

(2) enforce the provisions of this chapter and rules adopted pursuant to this chapter;

(3) establish outfitter standards~~, guide standards,~~ and ~~professional~~ guide standards;

(4) adopt:

(a) rules to administer and enforce this chapter, including rules prescribing all requisite qualifications for licensure as an outfitter~~, guide,~~ or ~~professional~~ guide. Qualifications for outfitters ~~must~~ *may* include training, testing, experience ~~in activities similar to the service to be provided~~, *and* knowledge of rules of governmental bodies pertaining to outfitting ~~and condition and type of gear and equipment, and the filing of an operations plan~~.

(b) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the public health, safety, and welfare, including evidence of qualification and licensure under this chapter for any person practicing or offering to practice as an outfitter~~, guide,~~ or ~~professional~~ guide;

(c) rules specifying *components and* standards for review and approval of ~~proposed new~~ operations plans ~~involving hunting use. Approval is not required~~

~~when part or all of an existing operations plan is transferred from one licensed outfitter to another licensed outfitter.;~~

(d) rules establishing outfitter reporting requirements~~. The reports must be filed annually and report actual leased acreage actively used by clients during that year and actual leased acres unused by clients during that year, plus any other information designated by the board and developed in collaboration with the department of fish, wildlife, and parks or the review committee established in 87-1-269 that is considered necessary to evaluate the effectiveness of the hunter management and hunting access enhancement programs.~~. *The reports must be filed annually and report client names, outfitters and guides providing client services and the license numbers of those outfitters and guides, dates of client services, and private land acreage where licensed outfitters are authorized by the landowner to operate, including exclusive arrangements and lease agreements.*

(5) hold hearings and proceedings to suspend or revoke licenses of outfitters~~, guides,~~ and ~~professional~~ guides for due cause; *and*

~~(6) maintain records of actual clients served by all Montana outfitters that fulfill the requirements of subsection (4)(d);~~

~~(7)~~*(6)* maintain records of net client hunter use."

**Section 3.** Section 37-47-301, MCA, is amended to read:

**"37-47-301. License required — services performed — standards.** (1) A person may not act as an outfitter~~, guide,~~ or ~~professional~~ guide or advertise or otherwise represent to the public that the person is an outfitter~~, guide,~~ or ~~professional~~ guide without first securing a license in accordance with the provisions of this part.

(2) Whenever an outfitter is engaged by a participant, the outfitter shall keep ~~and submit~~ *and submit* records as required by the board.

(3) Outfitters*,* ~~and~~ guides, ~~professional guides,~~ and other employees of an outfitter may not shoot, kill, or take big game animals for or in competition with those employing them while acting as outfitters, guides, ~~professional guides,~~ or employees of an outfitter.

(4) Outfitters utilizing lands under the control of the United States government shall obtain the proper permits required by the government office responsible for the area in which the outfitter intends to operate and shall comply with ~~environmental protection standards~~ *all applicable rules and regulations* established for these lands.

(5) Outfitters may not willfully and substantially misrepresent their facilities, prices, equipment, services, or hunting or fishing opportunities.

(6) Outfitters and their *contractors,* employees, agents, and representatives shall take every reasonable measure to provide ~~their~~ *the outfitter's* advertised services ~~to their clients~~.

(7) An outfitter may not hire or retain a guide ~~or professional guide~~ who does not hold a current license as provided under this part."

**Section 4.** Section 37-47-302, MCA, is amended to read:

**"37-47-302. Outfitter's qualifications.** An applicant for an outfitter's license or renewal of a license must meet the following qualifications:

(1) be 18 years of age or older, be physically capable and mentally competent to perform the duties of an outfitter, and meet experience, training, and testing requirements as prescribed by board rule; *and*

(2) own, hold under written lease, or contract for or represent a ~~company, corporation, or partnership~~ *business entity* who owns, holds under written lease, or contracts for the equipment and facilities that are necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and the outfitter's clients. ~~(all~~ *All* equipment and facilities are subject to inspection at all reasonable times and places by the board or its designated agent~~); and~~.

~~(3) have demonstrated a respect for and compliance with the laws of any state or of the United States and all rules promulgated under those laws related to fish and game, conservation of natural resources, and preservation of the natural ecosystem without pollution of the ecosystem.~~"

**Section 5.** Section 37-47-303, MCA, is amended to read:

**"37-47-303. Guide's ~~and professional guide's~~ qualifications.** ~~(1)~~ An applicant for a guide's ~~or professional guide's~~ license must ~~meet the following qualifications~~:

~~(a)~~*(1)* be 18 years of age or older and be physically capable and mentally competent to perform the duties of a guide ~~or professional guide~~;

~~(b)~~*(2)* be endorsed and recommended by an outfitter with a valid license, unless otherwise qualified under guide ~~or professional guide~~ standards established by the board pursuant to 37-47-201(4)~~; and~~

~~(c) have been issued a valid wildlife conservation license.~~

~~(2) In addition to the requirements listed in subsection (1), an applicant for licensure as a professional guide must meet additional experience requirements, to be set by board rule, and may be required to show proof of training or pass a qualifying examination when required by board rule~~*; and*

*(3) have been issued a valid wildlife conservation license*."

**Section 6.** Section 37-47-304, MCA, is amended to read:

**"37-47-304. Application.** (1) Each applicant for an outfitter's~~, guide's,~~ or ~~professional~~ guide's license shall apply for a license on a form furnished by the department.

(2) The application for an outfitter's license ~~forms the basis for the outfitter's operations plan and~~ must include:

(a) the applicant's full name, ~~residence,~~ address, ~~conservation license number, driver's license number, birth date, physical description,~~ *conservation license number,* and telephone number;

~~(b) the address of the applicant's principal place of business in the state of Montana;~~

~~(c) the amount and kind of property and equipment owned and used in the outfitting business of the applicant;~~

~~(d) the experience of the applicant, including:~~

~~(i)~~*(b) the applicant's* years of experience as an outfitter~~, guide,~~ or ~~professional~~ guide; *and*

~~(ii) the applicant's knowledge of areas in which the applicant has operated and intends to operate; and~~

~~(iii) the applicant's ability to cope with weather conditions and terrain;~~

~~(e) a signed statement of the licensed outfitter for each guide and professional guide to be employed or retained as an independent contractor, stating that the guide or professional guide is to be employed by the outfitter and stating that the outfitter recommends the guide or professional guide for licensure;~~

*(c) components of the outfitter's operations plan as required by board rule, which may include:*

~~(f)~~*(i)* an affidavit by the outfitter to the board that the *amount and kind of* equipment ~~listed on the application is in fact~~ *that is* owned, leased, or contracted for by the applicant~~,~~ is ~~in good operating condition, and is~~ sufficient and satisfactory for the services advertised or contemplated to be performed by the applicant; *and*

~~(g) a statement of the maximum number of participants to be accompanied at any one time;~~

~~(h) the written approval of the appropriate agency or landowner on whose lands the applicant intends to provide services or establish hunting camps; and~~

~~(i) the boundaries of the proposed operation, stating when applicable:~~

~~(i) the name and portion of river;~~

~~(ii) the county of location;~~

~~(iii) the legal owner of the property;~~

~~(iv) the name of the ranch;~~

~~(v) the proposed service, including the type of game sought;~~

~~(vi) the name of the agency granting use authority; and~~

~~(vii) other means of identifying boundaries as established by board rule.~~

*(ii) a description of any land, water body, or portion of a water body that will be utilized by the applicant while providing services.*

(3) An application for an outfitter's license must be in the name of an individual person only. An application involving ~~corporations, proprietorships, or partnerships~~ *a business entity* must be made by one individual person who qualifies under the provisions of this part. A license issued pursuant to this part must be in the name of that person. Any revocation or suspension of a license is binding upon the individual person and the ~~corporation, proprietorship, or partnership~~ *business entity* for the use and benefit of which the license was originally issued.

(4) Application must be made to and filed with the board.

(5) Only one application for an outfitter's license may be made in any license year. If an application is denied, subsequent applications by the same applicant for the license year involved are void, except as provided in 37-47-308."

**Section 7.** Section 37-47-305, MCA, is amended to read:

**"37-47-305. Outfitter's examination.** Each applicant for an outfitter's license, after meeting the experience and training specifications and other qualifications set by this chapter or rules adopted pursuant to this chapter, is entitled to take and must pass a standard examination administered by the board or its agent. The examination must require general and sufficient knowledge displaying and indicating ability to perform the services contemplated with efficiency and with safety to the health and welfare of participants. The examination must test the applicant's knowledge of subjects that apply to the type of license applied for and may include the following subjects:

(1) federal and state fish and game laws and regulations;

~~(2) practical woodsmanship;~~

~~(3) general knowledge of big game;~~

~~(4) field preparation of trophies;~~

~~(5) care of game meat;~~

~~(6) use of outfitter's gear as listed on the application;~~

~~(7) knowledge of area and terrain;~~

~~(8) knowledge of firearms;~~

~~(9)~~*(2)* federal and state regulations as applicable to outfitting;

~~(10) first aid;~~

~~(11)~~*(3)* boat safety; *and*

~~(12)~~*(4)* water safety~~;~~

~~(13) care and safety of livestock~~."

**Section 8.** Section 37-47-306, MCA, is amended to read:

**"37-47-306. Fees.** (1) The board shall establish fees commensurate with costs as provided in 37-1-134.

(2) Applications must be accompanied by a license fee as specified by board rule.

~~(3) If a nonresident license applicant resides in a state that requires residents of the state of Montana to pay in excess of the amount established by the board for a similar license, then the fee for the nonresident outfitter's, guide's, or professional guide's license must be the same amount as the higher fee charged in the state where the nonresident license applicant resides. A nonresident hunting outfitter is subject to the same rules and regulations that apply to a resident hunting outfitter.~~

~~(4)~~*(3)* The license fees must be deposited in the state special revenue fund and must be used by the board to investigate the applicant, to enforce this part, and for administrative costs, subject to 37-1-101(6)."

**Section 9.** Section 37-47-307, MCA, is amended to read:

**"37-47-307. Investigation of applicant — issuance or denial of license.** (1) The department shall investigate each applicant for an outfitter's~~,~~ ~~guide's,~~ or ~~professional~~ guide's license. The board shall determine the applicant's qualifications.

(2) The board may deny or refuse to issue any new license or to renew any previous license if the applicant does not meet the qualifications stated in this chapter or rules adopted pursuant to this chapter. In the event that any application for a license is denied or refused, the board shall immediately notify the applicant, setting forth in the notice the grounds upon which the denial or refusal is based.

(3) A licensee in good standing is entitled to a new license for the ensuing license year upon complying with the provisions of this chapter or rules adopted pursuant to this chapter and upon completing an application for license renewal on a form provided by the board.

(4) This section may not be interpreted to conflict with 37-1-138."

**Section 10.** Section 37-47-310, MCA, is amended to read:

**"37-47-310. Transfer or amendment of outfitter's license — transfer of river-use days to new owner of fishing outfitter business.** (1) An outfitter's license may not be transferred.

(2) An individual person may, upon proper showing, have that person's outfitter's license amended to indicate that the license is being held for the use and benefit of a named ~~proprietorship, partnership, or corporation~~ *business entity*.

(3) Subject to approval by the board, a person designated by the family of an outfitter who is deceased or incapacitated due to physical or mental disease or

injury or who is unable to carry out the responsibilities of an outfitter due to the outfitter's status as an active member of the military may continue to provide outfitting services for the outfitter's unexpired license year, or until the family sells the outfitting business, until the designee obtains an outfitter license.

(4) When a fishing outfitter's business is sold or transferred in its entirety, any river-use days that have been allocated to that fishing outfitter through the fishing outfitter's historic use of or activities on restricted-use streams are transferable to the new owner of the fishing outfitter's business. Upon the sale or transfer of a fishing outfitter's business, the outfitter who sells or transfers the business shall notify the new owner that the use of any transferred river-use days is subject to change pursuant to rules adopted by the fish, wildlife, and parks commission and that a property right does not attach to the transferred river-use days."

**Section 11.** Section 37-47-311, MCA, is amended to read:

**"37-47-311. Limit one license.** *(1)* An individual may not hold more than one outfitter's license either for the individual's own benefit or for the use and benefit of a ~~partnership, limited liability partnership, limited liability company, or corporation~~ *business entity*. However, the name of a ~~partnership, limited liability partnership, limited liability company, or corporation~~ *business entity* may appear on more than one current outfitter's license.

*(2) Subsection (1) does not prevent a licensee from:*

*(a) owning or operating more than one business entity under one license;* ~~and~~ *or*

*(b) filing* ~~within~~ more than one ~~operation~~ *operations* plan ~~filed~~ with the board."

**Section 12.** Section 37-47-341, MCA, is amended to read:

**"37-47-341. Grounds for denial, suspension, or revocation of license.** A license or right to apply for and hold a license issued under this part may be denied, suspended, or revoked or other disciplinary conditions may be applied upon any of the following grounds:

(1) having ceased to meet all of the qualifications for holding a license, as required under this chapter and rules adopted pursuant to this chapter;

(2) fraud or deception in procuring a license;

(3) fraudulent, untruthful, or misleading advertising;

(4) having pleaded guilty to or been adjudged by a court guilty of a felony, including a case in which the sentence is suspended or imposition of the sentence is deferred, unless civil rights have been restored pursuant to law~~.~~*;*

(5) one conviction or bond forfeiture ~~as to a violation~~ *for a violation* of the fish and game or outfitting laws or regulations of any state*,* ~~or~~ the United States*, or other jurisdictions*;

(6) a substantial breach of a contract with a participant provided that the breach is established as a matter of final judgment in a court of law;

(7) the willful employment of or contracting with an unlicensed guide ~~or professional guide~~ by an outfitter;

(8) negligence or misconduct while acting as an outfitter~~, guide,~~ or ~~professional~~ guide that causes an accident or injury to the person or property of a participant;

(9) misconduct as defined by board rule; or

(10) any violation of this chapter or a rule adopted pursuant to this chapter."

**Section 13.** Section 37-47-343, MCA, is amended to read:

**"37-47-343. Appeal procedure.** A person who feels aggrieved by a final order of the board denying issuance of a license or suspending or revoking a license as an outfitter~~, guide,~~ or ~~professional~~ guide may petition for judicial review as provided in Title 2, chapter 4, part 7."

**Section 14.** Section 37-47-401, MCA, is amended to read:

**"37-47-401. Purpose.** It is recognized that some activities conducted by outfitters~~, guides,~~ and ~~professional~~ guides within the scope of their authorized services are inherently hazardous to participants regardless of all feasible safety measures that may be taken. It is the purpose of this part to define those areas of responsibility and affirmative acts or omissions for which outfitters~~, guides,~~ and ~~professional~~ guides are liable for loss, damage, or injury and those risks for which the participant expressly assumes or is considered to have voluntarily assumed the risk of loss or damage."

**Section 15.** Section 37-47-402, MCA, is amended to read:

**"37-47-402. Duties of outfitters~~, guides,~~ and ~~professional~~ guides.** An outfitter~~, guide,~~ or ~~professional~~ guide offering professional services in this state shall:

(1) act as would a reasonably prudent member of the profession while engaging in providing the services authorized to be performed by a licensed member of the profession;

(2) comply with all standards adopted by board rule."

**Section 16.** Section 37-47-403, MCA, is amended to read:

**"37-47-403. Duties of participants.** (1) A participant shall:

(a) act as would a reasonably prudent person when engaging in the activities offered by a licensed outfitter~~, guide,~~ or ~~professional~~ guide in this state;

(b) receive permission from the outfitter~~, guide,~~ or ~~professional~~ guide prior to embarking on any self-initiated activity and inform the outfitter~~, guide,~~ or ~~professional~~ guide of the participant's plans and intentions upon receiving permission to engage in the self-initiated activity.

(2) A participant may not:

(a) interfere with the running or operation of an outfitter's~~, guide's,~~ or ~~professional~~ guide's activities when those activities conform to the standards of care set forth in 37-47-402;

(b) use the outfitter's~~, guide's,~~ or ~~professional~~ guide's equipment, facilities, or services unless the participant has requested and received permission from the outfitter~~, guide,~~ or ~~professional~~ guide;

(c) knowingly, purposely, or negligently engage in any type of conduct that contributes to or causes injury to the participant or any other person."

**Section 17.** Section 37-47-404, MCA, is amended to read:

**"37-47-404. Responsibility for violations of law.** (1) A person accompanying a hunting or fishing party as an outfitter~~, guide,~~ or ~~professional~~ guide is equally responsible with any person or party engaging the person as an outfitter for any violation of fish and game laws unless the violation is reported to a peace officer by the outfitter~~, guide,~~ or ~~professional~~ guide and the outfitter~~, guide,~~ or ~~professional~~ guide was not an active participant. An outfitter~~, guide,~~ or ~~professional~~ guide who willfully fails or refuses to report any violation of fish and game laws is liable for the penalties provided in this chapter. If a guide ~~or professional guide~~ violates the laws or applicable regulations relating to fish and game, outfitting, or guiding with actual ~~or implied~~ knowledge of an outfitter

engaging the guide ~~or professional guide~~, the outfitter is legally responsible for the violation for all purposes under the laws or regulations if the outfitter fails to report the violation to the proper authority.

(2) An outfitter~~, guide,~~ or ~~professional~~ guide shall report any violation or suspected violation of fish and game laws that the outfitter~~, guide,~~ or ~~professional~~ guide knows ~~or reasonably should have known~~ has been committed by the employees, *contractors,* agents, representatives, clients, or participants in the outfitting or guiding activity. The violation or suspected violation must be reported to a peace officer at the earliest possible opportunity.

(3) A person may not hire or retain an outfitter unless the outfitter is currently licensed in accordance with the laws of the state of Montana. A person may not use the services of a guide ~~or professional guide~~ and a guide ~~or professional guide~~ may not offer services unless the services are obtained through an endorsing outfitter."

**Section 18.** Section 87-6-702, MCA, is amended to read:

**"87-6-702. Outfitting without a license.** (1) (a) A person may not purposely or knowingly engage in outfitting while not licensed pursuant to Title 37, chapter 47, or purposely or knowingly violate a licensing rule adopted under Title 37, chapter 47.

(b) A person convicted of a violation of subsection (1)(a) is punishable by a fine of not less than $200 or more than $1,000 or imprisonment in the county jail for up to 1 year, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this state for a period set by the court. A sentencing court that imposes a period of license revocation shall consider the provisions of subsection (3).

(2) (a) A person or entity that represents to any other person, any entity, or the public that the person or entity is an outfitter and who commits the offense of outfitting without a license, as described in subsection (1)(a), for any portion of 5 or more days for consideration within 1 calendar year for any person or for consideration valued in excess of $5,000 is punishable by a fine of not more than $50,000 or imprisonment in the state prison for up to 5 years, or both.

(b) A person convicted of a violation of subsection (2)(a) shall forfeit any current hunting, fishing, or trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this state for a minimum of 5 years. A sentencing court that imposes a period of license revocation shall consider the provisions of subsection (3).

(3) A sentencing court that imposes a period of license revocation pursuant to subsection (1)(b) or (2)(b) shall consider and may impose any of the following conditions during the period of revocation:

(a) prohibiting the offender from:

(i) participating in any hunting, fishing, or trapping endeavor as a hunter, angler, trapper, scout, guide, observer, or assistant;

(ii) brokering or participating in any lease of property for hunting, fishing, or trapping, either personally or through an agent or representative;

(iii) participating in any seminar or show that is designed to promote hunting, fishing, or trapping;

(iv) purchasing or possessing any hunting, fishing, or trapping permits; and

(b) imposing any other reasonable condition or restriction that is related to the crime committed or that is considered necessary for the rehabilitation of the offender or for the protection of the citizens or wildlife of this state.

(4) A person convicted of a violation of this section shall reimburse the full amount of any fees received to the person to whom illegal outfitting services were provided.

(5) As used in this section, the following definitions apply:

(a) "Consideration" means remuneration given in exchange for outfitting services supplied based on a business relationship between parties, but not including reimbursement for shared trip expenses.

(b) (i) "Outfitting" means providing hunting or fishing services for consideration, including any saddle or pack animal, facilities, camping equipment, personal service, or vehicle, watercraft, or other conveyance for any person to hunt, fish, trap, capture, take, kill, or pursue any game, including fish. The term includes accompanying that person, either part or all of the way, on an expedition for any of these purposes or supervision of a licensed guide ~~or professional guide~~ in accompanying that person.

(ii) The term does not include*:*

*(A) services provided by packers, wranglers, cooks, or other parties under the direct employment of the outfitter; or*

*(B)* the provision of the services listed in subsection (5)(b)(i) by a person on real property that the person owns for the primary pursuit of bona fide agricultural interests."

**Section 19. Repealer.** The following sections of the Montana Code Annotated are repealed:

37-47-103. Publication of license information.

37-47-316. Transfer of net client hunter use upon transfer of operations plan.

37-47-318. Fees in addition to annual license fee — allocation.

Approved April 30, 2013

# CHAPTER NO. 342

[HB 359]

AN ACT PROVIDING THAT AN ADMINISTRATIVE OR JUDICIAL ORDER MAY BE ADMISSIBLE IN A CIVIL ACTION REGARDING REMEDIAL ACTIONS RELATED TO HAZARDOUS WASTE FACILITIES; AND AMENDING SECTIONS 75-10-706 AND 75-10-711, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 75-10-706, MCA, is amended to read:

**"75-10-706. Purpose — intent.** (1) The purposes of this part are to:

(a) protect the public health and welfare of all Montana citizens against the dangers arising from releases of hazardous or deleterious substances;

(b) encourage private parties to clean up sites within the state at which releases of hazardous or deleterious substances have occurred, resulting in adverse impacts on the health and welfare of the citizens of the state and on the state's natural, environmental, and biological systems; and

(c) provide for funding to study, plan, and undertake the rehabilitation, removal, and cleanup of sites within the state at which no voluntary action has been taken.

(2) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Comprehensive Environmental Cleanup and Responsibility Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

~~(3) A person who is not subject to an administrative or judicial order may not conduct any remedial action at any facility that is subject to an administrative or judicial order issued pursuant to this part without the written permission of the department. Remedial action performed in accordance with this part is intended to provide for the protection of the environmental life support system from degradation and to prevent unreasonable depletion and degradation of natural resources.~~"

**Section 2.** Section 75-10-711, MCA, is amended to read:

**"75-10-711. Remedial action — orders — penalties — judicial proceedings.** (1) The department may take remedial action whenever:

(a) there has been a release or there is a substantial threat of a release into the environment that may present an imminent and substantial endangerment to the public health, welfare, or safety or the environment; and

(b) none of the persons who are liable or potentially liable under 75-10-715(1) and who have been given the opportunity by letter to properly and expeditiously perform the appropriate remedial action will properly and expeditiously perform the appropriate remedial action. Any person liable under 75-10-715(1) shall take immediate action to contain, remove, and abate the release.

(2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe that a release has occurred or is about to occur, the department may undertake remedial action in the form of any investigation, monitoring, survey, testing, or other information gathering as authorized by 75-10-707 that is necessary and appropriate to identify the existence, nature, origin, and extent of the release or the threat of release and the extent and imminence of the danger to the public health, safety, or welfare or the environment.

(3) Except as provided in 75-10-712, the department is authorized to draw upon the fund to take action under subsection (1) if it has made diligent good faith efforts to determine the identity of the person or persons liable for the release or threatened release and:

(a) is unable to determine the identity of the liable person or persons in a manner consistent with the need to take timely remedial action; or

(b) a person or persons determined by the department to be liable or potentially liable under 75-10-715(1) have been informed in writing of the department's determination and have been requested by the department to take appropriate remedial action but are unable or unwilling to take action in a timely manner; and

(c) the written notice informs the person that if subsequently found liable pursuant to 75-10-715(1), the person may be required to reimburse the fund for

the state's remedial action costs and may be subject to penalties pursuant to this part.

(4) Whenever the department is authorized to act pursuant to subsection (1), it may issue to any person liable under 75-10-715(1) cease and desist, remedial, or other orders as may be necessary or appropriate to protect the public health, safety, or welfare or the environment.

(5) (a) A person who violates or fails or refuses to comply with an order issued under 75-10-707 or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than $10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining the amount of any penalty assessed, the court may take into account:

(i) the nature, circumstances, extent, and gravity of the noncompliance;

(ii) with respect to the person liable under 75-10-715(1):

(A) the person's ability to pay;

(B) any prior history of violations;

(C) the degree of culpability; and

(D) the economic benefit or savings, if any, resulting from the noncompliance; and

(iii) any other matters as justice may require.

(b) Civil penalties collected under subsection (5)(a) must be deposited into the environmental quality protection fund established in 75-10-704.

(6) A court has jurisdiction to review an order issued under 75-10-707 or this section only in the following actions:

(a) an action under 75-10-715 to recover remedial action costs or penalties or for contribution;

(b) an action to enforce an order issued under 75-10-707 or this section;

(c) an action to recover a civil penalty for violation of or failure to comply with an order issued under 75-10-707 or this section; or

(d) an action by a person to whom an order has been issued to determine the validity of the order, only if the person has been in compliance and continues in compliance with the order pending a decision of the court.

(7) In considering objections raised in a judicial action regarding orders issued under this part, the court shall uphold and enforce an order issued by the department unless the objecting party can demonstrate, on the administrative record, that the department's decision to issue the order was arbitrary and capricious or otherwise not in accordance with law.

(8) Instead of issuing a notification or an order under this section, the department may bring an action for legal or equitable relief in the district court of the county where the release or threatened release occurred or in the first judicial district as may be necessary to abate any imminent and substantial endangerment to the public health, safety, or welfare or the environment resulting from the release or threatened release.

*(9) A person who is not subject to an administrative or judicial order may not conduct any remedial action at any facility that is subject to an administrative or judicial order issued pursuant to this part without the written permission of the department. If a state or federal administrative or judicial order is issued relative to a facility, the order and any remedial activity conducted pursuant to the order may be admissible in a civil action pertaining to the facility or property adjacent to or allegedly impacted by the facility provided that the reviewing court in its discretion determines the order to be relevant and more probative than*

*prejudicial. Admission of this evidence does not make the department a necessary party to the action. Remedial action performed in accordance with this part is intended to provide for the protection of the environmental life support system from degradation and to prevent unreasonable depletion and degradation of natural resources.*

~~(9)~~*(10)* The department may take remedial action pursuant to subsection (1) at a site that is regulated under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, if the department determines that remedial action is necessary to carry out the purposes of this part."

Approved April 30, 2013

# CHAPTER NO. 343

[HB 385]

AN ACT GENERALLY REVISING LAWS RELATING TO A TENANT ENGAGING IN OR KNOWINGLY ALLOWING ANY PERSON TO ENGAGE IN ANY ACTIVITY ON RENTAL PREMISES THAT CREATES A REASONABLE POTENTIAL THAT THE PREMISES MAY BE DAMAGED OR DESTROYED OR THAT NEIGHBORING TENANTS MAY BE INJURED; AND AMENDING SECTIONS 70-24-303, 70-24-321, 70-24-422, AND 70-24-427, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 70-24-303, MCA, is amended to read:

**"70-24-303. Landlord to maintain premises — agreement that tenant perform duties — limitation of landlord's liability for failure of smoke detector or carbon monoxide detector.** (1) A landlord:

(a) shall comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

(b) may not knowingly allow any tenant or other person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured ~~by any of the following:~~

~~(i) criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110;~~

~~(ii) operation of an unlawful clandestine laboratory, as prohibited by 45-9-132; or~~

~~(iii) gang-related activities, as prohibited by Title 45, chapter 8, part 4~~;

(c) shall make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(d) shall keep all common areas of the premises in a clean and safe condition;

(e) shall maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

(f) shall, unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles and conveniences for the removal of ashes,

garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

(g) shall supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant; and

(h) shall install in each dwelling unit under the landlord's control an approved carbon monoxide detector, in accordance with rules adopted by the department of labor and industry, and an approved smoke detector, in accordance with rules adopted by the department of justice. Upon commencement of a rental agreement, the landlord shall verify that the carbon monoxide detector and the smoke detector in the dwelling unit are in good working order. The tenant shall maintain the carbon monoxide detector and the smoke detector in good working order during the tenant's rental period. For the purposes of this subsection, an approved carbon monoxide detector, as defined in 70-20-113, and an approved smoke detector, as defined in 70-20-113, bear a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly.

(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through (1)(h), a landlord's duty must be determined by reference to subsection (1)(a).

(3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the tenant perform the landlord's duties specified in subsections (1)(f) and (1)(g) and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a); and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

(5) The landlord is not liable for damages caused as a result of the failure of the carbon monoxide detector or the smoke detector required under subsection (1)(h)."

**Section 2.** Section 70-24-321, MCA, is amended to read:

**"70-24-321. Tenant to maintain dwelling unit.** (1) A tenant shall:

(a) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(b) keep that part of the premises that the tenant occupies and uses as reasonably clean and safe as the condition of the premises permits;

(c) dispose from the dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner;

(d) keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

(e) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, in the premises;

(f) conduct oneself and require other persons on the premises with the tenant's consent to conduct themselves in a manner, that will not disturb the tenant's neighbors' peaceful enjoyment of the premises; and

(g) use the parts of the premises, including the living room, bedroom, kitchen, bathroom, and dining room, in a reasonable manner, considering the purposes for which they were designed and intended. This section does not preclude the right of the tenant to operate a limited business or cottage industry on the premises, subject to state and local laws, if the landlord has consented in writing. The landlord may not unreasonably withhold consent if the limited business or cottage industry is operated within reasonable rules of the landlord.

(2) A tenant may not destroy, deface, damage, impair, or remove any part of the premises or permit any person to do so.

(3) A tenant may not engage or knowingly allow any person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured ~~by any of the following:~~

~~(a) criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110;~~

~~(b) operation of an unlawful clandestine laboratory, as prohibited by 45-9-132; or~~

~~(c) gang-related activities, as prohibited by Title 45, chapter 8, part 4~~*, including but not limited to any of the following activities:*

*(a) criminal production or manufacture of dangerous drugs as prohibited by 45-9-110;*

*(b) operation of an unlawful clandestine laboratory as prohibited by 45-9-132;*

*(c) gang-related activities as prohibited by Title 45, chapter 8, part 4;*

*(d) unlawful possession of a firearm, explosive, or hazardous or toxic substance; or*

*(e) any activity that is otherwise prohibited by law*."

**Section 3.** Section 70-24-422, MCA, is amended to read:

**"70-24-422. Noncompliance of tenant generally — landlord's right of termination — damages — injunction.** (1) Except as provided in this chapter, if there is a noncompliance by the tenant with the rental agreement or a noncompliance with 70-24-321, the landlord may deliver a written notice to the tenant pursuant to 70-24-108 specifying the acts and omissions constituting the noncompliance and that the rental agreement will terminate upon a date specified in the notice not less than the minimum number of days after receipt of the notice provided for in this section. The rental agreement terminates as provided in the notice, subject to the following:

(a) If the noncompliance is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the noncompliance before the date specified in the notice, the rental agreement does not terminate.

(b) If the noncompliance involves an unauthorized pet, the notice period is 3 days.

(c) If the noncompliance involves unauthorized persons residing in the rental unit, the notice period is 3 days.

(d) If the noncompliance is not listed in subsection (1)(b) or (1)(c), the notice period is 14 days.

(e) If substantially the same act or omission that constituted a prior noncompliance of which notice was given recurs within 6 months, the landlord may terminate the rental agreement upon at least 5 days' written notice specifying the noncompliance and the date of the termination of the rental agreement.

(2) If rent is unpaid when due and the tenant fails to pay rent within 3 days after written notice by the landlord of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period, the landlord may terminate the rental agreement.

(3) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation of 70-24-321(2), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the noncompliance under the provisions of 70-24-321(2).

(4) If the tenant creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured~~, as evidenced by the tenant being arrested for or charged with an act that violates the provisions~~ *in violation* of 70-24-321(3), the landlord may terminate the rental agreement upon giving ~~3 days'~~ *3 days'* written notice specifying the violation and noncompliance under the provisions of 70-24-321(3).

~~(5)~~*(5)* Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or 70-24-321. Except as provided in subsection ~~(6)~~ *(6)*, if the tenant's noncompliance is purposeful, the landlord may recover treble damages.

~~(6)~~*(6)* Treble damages may not be recovered for the tenant's early termination of the tenancy.

~~(7)~~*(7)* The landlord is not bound by this section in the event that the landlord elects to use the 30-day notice for termination of tenancy as provided in 70-24-441."

**Section 4.** Section 70-24-427, MCA, is amended to read:

**"70-24-427. Landlord's remedies after termination — action for possession.** (1) If the rental agreement is terminated, the landlord has a claim for possession and for rent and a separate claim for actual damages for any breach of the rental agreement.

(2) An action filed pursuant to subsection (1) in a court must be heard within ~~20~~ *14* days after the tenant's appearance or the answer date stated in the summons~~, except that if the rental agreement is terminated because of noncompliance under 70-24-321(3), the action must be heard within 5 business days after the tenant's appearance or the answer date stated in the summons~~, *except that if the rental agreement is terminated because of noncompliance under 70-24-321(3), the action must be heard within 5 business days after the tenant's appearance or the answer date stated in the summons*. If the action is appealed to the district court, the hearing must be held within ~~20~~ *14* days after the case is transmitted to the district court~~, except that if the rental agreement is terminated because of noncompliance under 70-24-321(3), the hearing must be held within 5 business days after the case is transmitted to the district court~~, *except that if the rental agreement is terminated because of noncompliance under*

*70-24-321(3), the hearing must be held within 5 business days after the case is transmitted to the district court*.

(3) The landlord and tenant may stipulate to a continuance of the hearing beyond the time limit in subsection (2) without the necessity of an undertaking.

(4) In a landlord's action for possession filed pursuant to subsection (1), the court shall rule on the action within ~~5~~ *5* days after the hearing."

Approved April 30, 2013

# CHAPTER NO. 344

[HB 403]

AN ACT REVISING FEES COLLECTED BY DISTRICT COURT CLERKS; ESTABLISHING FEES FOR PROVIDING COPIES BY FACSIMILE, E-MAIL, OR OTHER ELECTRONIC MEANS; ESTABLISHING FEES FOR FILING A PLEADING BY FACSIMILE OR E-MAIL; AMENDING SECTIONS 7-4-2516, 25-1-201, 25-10-404, AND 25-10-405, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-4-2516, MCA, is amended to read:

**"7-4-2516. Fees not required in certain cases.** No fees must be charged the state, any county, or any subdivision thereof, any public officer acting therefor, or in habeas corpus proceedings for official services rendered, and all such services must be performed without the payment of fees*, except the fees under 25-1-201(1)(d) and (1)(r)*."

**Section 2.** Section 25-1-201, MCA, is amended to read:

**"25-1-201. Fees of clerk of district court.** (1) The clerk of district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, $90; for filing a complaint in intervention, from the intervenor, $80; for filing a petition for dissolution of marriage, $170; for filing a petition for legal separation, $150; and for filing a petition for a contested amendment of a final parenting plan, $120;

(b) from each defendant or respondent, on appearance, $60;

(c) on the entry of judgment, from the prevailing party, $45;

(d) (i) except as provided in subsection (1)(d)(ii), for preparing copies of papers on file in the clerk's office *in all criminal and civil proceedings*, $1 a page for the first 10 pages of each file, for each request, and 50 cents for each additional page;

(ii) for a copy of a marriage license, $5, and for a copy of a dissolution decree, $10;

*(iii) for providing copies of papers on file in the clerk's office by facsimile, e-mail, or other electronic means in all criminal and civil proceedings, 25 cents per page;*

(e) for each certificate, with seal, $2;

(f) for oath and jurat, with seal, $1;

(g) for a search of court records, $2 for each name for each year searched, for a period of up to 7 years, and an additional $1 for each name for any additional year searched;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, $5;

(j) for transmission of records or files or transfer of a case to another court, $5;

(k) for filing and entering papers received by transfer from other courts, $10;

(l) for issuing a marriage license, $53;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, $55;

(o) for filing a declaration of marriage without solemnization, $53;

(p) for filing a motion for substitution of a judge, $100;

(q) for filing a petition for adoption, $75~~.~~*;*

*(r) for filing a pleading by facsimile or e-mail in all criminal and civil proceedings, 50 cents per page.*

(2) Except as provided in subsections (3) and (5) through (7), fees collected by the clerk of district court must be deposited in the state general fund as specified by the supreme court administrator.

(3) (a) Of the fee for filing a petition for dissolution of marriage, $5 must be deposited in the children's trust fund account established in 52-7-102, $19 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714, and $30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.

(b) Of the fee for filing a petition for legal separation, $5 must be deposited in the children's trust fund account established in 52-7-102 and $30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.

(4) If the moving party files a statement signed by the nonmoving party agreeing not to contest an amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of district court may not collect from the moving party the fee for filing a petition for a contested amendment of a parenting plan under subsection (1)(a).

(5) Of the fee for filing an action or proceeding, except a petition for dissolution of marriage, $9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714.

(6) The fees collected under subsections (1)(d), (1)(g), ~~and~~ (1)(j)*, and (1)(r)* must be deposited in the county district court fund. If a district court fund does not exist, the fees must be deposited in the county general fund to be used for district court operations.

(7) Of the fee for issuance of a marriage license and the fee for filing a declaration of marriage without solemnization, $13 must be deposited in the domestic violence intervention account established by 44-4-310 and $10 must be deposited in the county district court fund. If a district court fund does not exist, the fees must be deposited in the county general fund to be used for district court operations.

(8) Any filing fees, fines, penalties, or awards collected by the district court or district court clerk not otherwise specifically allocated must be deposited in the state general fund."

**Section 3.** Section 25-10-404, MCA, is amended to read:

**"25-10-404. Poor persons not required to prepay fees — definition.** (1) Except as provided in subsections (3) and (6), a person may request a waiver of fees by filing an affidavit, supported by a financial statement, stating that the person has a good cause of action or defense and is unable to pay the costs or procure security to secure the cause of action or defense. Except as provided in subsections (2) and (6), upon issuance of an order of the court or administrative tribunal approving a request for waiver of fees, the person may commence and prosecute or defend an action in any of the courts and administrative tribunals of this state and the officers of the courts and administrative tribunals shall issue and serve all writs and perform all services in the action without demanding or receiving their fees in advance*, except the fees under 25-1-201(1)(d) and (1)(r).*

(2) If a judge or presiding officer of an administrative tribunal is not available to approve a request for a waiver of fees prior to filing a pleading, the pleading must be filed subject to subsequent approval. If the request is subsequently denied, the fees must be paid before the case may proceed further.

(3) A person represented by an entity that provides free legal services to indigent persons is not required to file the financial statement required by subsection (1).

(4) The department of justice shall, by rule, prescribe the form of the financial statement required by subsection (1) for use in determining indigence. The form may require the disclosure of income and assets, including but not limited to the ownership of real and personal property, cash, and savings.

(5) A prisoner in the legal custody of the department of corrections who files a complaint or appeals a judgment in a civil action or proceeding without prepaying the required fees or security shall, in addition to filing the affidavit required in subsection (1), submit a certified copy of the prisoner's trust fund account statement, obtained from the facility in which the prisoner is confined, for the 6-month period immediately preceding any filing.

(6) If an indigent prisoner in the legal custody of the department of corrections files a civil complaint or an appeal from a civil judgment, the prisoner shall pay the total cost of the filing fee. If a prisoner is unable to pay the total filing fee, the court shall order the prisoner to make partial payments of any fees required by law when funds exist. The court shall consider the indigence policy of the department when determining whether funds exist.

(7) A prisoner may not be prohibited from filing a civil complaint or appealing a civil judgment or criminal conviction because of lack of assets or money to pay the initial partial filing fee. The court shall dismiss an action if the prisoner fails to pay either the partial or full amount of the filing fee as ordered by the court.

(8) As used in this section, "prisoner" means a person who is convicted of, sentenced for, or adjudicated delinquent for violations of criminal law or the terms and conditions of parole, probation, or a diversionary program and who is subject to incarceration, detention, or admission to any facility."

**Section 4.** Section 25-10-405, MCA, is amended to read:

**"25-10-405. Governmental entities not required to prepay fees — exceptions.** The state, a county, a municipality, or any subdivision thereof or

any officer when prosecuting or defending an action on behalf of the state, a county, a municipality, or a subdivision thereof is not required to pay or deposit any fee or amount to or with any officer during the prosecution or defense of an action, except the fee under 25-1-201(1)(p) for filing a motion for substitution of a judge*, the fee under 25-1-201(1)(r) for filing a pleading by facsimile or e-mail,* and all fees for photocopies, postage and handling, certifications, authentications, and record searches."

**Section 5. Effective date.** [This act] is effective July 1, 2013.

Approved April 30, 2013

# CHAPTER NO. 345

[HB 431]

AN ACT REVISING NEGOTIATION REQUIREMENTS FOR SURFACE OWNER DAMAGE AND DISRUPTION COMPENSATION FROM OIL AND GAS DEVELOPERS OR OPERATORS; AND AMENDING SECTIONS 82-10-502 AND 82-10-504, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 82-10-502, MCA, is amended to read:

**"82-10-502. Definitions.** As used in this part, the following definitions apply:

(1) "Agricultural production" means the production of any growing grass, crops, or trees attached to the surface of the land or farm animals with commercial value.

*(2) "Lost land value" means the value of the highest and best reasonably available use of the land directly utilized by oil and gas operations and production, other than uses appurtenant to the mineral estate.*

~~(2)~~*(3)* "Oil and gas developer or operator" means the person who acquires the oil and gas lease for the purpose of extracting oil and gas.

~~(3)~~*(4)* "Oil and gas estate" means an estate in or ownership of all or part of the oil and gas underlying a specified tract of land.

~~(4)~~*(5)* "Oil and gas operations" means the exploration for or drilling of an oil and gas well that requires entry upon the surface estate and is begun subsequent to June 1, 1981, and the production operations directly related to the exploration or drilling.

*(6) "Reasonably available use" means the present use or a future use for which a permit, if necessary, has been issued under applicable law.*

~~(5)~~*(7)* "Surface owner" means the person who holds record title to or has a purchaser's interest in the surface of the land."

**Section 2.** Section 82-10-504, MCA, is amended to read:

**"82-10-504. Surface damage and disruption payments — dispute resolution — penalty for late payment.** (1) (a) The surface owner and the oil and gas developer or operator shall attempt to negotiate *in good faith* an agreement on damages. The oil and gas developer or operator shall pay the surface owner a sum of money or other compensation equal to the amount of damages sustained by the surface owner for loss of agricultural production and income, lost land value, and lost value of improvements caused by oil and gas operations.

(b) The amount of damages may be determined by any formula mutually agreeable between the surface owner and the oil and gas developer or operator. When determining damages, consideration must be given to the period of time during which the loss occurs.

(c) At any time during the negotiation, at the request of either party and upon mutual agreement, the surface owner and the oil and gas developer or operator may enter into a dispute resolution process, including mediation.

(d) The surface owner may elect to receive annual damage payments over a period of time, except that the surface owner must be compensated by a single sum payment for harm caused by exploration only.

(e) The payments ~~contemplated by~~ *under* this subsection (1) may cover only land directly affected by oil and gas operations and production. Payments under this subsection (1) are intended to compensate the surface owner for damage and disruption. A person may not reserve or assign damage and disruption compensation apart from the surface estate except to a tenant of the surface estate.

(2) An oil and gas developer or operator who fails to timely pay an installment under any annual damage agreement negotiated with a surface owner is liable for payment to the surface owner of twice the amount of the unpaid installment if the installment payment is not paid within 60 days of receipt of notice of failure to pay from the surface owner."

Approved April 30, 2013

# CHAPTER NO. 346

[HB 444]

AN ACT GENERALLY REVISING STATE LAND LAWS RELATED TO ACCESS; PROVIDING A TAX CREDIT FOR QUALIFIED ACCESS TO STATE LANDS; CREATING THE UNLOCKING STATE LANDS PROGRAM; DEFINING PARCELS NOT PREVIOUSLY DEEMED LEGALLY ACCESSIBLE; PROVIDING CRITERIA FOR PROGRAM PARTICIPATION; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING A DELAYED EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

WHEREAS, the Legislature wishes to increase access by the public to publicly owned, state lands; and

WHEREAS, increasing access to public lands will provide additional opportunities for activities such as hunting, fishing, wildlife viewing, and other recreational opportunities as determined by the commission; and

WHEREAS, the unlocking state lands program will provide incentives for participating landowners to increase public access to state lands.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Credit for unlocking state lands program.** (1) A taxpayer is allowed a credit against the taxes imposed by Title 15, chapter 30 or 31, in the amount of $500 for each qualified access to state land, as defined in 77-1-101, that is provided. The maximum credit that a taxpayer may claim in a year under this section is $2,000.

(2) If the amount of the credit exceeds the taxpayer's liability under Title 15, chapter 30 or 31, the amount of the excess must be refunded to the taxpayer. The credit may be claimed even if the claimant has no taxable income.

(3) For purposes of this section, "qualified access to state land" means an access established through a taxpayer's property to a parcel of state land for recreational use and certified by the department of fish, wildlife, and parks pursuant to [section 2].

(4) If the property through which access is provided is owned by multiple taxpayers, the taxpayers may claim a proportionate share of the $500 credit based on their respective ownership interests in that property.

(5) If qualified access to the same parcel of state land is provided through separate properties owned by different taxpayers, the taxpayer for each property may claim a $500 credit.

**Section 2. Unlocking state lands program — purpose — commission rulemaking authority.** (1) The legislature finds that increasing access to public lands will provide additional opportunities for activities such as hunting, fishing, wildlife viewing, and other recreational activities as determined by the commission.

(2) The department may establish and administer a voluntary program to encourage access through private land to parcels not previously deemed legally accessible to be known as the unlocking state lands program.

(3) Private land is not eligible for the unlocking state lands program if outfitting or commercial hunting restricts public hunting opportunities on that land.

(4) If the parcel not previously deemed legally accessible is leased state land under Title 77, chapter 1, only the lessee with a qualified access to that state land under [section 1] is eligible for the unlocking state lands program.

(5) (a) A contract for participation in the unlocking state lands program is established through a cooperative agreement between the landowner and the department that guarantees reasonable access to state land through the landowner's private land. This contract serves as certification that the landowner is providing qualified access to state land and is eligible for the tax credit identified in [section 1]. The contract must include a certification number for identification purposes. The department shall provide a copy of the contract to the landowner and notify the department of revenue of the certification number.

(b) Contracts may be established with landowners who, prior to [the effective date of this act], provided access to state land that was otherwise not legally accessible under subsection (9). Landowners who establish contracts under this subsection (5)(b) are eligible to receive the tax credit identified in [section 1].

(6) The commission shall develop rules for establishing contracts under this section regarding:

(a) duration of access;

(b) types of qualified access; and

(c) reasonable landowner-imposed limitations.

(7) The department shall provide public notice of any available qualified access to state land established through the unlocking state lands program.

(8) Recreational users of access established by the unlocking state lands program shall remain in the prescribed access route as defined by the contract in subsection (5).

(9) For purposes of this section, "parcels not previously deemed legally accessible" means state land that cannot be accessed by:

(a) public road, right-of-way, or easement;

(b) public waters;

(c) adjacent federal, state, county, or municipal land that is open to public use; or

(d) adjacent private land because that landowner has not granted permission to cross.

**Section 3. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 15, chapter 30, part 23, and the provisions of Title 15, chapter 30, part 23, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87, chapter 1, part 2, apply to [section 2].

**Section 4. Effective date.** [This act] is effective January 1, 2014.

**Section 5. Applicability.** [This act] applies to tax years beginning after December 31, 2013.

**Section 6. Termination.** [This act] terminates December 31, 2018.

Approved April 30, 2013

# CHAPTER NO. 347

[HB 457]

AN ACT GENERALLY REVISING RECOUNT BOARD LAWS; CREATING A SCHOOL RECOUNT BOARD FOR SCHOOL DISTRICT ELECTIONS; PROVIDING DEFINITIONS; PROVIDING PROCEDURES FOR SCHOOL RECOUNT BOARDS; CLARIFYING FUNDING FOR SCHOOL DISTRICT RECOUNTS; AMENDING SECTIONS 13-1-101, 13-16-101, 13-16-201, 13-16-203, 13-16-204, 13-16-205, 13-16-301, 13-16-417, 13-16-418, AND 13-16-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. School recount board — duties — composition.** (1) There is a school recount board. If a school election requires a recount pursuant to 13-16-201, the school recount board shall perform the recount following the procedures for a recount board as provided in Title 13, chapter 16.

(2) (a) The school recount board must consist of three members of the board of trustees of the school district for which the school election took place.

(b) If there are more than three members of the board of trustees, the presiding officer of the board of trustees shall appoint three trustees to serve as school recount board members. If the presiding officer of the board of trustees is a candidate for an office or nomination for which votes are to be recounted, another trustee chosen by majority vote shall serve as the presiding officer for purposes of appointing the school recount board members.

(c) If one or more of the trustees appointed to the school recount board cannot serve or cannot attend when the school recount board meets, the presiding officer shall appoint one or more remaining trustees to serve. If there is an insufficient number of trustees to serve on the school recount board, the presiding officer may appoint the school district clerk or the clerk's designee or the county superintendent or the superintendent's designee to serve as the remaining member or members.

(d) A candidate for an office or nomination for which votes are to be recounted may not be a member of the school recount board.

(e) The school district clerk is secretary of the school recount board, and the board may appoint school district employees or hire any additional clerks as needed.

**Section 2.** Section 13-1-101, MCA, is amended to read:

**"13-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Active elector" means an elector whose name has not been placed on the inactive list due to failure to respond to confirmation notices pursuant to 13-2-220 or 13-19-313.

(2) "Active list" means a list of active electors maintained pursuant to 13-2-220.

(3) "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(4) "Application for voter registration" means a voter registration form prescribed by the secretary of state that is completed and signed by an elector, submitted to the election administrator, and contains voter registration information subject to verification as provided by law.

(5) "Ballot" means a paper ballot counted manually or a paper ballot counted by a machine, such as an optical scan system or other technology that automatically tabulates votes cast by processing the paper ballots.

(6) "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office as required by law;

(b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; or

(c) an officeholder who is the subject of a recall election.

(7) (a) "Contribution" means:

(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(ii) a transfer of funds between political committees;

(iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residences for a candidate or other individual;

(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees; or

(iv) filing fees paid by the candidate.

(8) "Election" means a general, regular, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

(9) "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections not administered by the county, the term means the school district clerk.

(10) "Elector" means an individual qualified to vote under state law.

(11) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (7);

(ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

(iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees.

(12) "Federal election" means a general or primary election in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

(13) "General election" or "regular election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted as a constitutional initiative at a regular election, regular election means an election held at the time provided in 13-1-104(1).

(14) "Inactive elector" means an individual who failed to respond to confirmation notices and whose name was placed on the inactive list pursuant to 13-2-220 or 13-19-313.

(15) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220 or 13-19-313.

(16) "Individual" means a human being.

(17) (a) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to

initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question.

(b) For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes a "ballot issue" upon preparation and transmission by the secretary of state of the form of the petition or referral to the person who submitted the proposed issue.

(18) "Legally registered elector" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.

(19) "Mail ballot election" means any election that is conducted under Title 13, chapter 19, by mailing ballots to all active electors.

(20) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (6).

(21) "Place of deposit" means a location designated by the election administrator pursuant to 13-19-307 for a mail ballot election conducted under Title 13, chapter 19.

(22) "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

(a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or

(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(c) as an earmarked contribution.

(23) "Political subdivision" means a county, consolidated municipal-county government, municipality, special district, or any other unit of government, except school districts, having authority to hold an election for officers or on a ballot issue.

(24) "Polling place election" means an election primarily conducted at polling places rather than by mail under the provisions of Title 13, chapter 19.

(25) "Primary" or "primary election" means an election held throughout the state to nominate candidates for public office at times specified by law, including nominations of candidates for offices of political subdivisions when the time for nominations is set on the same date for all similar subdivisions in the state.

(26) "Provisional ballot" means a ballot cast by an elector whose identity or eligibility to vote has not been verified as provided by law.

(27) "Provisionally registered elector" means an individual whose application for voter registration was accepted but whose identity or eligibility has not yet been verified as provided by law.

(28) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(29) "Random-sample audit" means an audit involving a manual count of ballots from designated races and ballot issues in precincts selected through a random process as provided in 13-17-503.

(30) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

*(31) "School election" has the meaning provided in 20-20-101.*

*(32) "School election filing officer" means the filing officer with whom the declarations for nomination for school district office were filed or with whom the school ballot issue was filed.*

*(33) "School recount board" means the board authorized pursuant to [section 1] to perform recount duties in school elections.*

~~(31)~~*(34)* "Special election" means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.

~~(32)~~*(35)* "Statewide voter registration list" means the voter registration list established and maintained pursuant to 13-2-107 and 13-2-108.

~~(33)~~*(36)* "Transfer form" means a form prescribed by the secretary of state that may be filled out by an elector to transfer the elector's registration when the elector's residence address has changed within the county.

~~(34)~~*(37)* "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in 13-15-206.

~~(35)~~*(38)* "Voted ballot" means a ballot that is:

(a) deposited in the ballot box at a polling place;

(b) received at the election administrator's office; or

(c) returned to a place of deposit.

~~(36)~~*(39)* "Voting system" or "system" means any machine, device, technology, or equipment used to automatically record, tabulate, or process the vote of an elector cast on a paper ballot."

**Section 3.** Section 13-16-101, MCA, is amended to read:

**"13-16-101. County governing body as county recount board.** (1) The county recount board must consist of three members.

(2) Three members of the governing body must be appointed by the presiding officer if there are more than three members of the governing body.

(3) If three members of the governing body cannot attend when the board meets, any vacant position must be filled by one or more county officers chosen by the remaining members of the governing body.

(4) If a member of the recount board is a candidate for an office or nomination for which votes are to be recounted, the member must be disqualified.

(5) The election administrator is secretary of the recount board, and the board may hire any additional clerks as needed.

(6) The board may appoint county employees or hire clerks to assist as needed.

*(7) If the recount is for a school election, the school recount board as provided in [section 1] shall perform recount board duties.*"

**Section 4.** Section 13-16-201, MCA, is amended to read:

**"13-16-201. Conditions under which recount to be conducted.** (1) A recount must be conducted if:

(a) a candidate for a precinct office or for a county, municipal, or district office voted for in only one county, other than a legislator or a judge of the district court, is defeated by a margin not exceeding 1/4 of 1% of the total votes cast or by a margin not exceeding 10 votes, whichever is greater, and the defeated candidate, within 5 days after the official canvass, files with the election administrator a verified petition stating that the candidate believes that a recount will change the result and that a recount of the votes for the office or nomination should be conducted;

(b) a candidate for a congressional office, a state or district office voted on in more than one county, the legislature, or judge of the district court is defeated by a margin not exceeding 1/4 of 1% of the total votes cast for all candidates for the same position and the defeated candidate, within 5 days after the official canvass, files a petition with the secretary of state as set forth in subsection (1)(a). The secretary of state shall immediately notify by certified mail each election administrator whose county includes any precincts that voted for the office, and a recount must be conducted in those precincts.

(c) a question submitted to the vote of the people of a county, municipality, or district within a county is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed with the election administrator. This petition must be signed by not less than 10 electors of the jurisdiction and must be filed within 5 days after the official canvass.

(d) a question submitted to the vote of the people of the state is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed with the secretary of state. This petition must be signed by not less than 100 electors of the state, representing at least five counties of the state, and must be filed within 5 days after the official canvass.

(e) a question submitted to the vote of the people of a multicounty district is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed with the secretary of state. This petition must be signed by not less than 25 electors of the district, representing at least two counties, and must be filed within 5 days after the official canvass.

(f) a canvassing board petitions for a recount as provided in 13-15-403.

(2) If the election is a school election, the petition is filed with the *school election* filing officer ~~with whom the declarations for nomination for school district office were filed or with whom the school ballot issue was filed~~.

(3) When a recount is required under subsection (1)(b), (1)(d), or (1)(e), the secretary of state shall immediately notify each election administrator of the filing of the petition, and a recount must be conducted in all precincts in each affected county."

**Section 5.** Section 13-16-203, MCA, is amended to read:

**"13-16-203. Recount for tie votes.** *(1)* When a tie has been certified to the election administrator, as provided in 13-15-405(4), or the secretary of state, the administrator or the secretary of state shall proceed as if a petition for a recount has been filed. If a tie exists after the recount, the tie must be resolved as provided by law.

*(2) In the event of a tie in a school election, the board of trustees shall proceed as if a petition for a recount has been filed pursuant to 13-16-204(1)(b). If a tie exists after the recount, the tie must be resolved pursuant to 20-20-418 or as otherwise provided by law.*"

**Section 6.** Section 13-16-204, MCA, is amended to read:

**"13-16-204. Meeting of recount board when recount requested.** (1) *(a)* Immediately upon receiving a petition for a recount or a notice from the secretary of state that a petition has been filed as provided in 13-16-201, the election administrator shall notify the members of the county recount board.

*(b) Upon receipt of a petition for a school election recount as provided in 13-16-201(2), the school election filing officer shall notify the members of the school recount board.*

(2) The board shall convene at the usual meeting place of the governing body without undue delay but not later than 5 days after receiving notice from the election administrator *or school election filing officer*."

**Section 7.** Section 13-16-205, MCA, is amended to read:

**"13-16-205. Expenses of recount.** ~~The~~ *(1) Except as provided in subsection (2), the* expense of the recount provided for in 13-16-201 is a county charge. Recount expenses of the secretary of state and board of state canvassers are a state charge.

*(2) If the recount is for a school election, the expense of the recount is a school district charge as provided in 20-20-107(1).*"

**Section 8.** Section 13-16-301, MCA, is amended to read:

**"13-16-301. Application and court order for recount.** (1) (a) Within 5 days after the canvass of election returns, an unsuccessful candidate for any public office at an election may apply to the district court of the county where the election was held for an order directing the *appropriate* county *or school* recount board to make a recount of the votes cast in any or all of the precincts *or the school district polling places*. If the election was held in more than one county, the application must be made to the district court of the county where the candidate resides.

(b) Within 5 days after the canvass of election returns, an elector who was eligible to vote on the issue and who believes that there are grounds for a recount of the votes cast for and against a ballot issue may apply to the district court of the county where the elector resides for an order directing the appropriate county *or school* recount board to make a recount of the votes cast in any or all of the precincts *or the school district polling places*.

(2) The application must specify the grounds for a recount, and it must be verified by the applicant that the matters contained in it are true to the best of the applicant's knowledge, information, and belief.

(3) Within 5 days after filing of the application, the judge shall hear the application and determine its sufficiency.

(4) If the judge finds there is probable cause to believe that the votes cast for the applicant or the ballot issue were not correctly counted, the judge shall order the appropriate county *or school* recount board to assemble within 5 days after the order is issued at a time and place fixed by the order. The board shall meet and recount the ballots as specified in the order."

**Section 9.** Section 13-16-417, MCA, is amended to read:

**"13-16-417. Sealing ballots and voting systems.** (1) When a recount of paper ballots that was conducted using a voting system is finished, each ballot must again be sealed in the same package or envelope in the presence of the election administrator and the *appropriate* county *or school* recount board and must be delivered to the election administrator for custody.

(2) All voting systems must be secured as provided in rules adopted under 13-17-211.

(3) All other materials used in the recount that are required to be sealed must be resealed in the same manner and delivered to the election administrator for custody."

**Section 10.** Section 13-16-418, MCA, is amended to read:

**"13-16-418. Certification after recount.** (1) *(a)* Immediately after the recount, the county recount board shall certify the result.

~~(2)~~*(b)* At least two members of the board shall sign the certificate, and it must be attested to under seal by the election administrator.

~~(3)~~*(c)* The certificate must set forth in substance the proceedings of the board and the appearance of any candidates or representatives. The certificate must adequately designate:

~~(a)~~*(i)* each precinct recounted;

~~(b)~~*(ii)* the vote of each precinct according to the official canvass previously made;

~~(c)~~*(iii)* the nomination, position, or question involved; and

~~(d)~~*(iv)* the correct vote of each precinct as determined by the recount.

~~(4)~~*(d)* When the certificate relates to a recount for a congressional office, a state or district office voted on in more than one county, a legislative office, or an office of judge of the district court or a ballot issue voted on in more than one county, the certificate must be made in duplicate. One copy must be transmitted immediately to the secretary of state by certified mail.

~~(5)~~*(e)* ~~(a)~~*(i)* If the recount relates to a county, municipal, or district office voted for in only one county, other than that of a legislator or a judge of the district court, or a precinct office or a ballot issue voted on in only one county, the county recount board shall immediately recanvass the returns as corrected by the certificate showing the result of the recount and make a corrected abstract of the votes.

~~(b)~~*(ii)* If the corrected abstract shows no change in the result, no further action is needed.

~~(c)~~*(iii)* If there is a change in the result, a new certificate of election or nomination must be issued to each candidate found to be elected or nominated and the first certificate is void. The individual receiving the second certificate must be elected or nominated to the office.

*(2) (a) In the event of a school election recount, immediately after the recount, the school recount board shall certify the result. At least two members of the recount board shall sign the certificate, and it must be attested to under seal by the school election administrator.*

*(b) The certificate must adequately designate:*

*(i) the vote of the district according to the official canvass previously made;*

*(ii) the position or question involved; and*

*(iii) the correct vote of the district as determined by the recount.*

*(c) The school recount board shall immediately recanvass the returns as corrected by the certificate showing the result of the recount and make a corrected abstract of the votes. If the corrected abstract shows no change in the result, no further action is needed. If there is a change in the result, a new certificate of election must be issued to each candidate found to be elected and the first certificate is void. The individual receiving the second certificate must be elected to the office.*"

**Section 11.** Section 13-16-420, MCA, is amended to read:

**"13-16-420. Misplaced or missing ballots.** If during a recount the *appropriate* county *or school* recount board discovers that ballots are misplaced or missing, it may petition the election administrator to inspect all sealed paper ballots within the county precincts *or school district polling places* to find the misplaced or missing ballots. Upon receiving the petition, the election

administrator shall inspect the sealed ballots to find the misplaced or missing ballots. Upon completion of the recount, the misplaced or missing ballots must be placed ~~in their~~ *with the* proper precinct *or school district polling place ballots* and sealed with ~~the remaining ballots~~ *them*."

**Section 12. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 20, chapter 20, part 4, and the provisions of Title 20, chapter 20, part 4, apply to [section 1].

**Section 13. Effective date.** [This act] is effective on passage and approval.

Approved April 30, 2013

# CHAPTER NO. 348

[HB 494]

AN ACT REQUIRING THE DEPARTMENT OF TRANSPORTATION TO PERFORM AN INSPECTION WITHIN 30 DAYS OF A CONTRACTOR'S REQUEST FOR AN INSPECTION; REQUIRING THE DEPARTMENT TO NOTIFY CONTRACTORS OF DEFICIENCIES; REQUIRING FINAL PAYMENT FOR CONTRACTS TO BE MADE WITHIN 90 DAYS AFTER THE DEPARTMENT'S FINAL ACCEPTANCE; AND AMENDING SECTION 60-2-115, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 60-2-115, MCA, is amended to read:

**"60-2-115. Contract let by commission — time for final payment of contract price — interest.** *(1)* ~~The commission~~ *Subject to subsections (2) through (4), the department* shall comply with the 30-day time period for payment of contracts as provided in 18-2-306 for all contracts let by the commission in accordance with this part.

*(2) For the final payment on a contract, the department shall, within 30 days after a request by the contractor for final acceptance, perform an inspection of the project and notify the contractor of whether the department has granted or refused final acceptance.*

*(3) If the department notifies the contractor that the department has granted final acceptance, the department shall make the final payment of the contract price specified in the contract to the other party to the contract within 90 days after the notice.*

*(4) (a) If the department notifies the contractor that the department has refused final acceptance, the department shall include with the notice a list of all deficiencies that must be cured before the department will grant final acceptance.*

*(b) After the contractor has cured all of the deficiencies, the contractor shall request final acceptance by the department. Within 30 days after the contractor's request, the department shall perform an inspection of all of the cured deficiencies.*

*(c) If the department notifies the contractor of its final acceptance, the department shall make the final payment as provided in subsection (3).*

*(d) If the department notifies the contractor that the department has refused final acceptance, the department shall:*

*(i) notify the contractor of any remaining deficiencies; and*

*(ii) grant final acceptance, subject to any remedy provided under the provisions of Title 28, chapter 2.*

*(5) When the department grants final acceptance, the department shall immediately consider the contract complete and close the contract.*

*(6) For the purposes of this section, the following definitions apply:*

*(a) "Final acceptance" means the department's acceptance of the construction, maintenance, or public works project upon certification by the architect, project engineer, or other representative of the department of final completion of the project.*

*(b) "Final completion" means that the project has been completed in accordance with the terms and conditions of the contract documents and all warranties have expired.*"

**Section 2. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 30, 2013

# CHAPTER NO. 349

[HB 545]

AN ACT ALLOWING EMPLOYERS TO PAY THE TOTAL COST OF THEIR QUALIFYING EMPLOYEES' INDIVIDUAL DISABILITY COVERAGE IN CERTAIN INSTANCES; DEFINING "QUALIFYING EMPLOYEE"; CLARIFYING THAT AN EMPLOYER'S PAYMENT OF THE COST OF INDIVIDUAL DISABILITY COVERAGE FOR ITS QUALIFYING EMPLOYEES IS EXCLUDED FROM THE DEFINITION OF "ADJUSTED GROSS INCOME" FOR INDIVIDUAL INCOME TAX PURPOSES; PROVIDING THAT THE SMALL EMPLOYER HEALTH INSURANCE AVAILABILITY ACT DOES NOT APPLY TO DISABILITY COVERAGE PROVIDED BY SMALL EMPLOYERS FOR QUALIFYING EMPLOYEES; AMENDING SECTIONS 15-30-2110 AND 33-22-1804, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Employer payment of employee individual disability coverage.** (1) The provisions of Title 33 may not be construed as prohibiting an employer from paying a portion of or the entire cost of individual disability coverage for or on behalf of each of the employer's qualifying employees in any case in which a qualifying employee elects individual disability coverage because:

(a) the employer does not otherwise offer or provide its qualifying employees with group health plan coverage; or

(b) the employer offers or provides its qualifying employees with group health plan coverage but the cost to the qualifying employee of the coverage exceeds 9.5% of the qualifying employee's household income.

(2) An employer's contribution to coverage for its qualifying employees who elect disability coverage pursuant to subsection (1) must be made:

(a) at a uniform percentage of the cost of the health plan offered by the employer; or

(b) at a uniform set dollar amount regardless of whether an employer offers no health plan or a health plan with one or more benefit options.

(3) For purposes of this section, "qualifying employee" means an employee who is employed by the employer for at least 30 hours per week.

**Section 2.** Section 15-30-2110, MCA, is amended to read:

**"15-30-2110. Adjusted gross income.** (1) Subject to subsection (13), adjusted gross income is the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105;

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after December 31, 2002, the amount of any dividend to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, or a county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-2101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law*, including premiums paid by the employer for an employee pursuant to [section 1]*;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and ranch risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-2602.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;

(r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero; and

(s) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in 15-31-163.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and who file separate Montana income tax returns are not required to recompute allowable passive losses according to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C. 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

(9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(11) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(12) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection (12)(a)(iv), not to exceed $5,000, from the taxpayer's adjusted gross income if the taxpayer:

(i) is a health care professional licensed in Montana as provided in Title 37;

(ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;

(iii) has had a student loan incurred as a result of health-related education; and

(iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment program described in subsection (12)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (12)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional.

(13) Notwithstanding the provisions of subsection (1), adjusted gross income does not include 40% of capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

(14) By November 1 of each year, the department shall multiply the amount of pension and annuity income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii) by the inflation factor for that tax year, but using the year 2009 consumer price index, and rounding the results to the nearest $10. The resulting amounts are effective for that tax year and must be used as the basis for the exemption determined under subsection (2)(c). (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)"

**Section 3.** Section 33-22-1804, MCA, is amended to read:

**"33-22-1804. Applicability and scope.** (1) This part applies to a health benefit plan marketed through a small employer that provides coverage to the employees of a small employer in this state if any of the following conditions are met:

(a) a portion of the premium or benefits is paid by or on behalf of the small employer;

(b) an eligible employee or dependent is reimbursed, whether through wage adjustments or otherwise, by or on behalf of the small employer for any portion of the premium;

(c) the health benefit plan is treated by the employer or any of the eligible employees or dependents as part of a plan or program for the purposes of section 106, 125, or 162 of the Internal Revenue Code, except a plan or program that is funded entirely by contributions from the employees; or

(d) all of the premium is paid by the employee who obtains coverage through the employer's group health benefit plan.

(2) This part does not apply to an individual health benefit plan for which the entire premium is paid by an employee through payroll deduction or other means.

(3) Unless prohibited by a written opinion from a federal agency, by final regulations implementing Public Law 104-191, or by a ruling by a court of competent jurisdiction, this part does not apply to an individual health benefit plan if the eligible employee or dependent is directly or indirectly reimbursed, whether through wage adjustments or otherwise, by or on behalf of the small employer for any portion of the premium. However, this part does apply to an individual health benefit plan if the employer making the direct or indirect reimbursement for any portion of the premium has had in place an employer-sponsored group health benefit plan in the 12 months preceding the reimbursement.

*(4) This part does not apply to an individual health benefit plan for which the premium is paid by a small employer pursuant to [section 1].*"

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to [section 1].

**Section 5. Effective date.** [This act] is effective January 1, 2014.

Approved April 30, 2013

# CHAPTER NO. 350

[HB 555]

AN ACT GENERALLY REVISING MEDIATION LAWS; CLARIFYING THE CIRCUMSTANCES IN WHICH A COURT MAY ORDER MEDIATION TO RESOLVE AMENDED PARENTING PLAN DISPUTES; REQUIRING PARTIES TO PROVIDE INFORMED CONSENT BEFORE A COURT CAN AUTHORIZE MEDIATION WHEN THE COURT SUSPECTS PHYSICAL, SEXUAL, OR EMOTIONAL ABUSE; REQUIRING A MEDIATOR TRAINED IN MEDIATING DOMESTIC VIOLENCE CASES TO CONDUCT MEDIATIONS IN CERTAIN CASES; DEFINING "INFORMED CONSENT"; ALLOWING PERSONS WHO ARE NOT ATTORNEYS TO BE PRESENT DURING CERTAIN MEDIATIONS; ALLOWING MEDIATIONS TO BE CONDUCTED BY MEDIATORS WHO ARE TRAINED IN MEDIATING DOMESTIC VIOLENCE CASES; AND AMENDING SECTIONS 40-4-219, 40-4-301, 40-4-302, AND 40-4-307, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 40-4-219, MCA, is amended to read:

**"40-4-219. Amendment of parenting plan — mediation.** (1) The court may in its discretion amend a prior parenting plan if it finds, upon the basis of facts that have arisen since the prior plan or that were unknown to the court at the time of entry of the prior plan, that a change has occurred in the circumstances of the child and that the amendment is necessary to serve the best interest of the child. In determining the child's best interest under this section, the court may, in addition to the criteria in 40-4-212, also consider whether:

(a) the parents agree to the amendment;

(b) the child has been integrated into the family of the petitioner with consent of the parents;

(c) the child is 14 years of age or older and desires the amendment;

(d) one parent has willfully and consistently:

(i) refused to allow the child to have any contact with the other parent; or

(ii) attempted to frustrate or deny contact with the child by the other parent; or

(e) one parent has changed or intends to change the child's residence in a manner that significantly affects the child's contact with the other parent.

(2) A court may modify a de facto parenting arrangement in accordance with the factors set forth in 40-4-212.

(3) The court shall presume a parent is not acting in the child's best interest if the parent does any of the acts specified in subsection (1)(d) or (8).

(4) The court may amend the prior parenting plan based on subsection (1)(e) to provide a new residential schedule for parental contact with the child and to apportion transportation costs between the parents.

(5) Attorney fees and costs must be assessed against a party seeking frivolous or repeated amendment if the court finds that the amendment action is vexatious and constitutes harassment.

(6) A parenting plan may be amended upon the death of one parent pursuant to 40-4-221.

(7) As used in this section, "prior parenting plan" means a parenting determination contained in a judicial decree or order made in a parenting

proceeding. In proceedings for amendment under this section, a proposed amended parenting plan must be filed and served with the motion for amendment and with the response to the motion for amendment. Preference must be given to carrying out the parenting plan.

(8) (a) If a parent or other person residing in that parent's household has been convicted of any of the crimes listed in subsection (8)(b), the other parent or any other person who has been granted rights to the child pursuant to court order may file an objection to the current parenting order with the court. The parent or other person having rights to the child pursuant to court order shall give notice to the other parent of the objection as provided by the Montana Rules of Civil Procedure, and the other parent has 20 days from the notice to respond. If the parent who receives notice of objection fails to respond within 20 days, the parenting rights of that parent are suspended until further order of the court. If that parent responds and objects, a hearing must be held within 30 days of the response.

(b) This subsection (8) applies to the following crimes:

(i) deliberate homicide, as described in 45-5-102;

(ii) mitigated deliberate homicide, as described in 45-5-103;

(iii) sexual assault, as described in 45-5-502;

(iv) sexual intercourse without consent, as described in 45-5-503;

(v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under 45-5-505;

(vi) incest, as described in 45-5-507;

(vii) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

(viii) endangering the welfare of children, as described in 45-5-622;

(ix) partner or family member assault of the type described in 45-5-206(1)(a);

(x) sexual abuse of children, as described in 45-5-625.

(9) Except in cases of physical*, sexual, or emotional* abuse or threat of physical*, sexual, or emotional* abuse by one parent against the other parent or the child~~,~~ or when a parent has been convicted of a crime enumerated in subsection (8)(b), the court may, in its discretion, order the parties to participate in a dispute resolution process to assist in resolving any conflicts between the parties regarding amendment of the parenting plan. The dispute resolution process may include counseling or mediation by a specified person or agency, and court action.

(10) (a) Except as provided in subsection (10)(b), a court-ordered or de facto modification of a parenting plan based in whole or in part on military service orders of a parent is temporary and reverts to the previous parenting plan at the end of the military service. If a motion for an amendment of a parenting plan is filed after a parent returns from military service, the court may not consider a parent's absence due to that military service in its determination of the best interest of the child.

(b) A parent who has performed or is performing military service, as defined in 10-1-1003, may consent to a temporary or permanent modification of a parenting plan:

(i) for the duration of the military service; or

(ii) that continues past the end of the military service."

**Section 2.** Section 40-4-301, MCA, is amended to read:

**"40-4-301. Family law mediation — exception.** (1) The district court may at any time consider the advisability of requiring the parties to a proceeding under this chapter to participate in the mediation of the case. Any party may request the court to order mediation. If the parties agree to mediation, the court may require the attendance of the parties or the representatives of the parties with authority to settle the case at the mediation sessions.

(2) ~~The~~ *Unless each of the parties provides written, informed consent, the* court may not authorize or permit continuation of mediated negotiations if the court has reason to suspect that one of the parties or a child of a party has been physically, sexually, or emotionally abused by the other party. *A mediation conducted under this subsection may be conducted by a mediator who is trained in mediating domestic violence cases.*

(3) The court shall appoint a mediator from the list maintained pursuant to 40-4-306. By agreement of all parties, mediators not on the list may be appointed.

(4) The court may adopt rules to implement this part.

*(5) For purposes of this section, "informed consent" means an educated, competent, and voluntary choice to enter into mediation.*"

**Section 3.** Section 40-4-302, MCA, is amended to read:

**"40-4-302. Mediation proceeding — tolling of statute of limitations.** (1) The purpose of a mediation proceeding is to reduce the acrimony that may exist between the parties and to develop an agreement that is supportive of the best interests of a child involved in the proceeding.

(2) The mediator shall attempt to effect a settlement of the parenting, child support, parental contact with the child, maintenance, or property settlement dispute. The mediator may not use coercive measures to effect the settlement. The mediator may recommend that a party obtain assistance from other resources in the community.

(3) Subject to 40-4-301(1) *and except in cases involving domestic violence*, the mediator may exclude attorneys from the mediation sessions. The parties' attorneys may confer with the mediator prior to the mediation session and may review and approve any agreement. *In cases involving domestic violence, a victim may elect to have advocates and support persons who are not attorneys present during the mediation.*

(4) An applicable statute of limitations is tolled as to the participants during the period of mediation. The tolling commences on the date the parties agree in writing to participate in the mediation or when the court orders mediation, whichever is later, and ends on the date the mediation is officially terminated by the mediator."

**Section 4.** Section 40-4-307, MCA, is amended to read:

**"40-4-307. Mediator qualifications.** A mediator must meet the following minimum qualifications:

(1) knowledge of the court system and the procedures used in family law matters;

(2) knowledge of other resources in the community to which the parties may be referred for assistance;

*(3) knowledge in the area of domestic violence;*

~~(3)~~*(4)* if applicable, knowledge of child development, clinical issues relating to children, the effects of marriage dissolution on children, and parenting research; and

~~(4)~~*(5)* knowledge of the mediation process."

Approved April 30, 2013

# CHAPTER NO. 351

[HB 562]

AN ACT REVISING SUBDIVISION LAWS REGARDING SURVEYS AND EXEMPTIONS FROM LOCAL SUBDIVISION REVIEW; AMENDING SECTION 76-3-207, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 76-3-207, MCA, is amended to read:

**"76-3-207. Divisions or aggregations of land exempted from review but subject to survey requirements and zoning regulations — exceptions — fees for examination of division.** (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions or aggregations of ~~land~~ *tracts of record of any size, regardless of the resulting size of any lot created by the division or aggregation,* are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions or aggregations of land other than subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between ~~adjoining properties~~ *adjoining properties*;

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

(d) for five or fewer lots within a platted subdivision, the relocation of common boundaries;

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(f) aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, a division, redesign, or rearrangement of lots that results in an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed

and approved by the governing body before an amended plat may be filed with the county clerk and recorder;

(b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to review under parts 5 and 6 of this chapter.

(3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

(b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as a partial payment of the total tax that is due.

(4) The governing body may examine a division or aggregation of land to determine whether or not the requirements of this chapter apply to the division or aggregation and may establish reasonable fees, not to exceed $200, for the examination."

**Section 2. Effective date.** [This act] is effective July 1, 2013.

Approved April 30, 2013

# CHAPTER NO. 352

[HB 580]

AN ACT PROVIDING AN APPROPRIATION FOR THE GREATER SAGE-GROUSE HABITAT CONSERVATION ADVISORY COUNCIL ESTABLISHED BY THE GOVERNOR; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the greater sage-grouse (Centrocercus urophasianus) is an iconic species that inhabits much of the sagebrush-grassland habitats in Montana; and

WHEREAS, the State of Montana currently enjoys viable and widespread populations of the species, the second largest abundance of greater sage-grouse among western states; and

WHEREAS, the United States Fish and Wildlife Service (USFWS) has determined that the greater sage-grouse species is warranted for listing as a threatened or endangered species under the Endangered Species Act (ESA) but is precluded by other higher priority species; and

WHEREAS, the United States District Court for the District of Idaho ruled on February 2, 2012, that the USFWS must reevaluate the status of the greater sage-grouse by September 30, 2015; and

WHEREAS, the United States Secretary of the Interior has invited Montana and other western states impacted by the potential listing of the greater sage-grouse to develop state-specific regulatory mechanisms to conserve the species and preclude the need to list it under the ESA; and

WHEREAS, the development of a state-specific strategy in Montana will be critical in demonstrating to the USFWS that the species does not warrant federal protection under the ESA; and

WHEREAS, the United States Bureau of Land Management (BLM) and the United States Forest Service (USFS) are currently implementing national instruction memoranda to guide interim management of public lands and to develop greater sage-grouse conservation measures for incorporation into the agencies' respective land use plans; and

WHEREAS, the development of a state-specific strategy will enable the BLM and USFS to incorporate relevant elements from the strategy into their land use plans and environmental analyses; and

WHEREAS, approximately half of greater sage-grouse habitat in Montana involves private property, and maintaining the species will require effective conservation strategies across property ownerships; and

WHEREAS, the State of Montana has management authority over greater sage-grouse populations in Montana; and

WHEREAS, the State of Montana in collaboration with stakeholders developed and adopted a state greater sage-grouse plan in 2004, pertaining to sage-grouse population responses to large scale changes in habitat; and

WHEREAS, the State of Montana has identified and will update, as appropriate, greater sage-grouse core areas, which include priority habitats for conservation; and

WHEREAS, it is in the interest of this state to bring stakeholders and experts together to recommend a course of action that will provide for conservation measures sufficient to preclude the need to list the greater sage-grouse; and

WHEREAS, the listing of the greater sage-grouse could have a significant adverse effect on the economy of the state of Montana; and

WHEREAS, it is appropriate and beneficial to fund the Greater Sage-Grouse Habitat Conservation Advisory Council established by Governor Steve Bullock in Executive Order No. 2-2013.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Appropriation.** (1) There is appropriated a total of $75,000 from the state special revenue fund oil and gas ERA account to the governor's office for the bienniums beginning July 1, 2011, and July 1, 2013, for the purpose of funding the greater sage-grouse habitat conservation advisory council established by the governor in Executive Order No. 2-2013.

(2) The legislature recommends that the greater sage-grouse habitat conservation advisory council develop its proposed recommendations on policies and actions for a statewide strategy to preclude the need to list the greater sage-grouse under the Endangered Species Act of 1973 by October 31, 2013, so that the public may review and comment on the proposed recommendations and the council may make any necessary changes prior to the recommendations being delivered to the governor by the established deadline of January 31, 2014.

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 30, 2013

# CHAPTER NO. 353

[HB 583]

AN ACT CREATING THE MONTANA SUICIDE REVIEW TEAM; ESTABLISHING MEMBERSHIP REQUIREMENTS; ESTABLISHING A PROCESS FOR OBTAINING AND REVIEWING INFORMATION RELATED TO SUICIDES; PROVIDING CONFIDENTIALITY; PROVIDING PENALTIES; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 50-16-522, 50-16-525, 50-16-804, 50-16-805, AND 53-21-1102, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Statement of policy — access to information.** (1) The prevention of suicide is both the policy of the state of Montana and a community responsibility. Many community professionals have expertise that can be used to promote strategies and supports to prevent suicide. The use of these professionals in reviewing suicides can lead to a greater understanding of the causes of death and the methods of preventing deaths.

(2) It is the intent of the legislature to establish the Montana suicide review team to study the incidence and causes of suicides in Montana and to make recommendations for community or statewide change, if appropriate, that may help prevent future deaths.

**Section 2. Montana suicide review team — duties.** (1) There is a Montana suicide review team established to review the circumstances related to suicides and to make recommendations to the governor. Activities by the suicide review team are limited to:

(a) performing an in-depth analysis of suicides that occur in Montana, including a review of records available by law;

(b) compiling statistics related to suicides for use in reports published by the department;

(c) analyzing the causes of suicides; and

(d) recommending measures to prevent future suicides.

(2) The Montana suicide review team may not review suicides that occur within the boundaries of an Indian reservation if the tribal government opposes the review.

(3) The Montana suicide review team shall provide a report to the governor before the end of each biennium that summarizes the review team's work and recommendations.

**Section 3. Montana suicide review team — membership — meetings.** (1) The Montana suicide review team consists of:

(a) six members appointed by the governor; and

(b) the suicide prevention officer provided for in 53-21-1101, who shall serve as a nonvoting member.

(2) (a) The governor shall appoint as members of the team:

(i) one psychiatrist licensed under Title 37, chapter 3;

(ii) one psychologist licensed under Title 37, chapter 17;

(iii) one clinical social worker licensed under Title 37, chapter 22, or one clinical professional counselor licensed under Title 37, chapter 23; and

(iv) one member of the clergy as defined in 15-6-201.

(b) The governor shall appoint two members from among the following:

(i) a nurse licensed under Title 37, chapter 8, to practice as a registered professional nurse or as an advanced practice registered nurse;

(ii) a physician assistant licensed under Title 37, chapter 20;

(iii) a representative of a tribal health department nominated by the tribal government;

(iv) a representative of the U.S. department of veterans affairs;

(v) a representative of an organization that advocates for individuals with mental illness and their family members;

(vi) a law enforcement representative;

(vii) a forensic pathologist; or

(viii) a county coroner.

(3) Appointed members shall serve a term of 3 years and may be reappointed.

(4) The suicide review team shall meet at least eight times a year.

(5) Members of the suicide review team who are not employees of a public agency may be paid a stipend.

(6) (a) Except as provided in subsection (6)(b), members are eligible for reimbursement for travel expenses as provided for in 2-18-501 through 2-18-503.

(b) A member who is an employee of a public agency may be reimbursed for travel and meal expenses only if the member travels to a meeting held in a location other than the location where the member lives or is employed.

(7) The suicide review team is attached to the department for administrative purposes only under 2-15-121.

**Section 4. Disclosure of information — confidentiality.** (1) The department shall provide the Montana suicide review team with a copy of each death certificate filed with the state that lists suicide as the cause of death. The department may not charge a fee for providing the death certificate.

(2) The suicide review team may request and may receive information from:

(a) a county coroner;

(b) the state medical examiner provided for in 44-3-201;

(c) an appropriate tribal official as designated by a tribe; and

(d) a health care provider as permitted in Title 50, chapter 16, part 5 or 8, or applicable federal law.

(3) Upon request of the Montana suicide review team, a health care provider may disclose information about a patient without the patient's authorization or without the authorization of the representative of a patient who is deceased.

(4) The review team shall maintain the confidentiality of the information received pursuant to [sections 1 through 6].

(5) Materials and information obtained by the Montana suicide review team are not subject to subpoena or to the requirements related to public records under Title 2, chapter 6.

**Section 5. Unauthorized disclosure — civil penalty.** A person aggrieved by the use of information obtained pursuant to [section 4] for a purpose not authorized by [sections 1 through 6] may bring a civil action for damages, costs, and fees as provided in 50-16-553 or 50-16-817.

**Section 6. Unauthorized disclosure — misdemeanor.** A person who knowingly uses information obtained pursuant to [section 4] for a purpose not

authorized by [sections 1 through 6] is guilty of a misdemeanor and upon conviction is punishable as provided in 46-18-212.

**Section 7.** Section 50-16-522, MCA, is amended to read:

**"50-16-522. Representative of deceased patient.** ~~A~~ *Except as provided in [section 4], a* personal representative of a deceased patient may exercise all of the deceased patient's rights under this part. If there is no personal representative or upon discharge of the personal representative, a deceased patient's rights under this part may be exercised by the surviving spouse, a parent, an adult child, an adult sibling, or any other person who is authorized by law to act for the deceased patient."

**Section 8.** Section 50-16-525, MCA, is amended to read:

**"50-16-525. Disclosure by health care provider.** (1) Except as authorized in 50-16-529, 50-16-530, ~~and~~ 50-19-402*, and [section 4]* or as otherwise specifically provided by law or the Montana Rules of Civil Procedure, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent or employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

(2) A health care provider shall maintain, in conjunction with a patient's recorded health care information, a record of each person who has received or examined, in whole or in part, the recorded health care information during the preceding 3 years, except for a person who has examined the recorded health care information under 50-16-529(1) or (2). The record of disclosure must include the name, address, and institutional affiliation, if any, of each person receiving or examining the recorded health care information, the date of the receipt or examination, and to the extent practicable a description of the information disclosed."

**Section 9.** Section 50-16-804, MCA, is amended to read:

**"50-16-804. Representative of deceased patient's estate.** ~~A~~ *Except as provided in [section 4], a* personal representative of a deceased patient's estate may exercise all of the deceased patient's rights under this part. If there is no personal representative or upon discharge of the personal representative, a deceased patient's rights under this part may be exercised by the surviving spouse, a parent, an adult child, an adult sibling, or any other person who is authorized by law to act for the deceased person."

**Section 10.** Section 50-16-805, MCA, is amended to read:

**"50-16-805. Disclosure of information ~~for workers' compensation and occupational disease claims and law enforcement purposes~~ *allowed for certain purposes.*** (1) To the extent provided in 39-71-604 and 50-16-527, a signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, by the health care provider.

(2) A health care provider may disclose health care information about an individual for law enforcement purposes if the disclosure is to:

(a) federal, state, or local law enforcement authorities to the extent required by law; or

(b) a law enforcement officer about the general physical condition of a patient being treated in a health care facility if the patient was injured by the possible criminal act of another.

*(3) A health care provider may disclose health care information to the Montana suicide review team for the purposes of [sections 1 through 6].*"

**Section 11.** Section 53-21-1102, MCA, is amended to read:

**"53-21-1102. Suicide reduction plan.** (1) The department of public health and human services shall produce a biennial suicide reduction plan that must be submitted to the legislature as provided in 5-11-210.

(2) The plan must include:

(a) an assessment of both risk and protective factors impacting Montana's suicide rate;

(b) specific activities to reduce suicide;

(c) concrete targets for suicide reduction among various demographic populations, including but not limited to American Indians, veterans, and youth;

(d) measurable outcomes for all activities; and

(e) information on all existing state suicide reduction activities for all state agencies, ~~as well as~~ *including but not limited to statistics from and recommendations by the Montana suicide review team and information from* any known local or tribal suicide reduction activities.

(3) Upon the development of a suicide reduction plan draft, the department shall initiate a public comment period of not less than 21 days during which members of mental health advocacy groups and other interested parties may submit comments on and suggestions for the plan. The department shall produce a final plan, which takes public comment into account, no later than 60 days after the close of the comment period. The plan must be published on the department's website and submitted to the appropriate interim committee of the legislature, the director of the department, and the governor."

**Section 12. Appropriation.** There is appropriated from the general fund to the department of public health and human services $67,000 in each year of the biennium beginning July 1, 2013, for carrying out the activities of the Montana suicide review team as established in [sections 2 through 4].

**Section 13. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

**Section 14. Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 53, chapter 21, part 11, and the provisions of Title 53, chapter 21, apply to [sections 1 through 6].

**Section 15. Effective date.** [This act] is effective July 1, 2013.

**Section 16. Termination.** [This act] terminates June 30, 2016.

Approved April 30, 2013

## CHAPTER NO. 354

[HB 586]

AN ACT REVISING LAWS RELATED TO AQUATIC INVASIVE SPECIES; ESTABLISHING A STATEWIDE INVASIVE SPECIES MANAGEMENT AREA; AUTHORIZING USE OF QUARANTINE MEASURES AND CHECK STATIONS AT KEY ENTRY POINTS TO THE STATE; DEFINING AND AUTHORIZING INSPECTION OF EQUIPMENT; REVISING DEPARTMENTAL DUTIES, INCLUDING DUTIES OF THE DEPARTMENT

OF TRANSPORTATION; GRANTING RULEMAKING AUTHORITY; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 80-7-1002, 80-7-1003, 80-7-1004, 80-7-1006, 80-7-1007, 80-7-1008, 80-7-1010, 80-7-1011, AND 80-7-1014, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Statewide invasive species management area.** (1) There is established a statewide invasive species management area for the purpose of preventing the introduction, importation, and infestation of invasive species through the mandatory inspection of vessels and equipment at key entry points to the state on a seasonal basis and the mandatory decontamination of any vessel or equipment on or in which an invasive species is detected.

(2) As far as practical, signs indicating that the statewide invasive species management area is in place must be posted in an effective manner along the boundaries of and within the state. The signs must include information about the specific regulations that apply to the area. The signs must be paid for with funds from the invasive species account established in 80-7-1004. The departments may coordinate with any other governmental entity for the posting of signs.

(3) At a check station established pursuant to this section, the departments may examine vessels and equipment for the presence of an invasive species and compliance with this section and rules adopted pursuant to 80-7-1007. A department may examine any interior portion of a vessel or equipment that may contain water, including bilges, livewells, and bait containers, for compliance only if inspection of interior portions is included as part of quarantine measures established pursuant to rules adopted under 80-7-1007.

(4) The owner, operator, or person in possession of a vessel or equipment shall:

(a) comply with this section and rules imposed under 80-7-1007; and

(b) stop at any check station established pursuant to this section unless a medical emergency makes stopping likely to result in death or serious bodily injury.

(5) If during an inspection of a vessel or equipment the presence of an invasive species is detected, that vessel or equipment may not leave the check station without authorization until it is cleaned and decontaminated in a manner established in accordance with rules adopted pursuant to 80-7-1007. The department shall make every effort to ensure decontamination of the vessel or equipment as expeditiously as possible.

(6) After use in a body of water within the statewide invasive species management area, all vessels, equipment, bait containers, livewells, bilges, and other boating-related equipment, excluding marine sanitary systems, must be drained in a way that does not impact any state waters before being transported on land or on a public highway, as defined in 61-1-101, except when allowed by the department of fish, wildlife, and parks.

**Section 2.** Section 80-7-1002, MCA, is amended to read:

**"80-7-1002. Legislative findings and purpose.** (1) The legislature finds that:

(a) invasive species can wreak damage on the economy, environment, recreational opportunities, and human health in Montana;

(b) there is reason to be concerned about the further introduction, importation, and infestation of Eurasian watermilfoil (Myriophyllum spicatum) and the introduction, importation, and infestation of additional invasive species

in Montana, such as the zebra mussel (Dreissena polymorpha) and the quagga mussel (Dreissena bugensis), that could cause catastrophic damage to not only our waterways, rivers, and lakes, our water storage, delivery, and irrigation systems, our hydroelectric power structures and systems, and our aquatic ecosystems, but also to the entire state economy;

(c) as infestations of threatening invasive species move ever closer to Montana's borders, protecting Montana against these species is of utmost importance to the state economy, environment, recreational opportunities, and human health for the benefit of all Montanans;

(d) preventing the introduction, importation, and infestation of invasive species is the most effective and least costly strategy for combating invasive species that, once established, are often difficult to control or eradicate;

(e) the use of check stations, at which vessels and ~~trailers transporting vessels~~ *equipment* may be inspected for the presence of invasive species and cleaned if an invasive species is detected, is an effective way to prevent the introduction, importation, and infestation of invasive species that are easily transferred from infested areas to uninfested areas when proper precautions are not taken; and

(f) preventing the introduction, importation, and infestation of invasive species is best accomplished through coordinated educational and management activities.

(2) The purpose of this part is to establish a mechanism for Montana to take concerted action to detect, control, and manage invasive species, including preventing further introduction, importation, and infestation, by educating the public about the threat of these species, coordinating public and private efforts and expertise to combat these species, and authorizing the use of check stations to prevent the ~~intrastate~~ movement of invasive species from infested areas to uninfested areas to protect the state's economy, environment, recreational opportunities, and human health for the benefit of all Montanans."

**Section 3.** Section 80-7-1003, MCA, is amended to read:

**"80-7-1003. Definitions.** As used in this part, the following definitions apply:

(1) "Departments" means the department of agriculture, the department of fish, wildlife, and parks, ~~and~~ the department of natural resources and conservation*, and the department of transportation*.

*(2) "Equipment" means an implement or machinery that has been wholly or partially immersed in surface waters, including but not limited to boat lifts, trailers transporting vessels, floating docks, pilings, dredge pipes, and buoys.*

~~(2)~~*(3)* "Invasive species" means, upon the mutual agreement of the directors of the departments, a nonnative, aquatic species that has caused, is causing, or is likely to cause harm to the economy, environment, recreational opportunities, or human health.

~~(3)~~*(4)* "Invasive species management area" means a designation made by a department *under 80-7-1008* for a specific area or for a body or bodies of water for a specific or indeterminate amount of time that regulates invasive species or potential carriers of invasive species within the boundaries of that area.

~~(4)~~*(5)* "Person" means an individual, partnership, corporation, association, limited partnership, limited liability company, governmental subdivision, agency, or public or private organization of any character.

~~(5)~~*(6)* "Vessel" has the meaning provided in 61-1-101."

**Section 4.** Section 80-7-1004, MCA, is amended to read:

**"80-7-1004. Invasive species account.** (1) There is an invasive species account in the state special revenue fund. The account is administered by the department of ~~agriculture~~ *fish, wildlife, and parks*.

(2) Money transferred from the general fund or received from any other lawful source, including but not limited to gifts, grants, donations, securities, or other assets, public or private, may be deposited in the account.

(3) Subject to subsection (4), money deposited in the account must be used ~~to accomplish the purposes of this part~~ *for projects that prevent or control any nonnative, aquatic invasive species pursuant to this part*.

(4) Any private contribution deposited in the account for a particular purpose, as stated by the donor, must be used exclusively for that purpose.

(5) Any interest and earnings on the account must be retained in the account."

**Section 5.** Section 80-7-1006, MCA, is amended to read:

**"80-7-1006. Departmental responsibilities.** (1) The departments shall prepare a list of invasive species and identify those departments and other public agencies with jurisdiction over each species on the list. The jurisdiction of each department for the prevention and control of invasive species is according to the department's powers and duties as established by law.

(2) For those invasive species under the jurisdiction of more than one department, the departments with jurisdiction, through cooperative agreement, shall seek to clarify and coordinate their respective responsibilities.

(3) Working in collaboration with each other, the departments, individually or collectively, shall develop and adopt an invasive species strategic plan or plans to accomplish the purposes of this part. The plan or plans shall identify and prioritize threats and determine appropriate actions, in the following order of priority, related to:

(a) public awareness and education;

(b) prevention and detection of invasive species, including the use of invasive species management areas authorized under 80-7-1008 *and the statewide invasive species management area established in [section 1]*;

(c) management, control, and restoration of infested areas; and

(d) emergency response.

(4) The departments ~~may~~ *shall* enforce quarantine regulations and measures imposed by law or rule in an invasive species management area *under 80-7-1008 or in the statewide invasive species management area under [section 1]*, including the mandatory inspection of any interior portion of a vessel *or equipment* that may contain water for the presence of an invasive species.

*(5) The departments may designate employees to carry out the provisions of this part.*

~~(5)~~*(6)* The departments shall implement education and outreach programs that increase public knowledge and understanding of prevention, early detection, and control of invasive species."

**Section 6.** Section 80-7-1007, MCA, is amended to read:

**"80-7-1007. Rulemaking authority.** *(1)* Unless otherwise provided in Title 81, chapters 2 and 7, or this chapter, each of the departments may adopt rules for the prevention, early detection, and control of invasive species under the departments' jurisdiction, including rules for the:

~~(1)~~*(a)* implementation of the invasive species strategic plan adopted pursuant to 80-7-1006;

~~(2)~~*(b)* transportation of an invasive species or any agent likely to be a carrier of an invasive species;

~~(3)~~*(c)* designation, regulation, and treatment of an invasive species management area *under 80-7-1008*, including rules pertaining to:

~~(a)~~*(i)* the use of quarantine regulations and measures;

~~(b)~~*(ii)* the movement of vessels *and equipment* within, to, or from the area; and

~~(c)~~*(iii)* the inspection and cleaning of vessels *and equipment* moving within, to, or from the area; and

~~(4)~~*(d)* manner in which vessels *and equipment*, including bilges, livewells, bait containers, and other boating-related equipment, traveling in the state must be cleaned to ensure that they are free from the presence of an invasive species.

*(2) The departments shall adopt rules for the administration of the statewide species management area established in [section 1], including rules specifying the method or methods for preventing the introduction or further introduction of invasive species into the state, and shall adopt rules for:*

*(a) the use of quarantine measures;*

*(b) the movement of vessels and equipment into the state; and*

*(c) the manner in which check stations will be used to inspect, clean, and decontaminate vessels and equipment moving into the state."*

**Section 7.** Section 80-7-1008, MCA, is amended to read:

**"80-7-1008. Invasive species management area — authorization.** (1) ~~When~~ *Except as provided in [section 1], when* an invasive species is identified as infesting or threatening an area, the department with jurisdiction over that invasive species may designate and administer an invasive species management area for a specific area of land or for a body or bodies of water for a specific or indeterminate amount of time to prevent and control the infestation or spread of that invasive species.

(2) To the extent practicable, prior to the designation of an invasive species management area, the department making the designation shall coordinate with all of the departments in order to further the purposes of this part.

(3) The designation of an invasive species management area must specify:

(a) the invasive species present or considered threatening; and

(b) the method or methods for preventing the introduction of the species or controlling or eradicating the species, including regulations pertaining to:

(i) the use of quarantine measures;

(ii) the movement of vessels *and equipment* within, to, and from the area; and

(iii) whether check stations will be used to inspect and clean vessels *and equipment* moving within, to, or from the area. A department may conduct mandatory inspections of any interior portion of a vessel *or equipment* that may contain water only if the department has included the use of mandatory inspections as part of quarantine measures established pursuant to subsection (3)(b)(i).

(4) As far as practical, signs indicating that an invasive species management area is in place must be posted in an effective manner at access points to the

designated area and along the boundaries and within the area. The signs must include information about the specific regulations that apply to the area. The signs must be paid for with funds from the invasive species account established in 80-7-1004. The departments may coordinate with any other governmental entity for the posting of signs."

**Section 8.** Section 80-7-1010, MCA, is amended to read:

**"80-7-1010. Invasive species management area — regulation.** (1) The owner, operator, or person in possession of any vessel *or equipment* authorized for use in an invasive species management area shall comply with any regulations imposed pursuant to 80-7-1008(3)(b).

(2) After use in a body of water within an invasive species management area, all vessels, *equipment,* bait containers, livewells, bilges, and other boating-related equipment, excluding marine sanitary systems, must be drained in a way that does not impact any state waters before being transported on land or a public highway, as defined in 61-1-101, except where allowed by the department of fish, wildlife, and parks.

~~(3) In a body of water designated as an invasive species management area, taking from the water or possessing any bait animal, dead or alive, including but not limited to crayfish, leeches, and minnows, is prohibited unless approved by the department of fish, wildlife, and parks.~~"

**Section 9.** Section 80-7-1011, MCA, is amended to read:

**"80-7-1011. Check stations.** (1) The departments shall establish a check station within or adjacent to an invasive species management area to prevent the introduction, importation, infestation, and spread of the invasive species for which the designation was issued.

(2) At a check station *established under subsection (1)*, the departments may examine vessels and ~~trailers transporting vessels~~ *equipment* for the presence of an invasive species and compliance with regulations imposed under 80-7-1008(3)(b) and with this section. A department may examine any interior portion of a vessel *or equipment* that may contain water, including bilges, livewells, and bait containers, for compliance only if inspection of interior portions is included as part of quarantine measures established pursuant to 80-7-1008(3)(b)(i).

(3) The owner, operator, or person in possession of a vessel *or equipment* shall stop at any check station unless a medical emergency makes stopping likely to result in death or serious bodily injury.

(4) If during an inspection of a vessel or ~~a trailer transporting a vessel~~ *equipment* the presence of an invasive species is detected, that vessel or ~~trailer~~ *equipment* may not leave the check station *without authorization* until it is cleaned and decontaminated in a manner established in accordance with 80-7-1008(3)(b). *The department shall make every effort to ensure decontamination of the vessel or equipment as expeditiously as possible.*"

**Section 10.** Section 80-7-1014, MCA, is amended to read:

**"80-7-1014. Penalty.** (1) Except as provided in subsection (2), the following penalties apply:

(a) The offense of negligently violating the provisions of 80-7-1010 through 80-7-1012 *and [section 1]* or rules adopted under 80-7-1010 through 80-7-1012 *and [section 1]* pertaining to an invasive species management area *or the statewide invasive species management area* is a misdemeanor punishable by a fine not to exceed $500.

(b) The offense of purposely or knowingly violating the provisions of 80-7-1010 through 80-7-1012 *and [section 1]* or rules adopted under 80-7-1010 through 80-7-1012 *and [section 1]* pertaining to an invasive species management area *or the statewide invasive species management area* is a misdemeanor punishable by a fine not to exceed $1,000.

(c) Purposely or knowingly attempting to introduce an invasive species in Montana is a felony. Any person found guilty under this subsection (1)(c) is subject to a criminal penalty of up to 2 years in prison, a fine not to exceed $5,000, or both. A person convicted of violating this subsection (1)(c) may also be required to pay restitution for any cost incurred to mitigate the effect of the violation.

(d) A civil penalty not to exceed $250 may be imposed on any person who violates any other provision of 80-7-1010 through 80-7-1012 *and [section 1]* or rules adopted under 80-7-1010 through 80-7-1012 *and [section 1]* not enumerated in subsections (1)(a) through (1)(c).

(2) A warning without penalty may be issued to any person violating the provisions of 80-7-1010 through 80-7-1012 *and [section 1]* or rules adopted under 80-7-1010 through 80-7-1012 *and [section 1]* if it is determined that a warning best serves the public interest.

(3) Civil penalties collected under this section must be deposited in the general fund."

**Section 11. Appropriation.** (1) In each year of the biennium beginning July 1, 2013, there is appropriated to the department of fish, wildlife, and parks $640,000 from the state general fund for the prevention and control of any nonnative, aquatic invasive species pursuant to Title 80, chapter 7, part 10.

(2) For the biennium beginning July 1, 2013, there is appropriated to the department of natural resources and conservation $300,000 from the general fund for projects that prevent or control any nonnative, aquatic invasive species pursuant to 80-7-1004.

**Section 12. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 80, chapter 7, part 10, and the provisions of Title 80, chapter 7, part 10, apply to [section 1].

**Section 13. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 11] is effective July 1, 2013.

Approved April 30, 2013

# CHAPTER NO. 355

[HB 588]

AN ACT REVISING LAWS RELATED TO UNLAWFUL USE OF AIRCRAFT FOR HUNTING-RELATED PURPOSES; PROHIBITING USE OF AN AIRCRAFT TO LOCATE A GAME ANIMAL ON THE SAME DAY IT WILL BE HUNTED; PROHIBITING COMMUNICATION OF THE LOCATION OF A GAME ANIMAL TO ANOTHER PERSON ON THE SAME DAY IT WILL BE HUNTED; REVISING PENALTIES; AND AMENDING SECTION 87-6-207, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Unlawful use of aircraft.** (1) Except as provided in 87-3-126, a person may not:

(a) kill, take, or shoot at any game bird, game animal, or fur-bearing animal from an aircraft, including a helicopter;

(b) use an aircraft, including a helicopter:

(i) to locate any game animal for the purpose of hunting that animal during the same hunting day after the person has been airborne; or

(ii) for the purpose of concentrating, pursuing, driving, rallying, or stirring up any game bird, migratory bird, game animal, or fur-bearing animal; or

(c) if in an aircraft, including a helicopter, spot or locate any game animal or fur-bearing animal and communicate the location of the game animal or fur-bearing animal to any person:

(i) on the ground by means of any air-to-ground communication signal or other device as an aid to hunting or pursuing wildlife; or

(ii) within the same hunting day after being airborne.

(2) Unless permitted by the department, a person may not use an aircraft, including a helicopter, for hunting purposes within the boundaries of a national forest except when cargo or persons are loaded and unloaded at federal aviation agency approved airports, aircraft landing fields, or heliports that have been established on private property or that have been established by any federal, state, county, or municipal governmental body. Hunting purposes include the transportation of hunters or wildlife and hunting equipment and supplies. The provisions of this subsection do not apply:

(a) during emergency situations;

(b) when search and rescue operations are being conducted; or

(c) for predator control as permitted by the department of livestock.

(3) The following penalties apply for a violation of this section:

(a) Unless otherwise provided in this subsection (3), a person convicted of a violation of this section shall be fined not less than $300 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(b) If a person is convicted or forfeits bond or bail after being charged with unlawful use of an aircraft to kill or take a deer, elk, antelope, mountain lion, mountain sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear, the person shall be fined not less than $500 or more than $2,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture unless the court imposes a longer period.

(c) If a person is convicted or forfeits bond or bail after being charged with unlawful use of an aircraft to kill or take a fur-bearing animal, the person shall be fined not less than $100 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period, and any pelts possessed unlawfully must be confiscated.

**Section 2.** Section 87-6-207, MCA, is amended to read:

**"87-6-207. Unlawful use of ~~aircraft or~~ boat.** ~~(1) Except as provided in 87-3-126, a person may not:~~

~~(a) kill, take, or shoot at any game bird, game animal, or fur-bearing animal from an aircraft, including a helicopter;~~

~~(b) use an aircraft or helicopter for the purpose of concentrating, pursuing, driving, rallying, or stirring up any game bird, migratory bird, game animal, or fur-bearing animal; or~~

~~(c) if in an aircraft, including a helicopter, spot or locate any game animal or fur-bearing animal and communicate the location of the game animal or fur-bearing animal to any person on the ground by means of any air-to-ground communication signal or other device as an aid to hunting or pursuing wildlife.~~

~~(2) Unless permitted by the department, a person may not use an aircraft, including a helicopter, for hunting purposes within the boundaries of a national forest except when persons or cargo are loaded and unloaded at federal aviation agency-approved airports, aircraft landing fields, or heliports that have been established on private property or that have been established by any federal, state, county, or municipal governmental body. Hunting purposes include the transportation of hunters or wildlife and hunting equipment and supplies. The provisions of this subsection do not apply:~~

~~(a) during emergency situations;~~

~~(b) when search and rescue operations are being conducted; or~~

~~(c) for predator control as permitted by the department of livestock.~~

~~(3)~~*(1)* A person may not use a powerboat, sailboat, or any boat under sail or any floating device towed by a powerboat, sailboat, or any boat under sail for the purpose of killing, capturing, taking, pursuing, concentrating, driving, or stirring up any upland game bird, game animal, or fur-bearing animal.

~~(4)~~*(2)* The following penalties apply for a violation of this section:

(a) Unless otherwise provided in this subsection ~~(4)~~ *(2)*, a person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(b) If a person is convicted or forfeits bond or bail after being charged with unlawful use of ~~aircraft or~~ *a* boat to kill or take a mountain sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear, the person shall be fined not less than $500 or more than $2,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture unless the court imposes a longer period.

(c) If a person is convicted or forfeits bond or bail after being charged with unlawful use of ~~aircraft or~~ *a* boat to kill or take a deer, antelope, elk, or mountain lion, the person shall be fined not less than $300 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or

trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period.

(d) If a person is convicted or forfeits bond or bail after being charged with unlawful use of ~~aircraft or~~ *a* boat to kill or take a fur-bearing animal, the person shall be fined not less than $100 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period, and any pelts possessed unlawfully must be confiscated."

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 87, chapter 6, part 2, and the provisions of Title 87, chapter 6, part 2, apply to [section 1].

Approved April 30, 2013

# CHAPTER NO. 356

[HB 591]

AN ACT INCREASING FEES FOR LICENSING OF WEIGHING DEVICES; AMENDING SECTION 30-12-203, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 30-12-203, MCA, is amended to read:

**"30-12-203. Licensing of weighing devices.** (1) A person may not knowingly operate or use an unlicensed weighing device in trade or commerce for ascertaining the weight of any commodity.

(2) A license must be obtained by applying to the department upon a form provided by the department. Each license must require at least one inspection a year.

(3) An application must be accompanied by the proper fee as established by this section, except that fees may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party.

WEIGHING DEVICES

| Capacity | Fees |
|---|---|
| 499 pounds or less | ~~$16~~ *$20* |
| 500 pounds through 1,999 pounds | ~~26~~ *$33* |
| 2,000 pounds through 7,999 pounds | ~~51~~ *$64* |
| 8,000 pounds through 60,000 pounds | ~~130~~ *$165* |
| 60,001 pounds or more | ~~225~~ *$280* |

(4) The capacity of a weighing device must be determined by the manufacturer's rated capacity.

(5) (a) All licenses are annual and, except for those described in subsection (5)(b), expire on the anniversary date established by rule by the board of review established in 30-16-302.

(b) Licenses for on-farm scales expire at the end of the calendar year.

(6) (a) A late renewal fee equal to 50% of the renewal license fee established in subsection (3) must be assessed if the fee is not paid:

(i) for on-farm scales, before the first day of the sixth month of the year in which the license fee is due; or

(ii) for all other licenses, within 60 days of the anniversary date.

(b) If the fee is not paid by the respective due date listed in subsection (6)(a), the weighing device may be sealed and removed from service by the department.

(c) A person may not use a weighing device that has been removed from service or break the seal on a device removed from service until all fees have been paid.

(7) The fees must be deposited to the state special revenue fund of the department for use in the administration and enforcement of this part."

**Section 2. Effective date.** [This act] is effective July 1, 2013.

Approved April 30, 2013

# CHAPTER NO. 357

[HB 593]

AN ACT REVISING THE SITE-SPECIFIC INFORMATION THAT IS CONSIDERED IN THE CLASSIFICATION AND APPRAISAL OF AGRICULTURAL LAND OR FOREST LAND FOR PROPERTY TAXATION PURPOSES; REQUIRING THE AGRICULTURAL ADVISORY COMMITTEE TO PROVIDE METHODS FOR ADJUSTING PRODUCTIVITY VALUES; EXPANDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-7-103 AND 15-7-201, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-7-103, MCA, is amended to read:

**"15-7-103. Classification and appraisal — general and uniform methods.** (1) ~~It is the duty of the~~ *The* department ~~of revenue to~~ *shall* implement the provisions of 15-7-101, 15-7-102, and this section by providing:

(a) for a general and uniform method of classifying lands in the state for the purpose of securing an equitable and uniform basis of assessment of lands for taxation purposes;

(b) for a general and uniform method of appraising city and town lots;

(c) for a general and uniform method of appraising rural and urban improvements;

(d) for a general and uniform method of appraising timberlands.

(2) All lands must be classified according to their use or uses.

(3) Land classified as agricultural land or forest land must be subclassified according to soil type and productive capacity. In the classification work, use must be made of soil surveys and maps and all other *site-specific and* pertinent available information*, including any information provided by the taxpayer such as:*

*(a) information detailing actual climate conditions;*

*(b) information from the United States department of agriculture, including but not limited to:*

*(i) natural resources conservation service rangeland inventory materials;*

*(ii) farm service agency materials; and*

*(iii) Montana agriculture statistics information; and*

*(c) any other documents or publicly available information that will assist in reaching a value that accurately approximates the productive capacity that the average Montana farmer or rancher could achieve*.

(4) All lands must be classified by parcels or subdivisions not exceeding 1 section each, by the sections, fractional sections, or lots of all tracts of land that have been sectionized by the United States government, or by metes and bounds, whichever yields a true description of the land.

(5) All agricultural lands must be classified and appraised as agricultural lands without regard to the best and highest value use of adjacent or neighboring lands.

(6) In any periodic revaluation of taxable property completed under the provisions of 15-7-111, all property classified in 15-6-134 must be appraised on the taxable portion of its market value in the same year. The department shall publish a rule specifying the year used in the appraisal.

(7) All sewage disposal systems and domestic use water supply systems of all dwellings may not be appraised, assessed, and taxed separately from the land~~,~~ *or from the* house~~,~~ or other improvements in which they are located. ~~In no event may the~~ *The* sewage disposal or domestic water supply systems *may not* be included twice by including *either of* them in the valuation and assessing them separately."

**Section 2.** Section 15-7-201, MCA, is amended to read:

**"15-7-201. Legislative intent — value of agricultural property.** (1) Because the market value of many agricultural properties is based upon speculative purchases that do not reflect the productive capability of agricultural land, it is the legislative intent that bona fide agricultural properties be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes.

(2) Agricultural land must be classified according to its use, which classifications include but are not limited to irrigated use, nonirrigated use, and grazing use.

(3) Within each class, land must be subclassified by productive capacity. Productive capacity is determined based on yield.

(4) In computing the agricultural land valuation schedules to take effect on the date when each revaluation cycle takes effect pursuant to 15-7-111, the department of revenue shall determine the productive capacity value of all agricultural lands using the formula V = I/R where:

(a) V is the per-acre productive capacity value of agricultural land in each subclass;

(b) I is the per-acre net income of agricultural land in each subclass and is to be determined as provided in subsection (5); and

(c) R is the capitalization rate and, unless the advisory committee recommends a different rate and the department adopts the recommended capitalization rate by rule, is equal to 6.4%. This capitalization rate must remain in effect until the next revaluation cycle.

(5) (a) Net income must be determined separately for each subclass.

(b) Net income must be based on commodity price data, which may include grazing fees, crop and livestock share arrangements, cost of production data, and water cost data for the base period using the best available data.

(i) Commodity price data and cost of production data for the base period must be obtained from the Montana Agricultural Statistics, the Montana crop

and livestock reporting service, and other sources of publicly available information if considered appropriate by the advisory committee.

(ii) Crop share and livestock share arrangements are based on typical agricultural business practices and average landowner costs.

(iii) Allowable water costs consist only of the per-acre labor costs, energy costs of irrigation, and, unless the advisory committee recommends otherwise and the department adopts the recommended cost by rule, a base water cost of $15 for each acre of irrigated land. Total allowable water costs may not exceed $50 for each acre of irrigated land. Labor and energy costs must be determined as follows:

(A) Labor costs are $5 an acre for pivot sprinkler irrigation systems; $10 an acre for tow lines, side roll, and lateral sprinkler irrigation systems; and $15 an acre for hand-moved and flood irrigation systems.

(B) Energy costs must be based on per-acre energy costs incurred in the energy cost base year, which is the calendar year immediately preceding the year specified by the department in 15-7-103(6). By July 1 of the year following the energy cost base year, an owner of irrigated land shall provide the department, on a form prescribed by the department, with energy costs incurred in that energy cost base year. In the event that no energy costs were incurred in the energy cost base year, the owner of irrigated land shall provide the department with energy costs from the most recent year available. The department shall adjust the most recent year's energy costs to reflect costs in the energy cost base year.

(c) The base crop for valuation of irrigated land is alfalfa hay adjusted to 80% of the sales price, and the base crop for valuation of nonirrigated land is spring wheat. The base unit for valuation of grazing lands is animal unit months, defined as the average monthly requirement of pasture forage to support a 1,200-pound cow with a calf or its equivalent.

(d) Unless the advisory committee recommends a different base period and the department adopts the recommended base period by rule, the base period used to determine net income must be the most recent 7 years for which data is available prior to the date the revaluation cycle ends. Unless the advisory committee recommends a different averaging method and the department adopts the recommended averaging method by rule, data referred to in subsection (5)(b) must be averaged, but the average must exclude the lowest and highest yearly data in the period.

(6) The department shall compile data and develop valuation manuals adopted by rule to implement the valuation method established by subsections (4) and (5).

(7) The governor shall appoint an advisory committee of persons knowledgeable in agriculture and agricultural economics. The advisory committee shall include one member of the Montana state university-Bozeman, college of agriculture, staff. The advisory committee shall:

(a) compile and review data required by subsections (4) and (5);

(b) recommend to the department any adjustments to data or to landowners' share percentages if required by changes in government agricultural programs, market conditions, or prevailing agricultural practices;

(c) recommend appropriate base periods and averaging methods to the department;

(d) evaluate the appropriateness of the capitalization rate and recommend a rate to the department;

(e) verify for each class and subclass of land that the income determined in subsection (5) reasonably approximates that which the average Montana farmer or rancher could have attained; ~~and~~

(f) recommend agricultural land valuation schedules to the department. With respect to irrigated land, the recommended value of irrigated land may not be below the value that the land would have if it were not irrigated.

*(g) provide methods for adjusting agricultural land productivity values when more site-specific data is available and pertinent; and*

*(h) recommend to the department definitions for "site-specific" and "pertinent".*"

**Section 3. Applicability.** [This act] applies to property tax years beginning after December 31, 2013.

Approved April 30, 2013

# CHAPTER NO. 358

[HB 607]

AN ACT REVISING THE PILOT PROGRAM FOR ELECTRONIC TITLE, LIEN FILING, AND REGISTRATION TO ALLOW A USER OPTION FOR EXPEDITED SERVICES; ALLOWING THE DEPARTMENT OF JUSTICE TO ESTABLISH A FEE FOR OPTIONAL EXPEDITED SERVICES; AND AMENDING SECTION 61-3-109, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-3-109, MCA, is amended to read:

**"61-3-109. Electronic title, lien filing, and registration.** *(1)* The department shall develop and implement a pilot program to allow:

~~(1)~~*(a)* electronic transmission of data by an authorized agent, a county treasurer, or a person to or from the department in lieu of the transmission of paper documents;

~~(2)~~*(b)* substantiation of electronic record transactions performed by the department, an authorized agent, a county treasurer, or a person;

~~(3)~~*(c)* the production and certification by a court or an authorized agent of a motor vehicle record generated from electronic records of title and registration maintained by the department;

~~(4)~~*(d)* electronic filing, perfection, and release of security interests or liens of record; ~~and~~

~~(5)~~*(e)* certification and audit by the department of its authorized agents*; and*

*(f) expedited title services for customers with exceptional needs who are willing to pay an optional fee prescribed by the department by rule.*

*(2) Money collected from the fee imposed under subsection (1)(f) must be deposited in the highway nonrestricted account provided for in 15-70-125*."

Approved April 30, 2013

# CHAPTER NO. 359

[HB 614]

AN ACT PROVIDING FOR THE SALE OF TRAVEL INSURANCE BY A TRAVEL RETAILER UNDER THE DIRECTION OF A LIMITED LINES

TRAVEL INSURANCE PRODUCER; PROVIDING FOR FEES FOR LICENSURE AND THE MAINTAINING OF REGISTRIES BY THE COMMISSIONER OF INSURANCE; GRANTING RULEMAKING AUTHORITY TO THE COMMISSIONER OF INSURANCE; PROVIDING FOR ENFORCEMENT AND PENALTIES; AND AMENDING SECTION 33-17-212, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Definitions.** As used in [sections 1 through 4], the following definitions apply:

(1) "Administrator" means an administrator as defined in 33-17-102.

(2) "Limited lines travel insurance producer" means a:

(a) managing general agent or third-party administrator; or

(b) licensed insurance producer, including a limited lines producer, designated by an insurer as the travel insurance supervising entity as set forth in [section 4].

(3) "Offer and disseminate" means providing general information, including a description of coverage and price, as well as processing applications, collecting premiums, and performing other activities not requiring licensure by the state.

(4) (a) "Travel insurance" means insurance coverage for personal risks incident to planned travel, including but not limited to:

(i) interruption or cancellation of a trip or event;

(ii) loss of baggage or personal effects;

(iii) damages to accommodations or rental vehicles; and

(iv) sickness, accident, disability, or death occurring during travel.

(b) The term does not include major medical plans that provide comprehensive medical protection for travelers on trips lasting 6 months or longer, including those working overseas and military personnel being deployed.

(5) "Travel retailer" means a business entity that makes, arranges, or offers travel services and that may offer and disseminate travel insurance as a service to its customers on behalf of and under the direction of a limited lines travel insurance producer.

**Section 2. Requirements to offer and disseminate travel insurance — fees — types of policies — rulemaking.** (1) A travel retailer may offer and disseminate travel insurance under a limited lines travel insurance producer business entity license only if the following conditions are met:

(a) the limited lines travel insurance producer or travel retailer provides purchasers of travel insurance with:

(i) a description of the material terms or the actual material terms of the insurance coverage;

(ii) a description of the process for filing a claim;

(iii) a description of the review or cancellation process for the travel insurance policy; and

(iv) the identity and contact information of the insurer and the limited lines travel insurance producer;

(b) at the time of licensure, the limited lines travel insurance producer establishes and maintains a registry on a form prescribed by the commissioner of each travel retailer that offers travel insurance on the limited lines travel insurance producer's behalf. The registry must be maintained and updated

annually by the limited lines travel insurance producer and must include the name, address, and contact information of each travel retailer and of an officer or person who directs or controls each travel retailer's operations; the travel retailer's federal tax identification number; and a statement that the travel retailer has not been convicted of a violation of 18 U.S.C. 1033. The limited lines travel insurance producer shall submit its registry to the commissioner within 10 business days of the commissioner's request. The commissioner shall require a fee for filing the registry that is commensurate with the cost of maintaining a file for all registries filed with the commissioner.

(c) the limited lines travel insurance producer designates an employee who is an individual licensed producer as the designated responsible producer responsible for the limited lines travel insurance producer's compliance with the applicable insurance laws and rules of this state;

(d) the designated responsible producer, president, secretary, treasurer, and any other officer or person who directs or controls the limited lines travel insurance producer's insurance operations have complied with the fingerprinting requirements in the resident state of the limited lines travel insurance producer;

(e) the limited lines travel insurance producer has paid all applicable insurance producer licensing fees required pursuant to 33-2-708 or other applicable state law; and

(f) the limited lines travel insurance producer requires each employee and authorized representative of the travel retailer whose duties include offering and disseminating travel insurance to receive a program of instruction or training, which may be subject to review by the commissioner. The training material must, at a minimum, contain instructions on the types of insurance offered, ethical sales practices, and required disclosures to prospective customers.

(2) A travel retailer offering or disseminating travel insurance shall make available to prospective purchasers brochures or other written materials that:

(a) provide the identity and contact information of the insurer and the limited lines travel insurance producer;

(b) explain that the purchase of travel insurance is not required in order to purchase any other product or service from the travel retailer; and

(c) explain that a travel retailer employee or authorized representative who is not licensed as an insurance producer is permitted to provide general information about the insurance offered by the travel retailer, including a description of the coverage and price, but is not qualified or authorized to answer technical questions about the terms and conditions of the insurance offered by the travel retailer or to evaluate the adequacy of the customer's existing insurance coverage.

(3) A travel retailer's employees or authorized representatives who are not licensed as insurance producers may not:

(a) evaluate or interpret the technical terms, benefits, and conditions of the offered travel insurance coverage;

(b) evaluate or provide advice concerning a prospective purchaser's existing insurance coverage; or

(c) hold themselves out as licensed insurers, licensed producers, or insurance experts.

(4) Travel insurance may be provided under an individual policy or under a group or master policy.

(5) The commissioner may adopt rules to implement the provisions of [sections 1 through 4].

**Section 3. Authorization.** Upon a limited lines travel insurance producer meeting the requirements provided for in [section 2], a travel retailer is authorized to offer and disseminate travel insurance and receive related compensation when the travel retailer's insurance-related activities, and those of its employees and authorized representatives, are limited to offering and disseminating travel insurance on behalf of and under the direction of the limited lines travel insurance producer.

**Section 4. Responsibility — enforcement — penalties.** (1) The limited lines travel insurance producer is the supervising entity responsible for the acts of the travel retailer and shall use reasonable means to ensure compliance by the travel retailer with the provisions of [sections 1 through 4].

(2) A limited lines travel insurance producer and any travel retailer offering and disseminating travel insurance under the limited lines travel insurance producer's license are subject to the applicable unfair trade practices provisions of Title 33, chapter 18, including penalty provisions, and to other enforcement provisions applicable to insurance producers generally.

**Section 5.** Section 33-17-212, MCA, is amended to read:

**"33-17-212. Examination required — exceptions — fees.** (1) Except as provided in subsection (6), an individual applying for a license is required to pass a written examination. The examination must test the knowledge of the individual concerning each kind of insurance listed in subsection (5) for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and rules of this state. The examination must be developed and conducted under rules adopted by the commissioner.

(2) The commissioner may conduct the examination or make arrangements, including contracting with an outside testing service, for administering the examination. The commissioner may arrange for the testing service to recover the cost of the examination from the applicant.

(3) An individual who fails to appear for the examination as scheduled or fails to pass the examination may reapply for an examination and shall remit all forms before being rescheduled for another examination.

(4) Except as provided in subsection (6), if the applicant is a business entity, each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license must meet the qualifications provided for in this section.

(5) Examination of an applicant for a license must cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:

(a) life insurance;

(b) disability insurance;

(c) property insurance, which for the purposes of this provision includes marine insurance;

(d) casualty insurance;

(e) surety insurance;

(f) limited lines credit insurance;

(g) title insurance.

(6) This section does not apply to and an examination is not required of:

(a) an individual lawfully licensed as an insurance producer as to the kind or kinds of insurance to be transacted as of or immediately prior to January 1, 1961, and who continues to be licensed;

(b) an applicant for a license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months immediately preceding the date of application unless the commissioner has suspended, revoked, or terminated the previous license;

(c) an applicant for a license as a nonresident insurance producer;

~~(d) transportation ticket agents of common carriers applying for a license to solicit and sell only:~~

~~(i) accident insurance ticket policies; or~~

~~(ii) insurance of personal effects while being carried as baggage on a common carrier, as incidental to their duties as transportation ticket agents; or~~

*(d) a limited lines travel insurance producer and those registered under the limited lines travel insurance producer's license pursuant to [section 2]; or*

(e) an association applying for a license under 33-17-211.

(7) (a) Subject to the provisions of subsection (7)(b), an individual who applies for a nonresident insurance producer license in this state and who was previously licensed for the same lines of authority in another state may not be required to complete any prelicensing education or examination.

(b) The exemption in subsection (7)(a) is available only if the individual is currently licensed in the other state or the individual's application is received within 90 days of the cancellation of the individual's previous license and if the other state issues a certification that, at the time of the cancellation, the individual was in good standing in that state or the state's database records, maintained by the national association of insurance commissioners or any of the association's affiliates or subsidiaries that the association oversees, indicate that the insurance producer is or was licensed in good standing for the lines of authority requested."

**Section 6. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 33, chapter 17, and the provisions of Title 33, chapter 17, apply to [sections 1 through 4].

Approved April 30, 2013

# CHAPTER NO. 360

[SB 28]

AN ACT ADOPTING THE INTERSTATE INSURANCE PRODUCT REGULATION COMPACT; AUTHORIZING THE STATE AUDITOR AS COMMISSIONER OF INSURANCE TO PARTICIPATE IN THE COMPACT; ENSURING THAT PARTICIPATING STATES PROVIDE A COMMON FRAMEWORK FOR REGULATING DESIGNATED INSURANCE PRODUCTS; LEGISLATIVELY OPTING OUT OF CERTAIN UNIFORM STANDARDS; PROVIDING OPT-OUT AUTHORITY; LIMITING GOVERNMENTAL LIABILITY; AND AMENDING SECTIONS 33-1-311 AND 33-1-501, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Compact Adopted.** The Interstate Insurance Product Regulation Compact is enacted into law and entered into with all jurisdictions legally joining in the compact, in the form substantially as set forth below.

Article I. Purposes

Pursuant to terms and conditions of this compact, the state of Montana seeks to join with other states and establish the Interstate Insurance Product Regulation Compact. Through means of joint and cooperative action among the compacting states, the purposes of this compact are:

(1) to promote and protect the interest of consumers of individual and group annuity, life insurance, disability income, and long-term care insurance products;

(2) to develop uniform standards for insurance products covered under the compact;

(3) to establish a central clearinghouse to receive and provide prompt review of insurance products covered under the compact and, in certain cases, advertisement related to the products, submitted by insurers authorized to do business in one or more compacting states;

(4) to give appropriate regulatory approval to those product filings and advertisement satisfying the applicable uniform standard;

(5) to improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the compact;

(6) to create the interstate insurance product regulation commission; and

(7) to perform these and other related functions as may be consistent with the state regulation of the business of insurance.

Article II. Definitions

For purposes of this compact, the following definitions apply:

(1) "Advertisement" means any material designed to create public interest in a product or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace, or retain a policy, as more specifically defined in the rules and operating procedures of the commission.

(2) "Bylaws" mean those bylaws established by the commission for its governance or for directing or controlling the commission's actions or conduct.

(3) "Compacting state" means a state that has enacted this compact legislation and that has not withdrawn pursuant to Article XIV, subsection (1), or been terminated pursuant to Article XIV, subsection (2).

(4) "Commission" means the interstate insurance product regulation commission established by this compact.

(5) "Commissioner" means the chief insurance regulatory official of a state, including but not limited to a commissioner, superintendent, director, or administrator.

(6) "Domiciliary state" means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, its state of entry.

(7) "Insurer" means any entity licensed by a state to issue contracts of insurance for any of the lines of insurance covered by this compact.

(8) "Member" means the person chosen by a compacting state as its representative to the commission or the designee named by the representative to the commission.

(9) "Noncompacting state" means a state that is not at the time a compacting state.

(10) "Operating procedures" mean procedures promulgated by the commission implementing a rule, a uniform standard, or a provision of this compact.

(11) "Product" means the form of a policy or contract, including any application, endorsement, or related form that is attached to and made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group annuity, life insurance, disability income, or long-term care insurance product that an insurer is authorized to issue.

(12) "Rule" means a statement of general or particular applicability and future effect promulgated by the commission, including a uniform standard developed pursuant to Article VII, designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of the commission, which has the force of law in the compacting states.

(13) "State" means any state, district, or territory of the United States of America.

(14) "Third-party filer" means an entity that submits a product filing to the commission on behalf of an insurer.

(15) "Uniform standard" means a standard adopted by the commission for a product line pursuant to Article VII and includes all of the product requirements in aggregate, provided that each uniform standard must be construed, whether express or implied, to prohibit the use of any inconsistent, misleading, or ambiguous provisions in a product and the form of the product made available to the public may not be unfair, inequitable, or against public policy as determined by the commission.

Article III. Establishment of the Commission and Venue

(1) The compacting states create and establish a joint public agency known as the interstate insurance product regulation commission. Pursuant to Article IV, the commission has the power to develop uniform standards for product lines, receive and provide prompt review of products filed with the commission, and give approval to those product filings satisfying applicable uniform standards. However, it is not intended for the commission to be the exclusive entity for receipt and review of insurance product filings. Nothing in the compact prohibits any insurer from filing its product in any state in which the insurer is licensed to conduct the business of insurance, and any such filing is subject to the laws of the state where filed.

(2) The commission is a body corporate and politic and an instrumentality of the compacting states.

(3) The commission is solely responsible for its liabilities except as otherwise specifically provided in this compact.

(4) Venue is proper and judicial proceedings by or against the commission must be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located.

Article IV. Powers of the Commission

The commission has the following powers:

(1) to promulgate rules, pursuant to Article VII, which have the force of law and are binding in the compacting states to the extent and in the manner provided in this compact;

(2) to exercise its rulemaking authority and establish reasonable uniform standards for products covered under the compact and advertisement related to the products, which have the force of law and are binding in the compacting states, but only for those products filed with the commission, provided that a compacting state has the right to opt out of the uniform standard pursuant to Article VII, to the extent and in the manner provided in this compact, and provided further that any uniform standard established by the commission for long-term care insurance products may provide the same or greater protections for consumers as, but may not provide less than, those protections set forth in the national association of insurance commissioners' Long-Term Care Insurance Model Act and Long-Term Care Insurance Model Regulation, respectively, adopted as of 2001. The commission shall consider whether any subsequent amendments to the national association of insurance commissioners' Long-Term Care Insurance Model Act or Long-Term Care Insurance Model Regulation adopted by the national association of insurance commissioners require amending of the uniform standards established by the commission for long-term care insurance products.

(3) to receive and review in an expeditious manner products filed with the commission and rate filings for disability income and long-term care insurance products and to give approval of those products and rate filings that satisfy the applicable uniform standard, where the approval has the force of law and is binding on the compacting states to the extent and in the manner provided in the compact;

(4) to receive and review in an expeditious manner advertisement relating to long-term care insurance products for which uniform standards have been adopted by the commission and to give approval to all advertisement that satisfies the applicable uniform standard. For any product covered under this compact, other than long-term care insurance products, the commission has the authority to require an insurer to submit all or any part of its advertisement with respect to that product for review or approval prior to use if the commission determines that the nature of the product is such that an advertisement of the product could have the capacity or tendency to mislead the public. The actions of the commission as provided in this section have the force of law and are binding in the compacting states to the extent and in the manner provided in the compact.

(5) to exercise its rulemaking authority and designate products and advertisement that may be subject to a self-certification process without the need for prior approval by the commission;

(6) to promulgate operating procedures pursuant to Article VII that are binding in the compacting states to the extent and in the manner provided in this compact;

(7) to bring and prosecute legal proceedings or actions in its name as the commission, provided that the standing of any state insurance department to sue or be sued under applicable law may not be affected;

(8) to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence;

(9) to establish and maintain offices;

(10) to purchase and maintain insurance and bonds;

(11) to borrow, accept, or contract for services of personnel, including but not limited to employees of a compacting state;

(12) to hire employees, professionals, or specialists and elect or appoint officers, to fix their compensation, define their duties, give them appropriate authority to carry out the purposes of the compact, and determine their qualifications, and to establish the commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel;

(13) to accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services and to receive, utilize, and dispose of the same, provided that at all times the commission shall strive to avoid any appearance of impropriety;

(14) to lease, purchase, or accept appropriate gifts or donations of or otherwise own, hold, improve, or use any property, real, personal, or mixed, provided that at all times the commission shall strive to avoid any appearance of impropriety;

(15) to sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property whether real, personal, or mixed;

(16) to remit filing fees to compacting states as may be set forth in the bylaws, rules, or operating procedures;

(17) to enforce compliance by compacting states with rules, uniform standards, operating procedures, and bylaws;

(18) to provide for dispute resolution among compacting states;

(19) to advise compacting states on issues relating to insurers domiciled or doing business in noncompacting jurisdictions, consistent with the purposes of this compact;

(20) to provide advice and training to those personnel in state insurance departments responsible for product review and to be a resource for state insurance departments;

(21) to establish a budget and make expenditures;

(22) to borrow money;

(23) to appoint committees, including advisory committees comprising members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and other interested persons as may be designated in the bylaws;

(24) to provide and receive information from and to cooperate with law enforcement agencies;

(25) to adopt and use a corporate seal; and

(26) to perform other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of the business of insurance.

Article V. Organization of the Commission

(1) Membership, voting, and bylaws.

(a) Each compacting state has and is limited to one member. Each member must be qualified to serve in that capacity pursuant to applicable law of the compacting state. Any member may be removed or suspended from office as provided by the law of the state from which the member is appointed. Any vacancy occurring in the commission must be filled in accordance with the laws of the compacting state in which the vacancy exists. Nothing in the compact may be construed to affect the manner in which a compacting state determines the election or appointment and qualification of its own commissioner.

(b) Each member is entitled to one vote and must have an opportunity to participate in the governance of the commission in accordance with the bylaws. Notwithstanding any provision in the compact to the contrary, an action of the commission with respect to the promulgation of a uniform standard may not be effective unless two-thirds of the members vote in favor of the standard.

(c) The commission shall, by a majority vote of the members, prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the compact, including but not limited to:

(i) establishing the fiscal year of the commission;

(ii) providing reasonable procedures for appointing and electing members, as well as holding meetings, of the management committee;

(iii) providing reasonable standards and procedures:

(A) for the establishment and meetings of other committees; and

(B) governing any general or specific delegation of any authority or function of the commission;

(iv) providing reasonable procedures for calling and conducting meetings of the commission that consist of a majority of commission members, ensuring reasonable advance notice of each meeting, and providing for the right of citizens to attend each meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' proprietary information, including trade secrets. The commission may meet in camera only after a majority of the entire membership votes to close a meeting in whole or in part. As soon as practicable, the commission shall make public:

(A) a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed; and

(B) votes taken during the meeting.

(v) establishing the titles, duties, and authority and reasonable procedures for the election of the officers of the commission;

(vi) providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws must exclusively govern the personnel policies and programs of the commission.

(vii) promulgating a code of ethics to address permissible and prohibited activities of commission members and employees; and

(viii) providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact after the payment or reserving of all of its debts and obligations.

(d) The commission shall publish its bylaws in a convenient form and file a copy of the bylaws and a copy of any amendment to the bylaws with the appropriate agency or officer in each of the compacting states.

(2) Management committee, officers, and personnel.

(a) A management committee comprising no more than 14 members must be established as follows:

(i) one member from each of the six compacting states with the largest premium volume for individual and group annuities, life, disability income, and long-term care insurance products as determined from the records of the national association of insurance commissioners for the prior year;

(ii) four members from those compacting states with at least 2% of the market based on the premium volume described in subsection (2)(a)(i), other

than the six compacting states with the largest premium volume, selected on a rotating basis as provided in the bylaws; and

(iii) four members from those compacting states with less than 2% of the market, based on the premium volume described in subsection (2)(a)(i), with one selected from each of the four zone regions of the national association of insurance commissioners as provided in the bylaws.

(b) The management committee has the authority and duties set forth in the bylaws, including but not limited to:

(i) managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission;

(ii) establishing and overseeing an organizational structure within and appropriate procedures for the commission to provide for the creation of uniform standards and other rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a compacting state to opt out of a uniform standard, provided that a uniform standard may not be submitted to the compacting states for adoption unless approved by two-thirds of the members of the management committee;

(iii) overseeing the offices of the commission; and

(iv) planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the commission.

(c) The commission shall annually elect officers from the management committee, with each having the authority and duties specified in the bylaws.

(d) The management committee may, subject to the approval of the commission, appoint or retain an executive director for a period, upon the terms and conditions, and for the compensation that the commission considers appropriate. The executive director shall serve as secretary to the commission but may not be a member of the commission. The executive director shall hire and supervise other staff authorized by the commission.

(3) Legislative and advisory committees.

(a) A legislative committee comprising state legislators or their designees must be established to monitor the operations of and make recommendations to the commission, including the management committee, provided that the manner of selection and term of any legislative committee member must be as set forth in the bylaws. Prior to the adoption by the commission of any uniform standard, revision to the bylaws, annual budget, or other significant matter provided in the bylaws, the management committee shall consult with and report to the legislative committee.

(b) The commission shall establish two advisory committees, one comprising consumer representatives independent of the insurance industry and the other comprising insurance industry representatives.

(c) The commission may establish additional advisory committees as its bylaws may provide to carry out its functions.

(4) Corporate records of the commission. The commission shall maintain its corporate books and records in accordance with the bylaws.

(5) Qualified immunity, defense, and indemnification.

(a) The members, officers, executive director, employees, and representatives of the commission are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of

property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that nothing in this subsection (5)(a) may be construed to protect any person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of that person.

(b) The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that nothing in the compact may be construed to prohibit that person from retaining personal counsel and provided further that the actual or alleged act, error, or omission did not result from that person's intentional or willful and wanton misconduct.

(c) The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities or that the person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful and wanton misconduct of that person.

Article VI. Meetings and Acts of the Commission

(1) The commission shall meet and take actions that are consistent with the provisions of this compact and the bylaws.

(2) Each member of the commission has the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the commission. A member shall vote in person or by other means that are provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone or other means of communication.

(3) The commission shall meet at least once during each calendar year. Additional meetings must be held as set forth in the bylaws.

Article VII. Rules and Operating Procedures — Rulemaking Functions of the Commission and Opting Out of Uniform Standards

(1) Rulemaking authority. The commission shall promulgate reasonable rules, including uniform standards, and operating procedures to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, if the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact or the powers granted by this compact, then the action by the commission is invalid and has no force.

(2) Rulemaking procedure. Rules and operating procedures must be made pursuant to a rulemaking process that conforms to the Model State Administrative Procedures Act of 1981, as amended, as may be appropriate to the operations of the commission. Before the commission adopts a uniform standard, the commission shall give written notice to the relevant state legislative committee or committees in each compacting state responsible for insurance issues of its intention to adopt the uniform standard. In adopting a

uniform standard, the commission shall consider fully all submitted materials and issue a concise explanation of its decision.

(3) Effective date and opt out of a uniform standard. A uniform standard becomes effective 90 days after its promulgation by the commission or at a later date determined by the commission, provided, however, that a compacting state may opt out of a uniform standard as provided in this article. "Opt out" means any action by a compacting state to decline to adopt or participate in a promulgated uniform standard. All other rules and operating procedures and amendments of the rules and operating procedures become effective as of the date specified in each rule, operating procedure, or amendment.

(4) Opt-out procedure.

(a) A compacting state may opt out of a uniform standard, either by legislation or regulation promulgated by the insurance department under the compacting state's administrative procedure act. If a compacting state elects to opt out of a uniform standard by regulation, the compacting state shall:

(i) give written notice to the commission no later than 10 business days after the uniform standard is promulgated or at the time the state becomes a compacting state; and

(ii) find that the uniform standard does not provide reasonable protections to the citizens of the state, given the conditions in the state. The commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the state that warrant a departure from the uniform standard and determining that the uniform standard would not reasonably protect the citizens of the state. The commissioner shall consider and balance the following factors and find that the conditions in the state and needs of the citizens of the state outweigh:

(A) the intent of the legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the products subject to this compact; and

(B) the presumption that a uniform standard adopted by the commission provides reasonable protections to consumers of the relevant product.

(b) Notwithstanding subsection (4)(a), a compacting state may, at the time of its enactment of this compact, prospectively opt out of all uniform standards involving long-term care insurance products by expressly providing for the opt out in the enacted compact, and the opt out may not be treated as a material variance in the offer or acceptance of any state to participate in this compact. The opt out is effective at the time of enactment of this compact by the compacting state and applies to all existing uniform standards involving long-term care insurance products and those subsequently promulgated.

(5) Effect of opt out.

(a) If a compacting state elects to opt out of a uniform standard, the uniform standard remains applicable in the compacting state electing to opt out until the opt-out legislation is enacted into law or the regulation opting out becomes effective.

(b) Once the opt out of a uniform standard by a compacting state becomes effective as provided under the laws of that state, the uniform standard has no further force in that state unless the legislation or regulation implementing the opt out is repealed or otherwise becomes ineffective under the laws of the state. If a compacting state opts out of a uniform standard after the uniform standard has been made effective in that state, the opt out has the same prospective effect as provided under Article XIV for withdrawals.

(6) Stay of uniform standard. If a compacting state has formally initiated the process of opting out of a uniform standard by regulation and while the regulatory opt out is pending, the compacting state may petition the commission, at least 15 days before the effective date of the uniform standard, to stay the effectiveness of the uniform standard in that state. The commission may grant a stay if it determines the regulatory opt out is being pursued in a reasonable manner and there is a likelihood of success. If the commission grants or extends a stay, the stay or extension may postpone the effective date by up to 90 days unless affirmatively extended by the commission, provided that a stay may not be permitted to remain in effect for more than 1 year unless the compacting state can show extraordinary circumstances that warrant a continuance of the stay, including but not limited to the existence of a legal challenge that prevents the compacting state from opting out. The commission may terminate a stay upon notice that the rulemaking process has been terminated.

(7) Not later than 30 days after a rule or operating procedure is promulgated, any person may file a petition for judicial review of the rule or operating procedure, provided that the filing of a petition may not stay or otherwise prevent the rule or operating procedure from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the commission consistent with applicable law and may not find the rule or operating procedure to be unlawful if the rule or operating procedure represents a reasonable exercise of the commission's authority.

Article VIII. Commission Records and Enforcement

(1) The commission shall promulgate rules establishing conditions and procedures for public inspection and copying of its information and official records, except information and records involving the privacy of individuals and insurers' trade secrets. The commission may promulgate additional rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure and may enter into agreements with those agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(2) Except with regard to privileged records, data, and information, the laws of any compacting state pertaining to confidentiality or nondisclosure may not relieve any compacting state commissioner of the duty to disclose any relevant records, data, or information to the commission, provided that disclosure to the commission may not be considered to waive or otherwise affect any confidentiality requirement and provided further that, except as otherwise expressly provided in this compact, the commission may not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data, and information in its possession. Confidential information of the commission must remain confidential after the information is provided to any commissioner.

(3) The commission shall monitor compacting states for compliance with duly adopted bylaws, rules, including uniform standards, and operating procedures. The commission shall notify any noncomplying compacting state in writing of its noncompliance with commission bylaws, rules, or operating procedures. If a noncomplying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state is considered to be in default as set forth in Article XIV.

(4) The commissioner of any state in which an insurer is authorized to do business or is conducting the business of insurance shall continue to exercise authority to oversee the market regulation of the activities of the insurer in accordance with the provisions of the state's law. The commissioner's enforcement of compliance with the compact is governed by the following provisions:

(a) With respect to the commissioner's market regulation of a product or advertisement that is approved or certified to the commission, the content of the product or advertisement may not constitute a violation of the provisions, standards, or requirements of the compact except upon a final order of the commission, issued at the request of a commissioner after prior notice to the insurer and an opportunity for hearing before the commission.

(b) Before a commissioner may bring an action for violation of any provision, standard, or requirement of the compact relating to the content of an advertisement not approved or certified to the commission, the commission or an authorized commission officer or employee shall authorize the action. However, authorization pursuant to this subsection (4)(b) does not require notice to the insurer, opportunity for hearing, or disclosure of requests for authorization or records of the commission's action on the requests.

Article IX. Dispute Resolution

The commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and that may arise between two or more compacting states or between compacting states and noncompacting states, and the commission shall promulgate an operating procedure providing for resolution of the disputes.

Article X. Product Filing and Approval

(1) Insurers and third-party filers seeking to have a product approved by the commission shall file the product with and pay applicable filing fees to the commission. Nothing in this compact may be construed to restrict or otherwise prevent an insurer from filing its product with the insurance department in any state in which the insurer is licensed to conduct the business of insurance, and the filing is subject to the laws of the states where filed.

(2) The commission shall establish appropriate filing and review processes and procedures pursuant to commission rules and operating procedures. Notwithstanding any provision in this compact to the contrary, the commission shall promulgate rules to establish conditions and procedures under which the commission shall provide public access to product filing information. In establishing the rules, the commission shall consider the interests of the public in having access to the information, as well as protection of personal medical and financial information and trade secrets, that may be contained in a product filing or supporting information.

(3) Any product approved by the commission may be sold or otherwise issued in those compacting states in which the insurer is legally authorized to do business.

Article XI. Review of Commission Decisions Regarding Filings

(1) Not later than 30 days after the commission has given notice of a disapproved product or advertisement filed with the commission, the insurer or third-party filer whose filing was disapproved may appeal the determination to a review panel appointed by the commission. The commission shall promulgate rules to establish procedures for appointing a review panel and provide for notice and hearing. An allegation that the commission, in disapproving a

product or advertisement filed with the commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law is subject to judicial review in accordance with Article III, subsection (4).

(2) The commission has authority to monitor, review, and reconsider products and advertisement subsequent to their filing or approval upon a finding that the product does not meet the relevant uniform standard. When appropriate, the commission may withdraw or modify its approval after proper notice and hearing subject to the appeal process in subsection (1).

Article XII. Finance

(1) The commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the commission may accept contributions and other forms of funding from the national association of insurance commissioners, compacting states, and other sources. Contributions and other forms of funding from other sources must be of such a nature that the independence of the commission concerning the performance of its duties may not be compromised.

(2) The commission shall collect a filing fee from each insurer and third-party filer filing a product with the commission to cover the cost of the operations and activities of the commission and its staff in a total amount sufficient to cover the commission's annual budget.

(3) The commission's budget for a fiscal year may not be approved until the budget has been subject to notice and comment as set forth in Article VII.

(4) The commission is exempt from all taxation in and by the compacting states.

(5) The commission may not pledge the credit of any compacting state except by and with the appropriate legal authority of that compacting state.

(6) The commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the commission are subject to the accounting procedures established under the commission bylaws. The financial accounts and reports, including the system of internal controls and procedures of the commission, must be audited annually by an independent certified public accountant. Upon the determination of the commission, but no less frequently than every 3 years, the review of the independent auditor must include a management and performance audit of the commission. The commission shall make an annual report to the governor and legislature of the compacting states, which must include a report of the independent audit. The commission's internal accounts are not confidential, and the materials may be shared with the commissioner of any compacting state upon request. However, any work papers related to any internal or independent audit and any information regarding the privacy of individuals and insurers' proprietary information, including trade secrets, must remain confidential.

(7) No compacting state has any claim to or ownership of any property held by or vested in the commission or to any commission funds held pursuant to the provisions of this compact.

Article XIII. Compacting States, Effective Date, and Amendment

(1) Any state is eligible to become a compacting state.

(2) The compact becomes effective and binding upon legislative enactment of the compact into law by two compacting states; however, the commission becomes effective for purposes of adopting uniform standards for, reviewing,

and giving approval or disapproval of products filed with the commission that satisfy applicable uniform standards only after 26 states are compacting states or, alternatively, by states representing greater than 40% of the premium volume for life insurance, annuity, disability income, and long-term care insurance products, based on records of the national association of insurance commissioners for the prior year. Thereafter, the compact becomes effective and binding as to any other compacting state upon enactment of the compact into law by the state.

(3) Amendments to the compact may be proposed by the commission for enactment by the compacting states. An amendment does not become effective and binding upon the commission and the compacting states until all compacting states enact the amendment into law.

Article XIV. Withdrawal, Default, and Termination

(1) Withdrawal.

(a) Once effective, the compact continues in force and remains binding upon each compacting state, provided that a compacting state may withdraw from the compact ("withdrawing state") by enacting a statute specifically repealing the statute that enacted the compact into law.

(b) The effective date of withdrawal is the effective date of the repealing statute. The withdrawal may not apply to any product filings approved or self-certified, or any advertisement of those products, on the date the repealing statute becomes effective except by mutual agreement of the commission and the withdrawing state unless the withdrawing state rescinds the approval as provided in subsection (1)(e).

(c) The commissioner of the withdrawing state shall immediately notify the management committee in writing upon the introduction of legislation repealing this compact in the withdrawing state.

(d) The commission shall notify the other compacting states of the introduction of the legislation within 10 days after its receipt of notice.

(e) The withdrawing state is responsible for all obligations, duties, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state. The commission's approval of products and advertisement prior to the effective date of withdrawal continues to be effective and must be given full force in the withdrawing state unless formally rescinded by the withdrawing state in the same manner as provided by the laws of the withdrawing state for the prospective disapproval of products or advertisement previously approved under state law.

(f) Reinstatement following withdrawal of any compacting state occurs upon the effective date of the withdrawing state reenacting the compact.

(2) Default.

(a) If the commission determines that any compacting state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this compact, the bylaws, or duly promulgated rules or operating procedures, then, after notice and hearing as set forth in the bylaws, all rights, privileges, and benefits conferred by this compact on the defaulting state must be suspended from the effective date of default as fixed by the commission. The grounds for default include but are not limited to failure of a compacting state to perform its obligations or responsibilities and any other

grounds designated in the commission rules. The commission shall immediately notify the defaulting state in writing of the defaulting state's suspension pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state must be terminated from the compact and all rights, privileges, and benefits conferred by this compact must be terminated from the effective date of termination.

(b) Product approvals by the commission, product self-certifications, or any advertisement in connection with the product that is in force on the effective date of termination remains in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily pursuant to subsection (1) of this article.

(c) Reinstatement following termination of any compacting state requires a reenactment of the compact.

(3) Dissolution of compact.

(a) The compact dissolves effective upon the date of the withdrawal or default of the compacting state that reduces membership in the compact to one compacting state.

(b) Upon the dissolution of this compact, the compact becomes null and void and is of no further force and the business and affairs of the commission must be wound up and any surplus funds must be distributed in accordance with the bylaws.

Article XV. Severability and Construction

(1) The provisions of this compact are severable, and if any phrase, clause, sentence, or provision is considered unenforceable, the remaining provisions of the compact are enforceable.

(2) The provisions of this compact must be liberally construed to effectuate its purposes.

Article XVI. Binding Effect of Compact and Other Laws

(1) Other laws.

(a) Nothing in this compact prevents the enforcement of any other law of a compacting state, except as provided in subsection (1)(b).

(b) For any product approved or certified to the commission, the rules, uniform standards, and any other requirements of the commission constitute the exclusive provisions applicable to the content, approval, and certification of those products. For advertisement that is subject to the commission's authority, any rule, uniform standard, or other requirement of the commission that governs the content of the advertisement constitutes the exclusive provision that a commissioner may apply to the content of the advertisement. Notwithstanding the foregoing, no action taken by the commission may abrogate or restrict:

(i) the access of any person to state courts;

(ii) remedies available under state law related to breach of contract, tort, or other laws not specifically directed to the content of the product;

(iii) state law relating to the construction of insurance contracts; or

(iv) the authority of the attorney general of the state, including but not limited to maintaining any actions or proceedings, as authorized by law.

(c) All insurance products filed with individual states are subject to the laws of those states.

(2) Binding effect of this compact.

(a) All lawful actions of the commission, including all rules and operating procedures promulgated by the commission, are binding upon the compacting states.

(b) All agreements between the commission and the compacting states are binding in accordance with their terms.

(c) Upon the request of a party to a conflict over the meaning or interpretation of commission actions and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding the meaning or interpretation in dispute.

(d) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by that provision upon the commission are ineffective as to that compacting state and those obligations, duties, powers, or jurisdiction remain in the compacting state and must be exercised by the agency of the compacting state to which those obligations, duties, powers, or jurisdictions are delegated by law in effect at the time this compact becomes effective.

Article XVII. State of Montana Opt Out

In accordance with the provisions of Article VII, subsection (4)(b), the state of Montana opts out of all existing and prospective uniform standards involving long-term care insurance products and all existing uniform standards involving individual disability income insurance products in order to preserve the state's statutory and constitutional requirements governing these insurance products.

**Section 2. Montana compact commissioner — alternate.** The commissioner of insurance provided for in 2-15-1903 or the commissioner's designated alternate shall represent this state on the interstate insurance product regulation commission.

**Section 3. Opt-out duties, guidelines, remedies.** (1) As a participant in the Interstate Insurance Product Regulation Compact, the commissioner may opt out of any uniform standard that provides a materially lower level of protection for or materially diminishes the rights of Montana policyholders or policy applicants under Montana law.

(2) Using the time periods provided in Title 2, chapter 4, for adopting administrative procedures and prior to notifying the interstate insurance product regulation commission of a decision to opt out, the commissioner shall provide public notice and hold a public hearing to allow for comments on the decision to opt out.

(3) After taking public comment, the commissioner shall notify the interstate insurance product regulation commission, the governor, and the legislative council of the decision to opt out.

(4) A decision of the commissioner to opt out of a uniform standard may be appealed as provided in 33-1-711.

**Section 4.** Section 33-1-311, MCA, is amended to read:

**"33-1-311. General powers and duties.** (1) The commissioner shall enforce the applicable provisions of the laws of this state and shall execute the duties imposed on the commissioner by the laws of this state.

(2) The commissioner has the powers and authority expressly conferred upon the commissioner by or reasonably implied from the provisions of the laws of this state.

(3) ~~The~~ *Except as otherwise provided in [section 1], the* commissioner shall administer the department to ensure that the interests of insurance consumers are protected.

(4) The commissioner may conduct examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as the commissioner considers proper, to determine whether any person has violated any provision of the laws of this state or to secure information useful in the lawful administration of any provision. The cost of additional examinations and investigations must be borne by the state.

(5) The commissioner shall maintain as confidential any information or document received from:

(a) the national association of insurance commissioners; or

(b) another state agency, an insurance department from another state, a federal agency, *the interstate insurance product regulation commission,* or a foreign government that treats the same information or document as confidential. The commissioner may provide information or documents, including information or documents that are confidential, to another state agency, the national association of insurance commissioners, a state or federal law enforcement agency, a federal agency, *the interstate insurance product regulation commission,* a foreign government, or an insurance department in another state~~,~~ if the recipient agrees to maintain the confidentiality of the information or documents.

(6) The department is a criminal justice agency as defined in 44-5-103."

**Section 5.** Section 33-1-501, MCA, is amended to read:

**"33-1-501. Filing of forms — approval — review of disapproval or withdrawal of approval — application.** (1) (a) An insurance policy or annuity contract form, certificate, enrollment form, application form, printed rider or endorsement form, or form of renewal certificate may not be delivered or issued for delivery in Montana unless the form and, for the purposes of disability insurance, an outline of coverage as required by 33-22-244 and 33-22-521 have been filed with and approved by the commissioner and, if required, the regulatory official of the state of domicile of the insurer *or the interstate insurance product regulation commission provided for in [section 1].* This provision does not apply to surety bonds or policies, riders, endorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject or that relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or disability insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. Forms for use in property, marine, other than ocean marine and foreign trade coverages, casualty, and surety insurance coverages may be filed by a rating organization on behalf of its members and subscribers or by a member or subscriber on its own behalf.

(b) A filing required by subsection (1)(a) must be submitted by an officer of the insurer with a certification in a form prescribed by the commissioner. The certification must state that to the best of the officer's knowledge and belief, the policy, contract form, certificate, enrollment form, application form, printed rider or endorsement form, or form of renewal certificate complies with the applicable provisions of Title 33.

(c) The approval of an insurance policy or annuity contract form, certificate, enrollment form, application form, or other related insurance form by the state of domicile may be waived by the commissioner if the commissioner considers

the requirements of subsection (1)(a) unnecessary for the protection of Montana insurance consumers. If the requirement is waived, an insurer shall notify the commissioner in writing within 10 days of disapproval, denial, or withdrawal of approval of a form by the state of domicile.

(2) (a) The filing must be made not less than 60 days before delivery and must be delivered by hand or sent by certified mail with a return receipt requested. The commissioner's office shall mark a filing with the date of receipt by the commissioner's office.

(b) (i) If after 60 days from the date of receipt by the commissioner's office the commissioner has not approved or disapproved the form by a notice pursuant to the provisions in subsection (4), the form is considered approved for all purposes, subject to subsection (2)(c).

(ii) The running of the 60-day period is tolled for a period commencing on the date that the commissioner notifies the insurer of problems or questions and requests additional information from the insurer concerning a form filed pursuant to subsection (1)(a) and ending on the date that the insurer submits its response to the commissioner.

(iii) For purposes of tolling the 60-day period as provided in subsection (2)(b)(ii), the commissioner's request notification may be made electronically.

(c) In a letter separate from the original filing and delivered by hand or sent by certified mail with return receipt requested, the insurer shall notify the commissioner, at least 10 days before the use of the form in the market, that the insurer believes that:

(i) the form has been or will be considered approved; and

(ii) the insurer will begin marketing the form in Montana.

(d) The commissioner's office shall mark a letter received pursuant to subsection (2)(c) with the date of receipt by the commissioner's office.

(3) Approval of a form by the commissioner constitutes a waiver of any unexpired portion of the waiting period.

(4) The commissioner may at any time, after notice and for cause shown, withdraw any approval. Notice by the commissioner disapproving a form or withdrawing a previous approval must state the grounds for disapproval or withdrawal in sufficient detail to inform the insurer of the specific reason or reasons for and the legal authority supporting the disapproval or withdrawal of approval in whole or in part. The disapproval or withdrawal of approval does not take effect unless it is issued after the commissioner has reviewed the form and provided notice to the person who filed the form pursuant to 33-1-314 and this subsection.

(5) After the date of the insurer's receipt of notice of disapproval or withdrawal of approval by the commissioner, the insurer may not deliver the form or issue the form for delivery in Montana.

(6) The insurer may request a hearing, as provided for in 33-1-701, for unresolved disputes regarding a disapproval or a withdrawal of approval.

(7) The commissioner may exempt from the requirements of this section, for so long as the commissioner considers proper, an insurance document, form, or type of document or form to which, in the commissioner's opinion, this section may not practicably be applied or the filing and approval of which are not desirable or necessary for the protection of the public.

(8) This section applies to a form used by a domestic insurer for delivery in a jurisdiction outside Montana if the insurance supervisory official of the

jurisdiction informs the commissioner that the form is not subject to approval or disapproval by the official and upon the commissioner's order requiring the form to be submitted to the commissioner for the purpose. The same standards apply to these forms as apply to forms for domestic use.

(9) Section 33-1-502 and this section do not apply to:

(a) reinsurance;

(b) policies or contracts not issued for delivery in Montana or delivered in Montana, except as provided in subsection (8);

(c) ocean marine and foreign trade insurances.

(10) Except as provided in chapter 21, group certificates that are delivered or issued for delivery in Montana for group insurance policies effectuated and delivered outside Montana but covering persons resident in Montana must be filed with the commissioner upon request. The certificates must meet the minimum provisions mandated by Montana if Montana law prevails over conflicting provisions of other state law."

**Section 6. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 1 through 3].

**Section 7. Two-thirds vote required.** Because [section 1] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Approved April 30, 2013

# CHAPTER NO. 361

[SB 45]

AN ACT REVISING THE DEFINITION OF "ELIGIBLE RENEWABLE RESOURCE" TO INCLUDE HYDROELECTRIC PROJECT EXPANSIONS; PROVIDING THE PUBLIC SERVICE COMMISSION WITH RULEMAKING AUTHORITY WITH RESPECT TO HYDROELECTRIC PROJECT EXPANSIONS; AND AMENDING SECTIONS 69-3-2003 AND 69-3-2006, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 69-3-2003, MCA, is amended to read:

**"69-3-2003. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Ancillary services" means services or tariff provisions related to generation and delivery of electric power other than simple generation, transmission, or distribution. Ancillary services related to transmission services include energy losses, energy imbalances, scheduling and dispatching, load following, system protection, spinning reserves and nonspinning reserves, and reactive power.

(2) "Balancing authority" means a transmission system control operator who balances electricity supply and load at all times to meet transmission system operating criteria and to provide reliable electric service to customers.

(3) "Common ownership" means the same or substantially similar persons or entities that maintain a controlling interest in more than one community renewable energy project even if the ownership shares differ between two

community renewable energy projects. Two community renewable energy projects may not be considered to be under common ownership simply because the same entity provided debt or equity or both debt and equity to both projects.

(4) "Community renewable energy project" means an eligible renewable resource that:

(a) is interconnected on the utility side of the meter in which local owners have a controlling interest and that is less than or equal to 25 megawatts in total calculated nameplate capacity; or

(b) is owned by a public utility and has less than or equal to 25 megawatts in total nameplate capacity.

(5) (a) "Competitive electricity supplier" means any person, corporation, or governmental entity that is selling electricity to small customers at retail rates in the state of Montana and that is not a public utility or cooperative.

(b) The term does not include governmental entities selling electricity produced only by facilities generating less than 250 kilowatts that were in operation prior to 1990.

(6) "Compliance year" means each calendar year beginning January 1 and ending December 31, starting in 2008, for which compliance with this part must be demonstrated.

(7) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(8) "Dispatch ability" means the ability of either a balancing authority or the owner of an electric generating resource to rapidly start, stop, increase, or decrease electricity production from that generating resource in order to respond to the balancing authority's need to match supply resources to loads on the transmission system.

(9) "Electric generating resource" means any plant or equipment used to generate electricity by any means.

(10) "Eligible renewable resource" means a facility either located within Montana or delivering electricity from another state into Montana that commences commercial operation after January 1, 2005, *or a hydroelectric project expansion referred to in subsection (10)(d)(iii),* ~~and that~~ *any of which* produces electricity from one or more of the following sources:

(a) wind;

(b) solar;

(c) geothermal;

(d) water power, in the case of a hydroelectric project that:

(i) does not require a new appropriation, diversion, or impoundment of water and that has a nameplate rating of 10 megawatts or less; ~~or~~

(ii) is installed at an existing reservoir or on an existing irrigation system that does not have hydroelectric generation as of April 16, 2009, and has a nameplate capacity of 15 megawatts or less; *or*

*(iii) is an expansion of an existing hydroelectric project that commences construction and increases existing generation capacity on or after [the effective date of this act]. Engineering estimates of the average incremental generation from the increase in existing generation capacity must be submitted to the commission for review. The commission shall determine an average annual*

*incremental generation that will constitute the eligible renewable resource from the capacity expansion, subject to further revision by the commission in the event of significant changes in stream flow or dam operation.*

(e) landfill or farm-based methane gas;

(f) gas produced during the treatment of wastewater;

(g) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic fuels from wood, forest, or field residues, except that the term does not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic;

(h) hydrogen derived from any of the sources in this subsection (10) for use in fuel cells;

(i) the renewable energy fraction from the sources identified in subsections (10)(a) through (10)(j) of electricity production from a multiple-fuel process with fossil fuels; and

(j) compressed air derived from any of the sources in this subsection (10) that is forced into an underground storage reservoir and later released, heated, and passed through a turbine generator.

(11) "Local owners" means:

(a) Montana residents;

(b) general partnerships of which all partners are Montana residents;

(c) business entities organized under the laws of Montana that:

(i) have less than $50 million of gross revenue;

(ii) have less than $100 million of assets; and

(iii) have at least 50% of the equity interests, income interests, and voting interests owned by Montana residents;

(d) Montana nonprofit organizations;

(e) Montana-based tribal councils;

(f) Montana political subdivisions or local governments;

(g) Montana-based cooperatives other than cooperative utilities; or

(h) any combination of the individuals or entities listed in subsections (11)(a) through (11)(g).

(12) "Nonspinning reserve" means offline generation that can be ramped up to capacity and synchronized to the grid within 10 minutes and that is needed to maintain system frequency stability during emergency conditions, unforeseen load swings, and generation disruptions.

(13) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on January 1, 2005, including the public utility's successors or assignees.

(14) "Renewable energy credit" means a tradable certificate of proof of 1 megawatt hour of electricity generated by an eligible renewable resource that is tracked and verified by the commission and includes all of the environmental attributes associated with that 1 megawatt-hour unit of electricity production.

(15) "Seasonality" means the degree to which an electric generating resource is capable of producing electricity in each of the seasons of the year.

(16) "Small customer" means a retail customer that has an individual load with an average monthly demand of less than 5,000 kilowatts.

(17) "Spinning reserve" means the online reserve capacity that is synchronized to the grid system and immediately responsive to frequency

control and that is needed to maintain system frequency stability during emergency conditions, unforeseen load swings, and generation disruptions.

(18) "Total calculated nameplate capacity" means the calculation of total nameplate capacity of the community renewable energy project and other eligible renewable resources that are:

(a) located within 5 miles of the project;

(b) constructed within the same 12-month period; and

(c) under common ownership."

**Section 2.** Section 69-3-2006, MCA, is amended to read:

**"69-3-2006. Commission authority — rulemaking authority.** (1) The commission has the authority to generally implement and enforce the provisions of this part.

(2) The commission shall adopt rules before June 1, 2006, to:

(a) select a renewable energy credit tracking system to verify compliance with this part;

(b) establish a system by which renewable resources become certified as eligible renewable resources;

(c) define the process by which waivers from full compliance with this part may be granted;

(d) establish procedures under which contracts for eligible renewable resources and renewable energy credits may receive advanced approval;

(e) define the requirements governing renewable energy procurement plans and annual reports; and

(f) generally implement and enforce the provisions of this part.

*(3) The commission may adopt rules to ensure that the calculation of energy generation and the renewable energy credits for eligible renewable resources under 69-3-2003(10)(d)(iii) reflects the actual electrical production from the expansion as typically reduced by seasonal water conditions.*"

**Section 3. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

**Section 4. Coordination instruction.** If both Senate Bill No. 31 and [this act] are passed and approved, then [section 5 of Senate Bill No. 31] is void. If both Senate Bill No. 31 and [this act] are passed an approved and if both contain a section that amends 69-3-2003, the sections amending 69-3-2003 are void and 69-3-2003 must be amended as follows:

**"69-3-2003. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Ancillary services" means services or tariff provisions related to generation and delivery of electric power other than simple generation, transmission, or distribution. Ancillary services related to transmission services include energy losses, energy imbalances, scheduling and dispatching, load following, system protection, spinning reserves and nonspinning reserves, and reactive power.

(2) "Balancing authority" means a transmission system control operator who balances electricity supply and load at all times to meet transmission system operating criteria and to provide reliable electric service to customers.

(3) "Common ownership" means the same or substantially similar persons or entities that maintain a controlling interest in more than one community

renewable energy project even if the ownership shares differ between two community renewable energy projects. Two community renewable energy projects may not be considered to be under common ownership simply because the same entity provided debt or equity or both debt and equity to both projects.

(4) "Community renewable energy project" means an eligible renewable resource that:

(a) is interconnected on the utility side of the meter in which local owners have a controlling interest and that is less than or equal to 25 megawatts in total calculated nameplate capacity; or

(b) is owned by a public utility and has less than or equal to 25 megawatts in total nameplate capacity.

(5) (a) "Competitive electricity supplier" means any person, corporation, or governmental entity that is selling electricity to small customers at retail rates in the state of Montana and that is not a public utility or cooperative.

(b) The term does not include governmental entities selling electricity produced only by facilities generating less than 250 kilowatts that were in operation prior to 1990.

(6) "Compliance year" means each calendar year beginning January 1 and ending December 31, starting in 2008, for which compliance with this part must be demonstrated.

(7) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(8) "Dispatch ability" means the ability of either a balancing authority or the owner of an electric generating resource to rapidly start, stop, increase, or decrease electricity production from that generating resource in order to respond to the balancing authority's need to match supply resources to loads on the transmission system.

(9) "Electric generating resource" means any plant or equipment used to generate electricity by any means.

(10) *(a)* "Eligible renewable resource" means a facility either located within Montana or delivering electricity from another state into Montana that commences commercial operation after January 1, 2005, *is a hydroelectric project referred to in subsection (10)(a)(iv)(C), or is a hydroelectric project expansion referred to in subsection (10)(a)(iv)(D),* ~~and that~~ *any of which* produces electricity from one or more of the following sources:

~~(a)~~*(i)* wind;

~~(b)~~*(ii)* solar;

~~(c)~~*(iii)* geothermal;

~~(d)~~*(iv) except as provided in subsection (10)(b)* water power, in the case of a hydroelectric project that:

~~(i)~~*(A)* does not require a new appropriation, diversion, or impoundment of water and that has a nameplate rating of 10 megawatts or less; ~~or~~

~~(ii)~~*(B)* is installed at an existing reservoir or on an existing irrigation system that does not have hydroelectric generation as of April 16, 2009, and has a nameplate capacity of 15 megawatts or less;

*(C) commences commercial operation in Montana on or after January 1, 2013, and is not an expansion under subsection (10)(a)(iv)(D); or*

*(D) is an expansion of a hydroelectric project that commences construction and increases existing generation capacity on or after [the effective date of this act]. Engineering estimates of the average incremental generation from the increase in existing generation capacity must be submitted to the commission for review. The commission shall determine an average annual incremental generation that will constitute the eligible renewable resource from the capacity expansion, subject to further revision by the commission in the event of significant changes in streamflow or dam operation.*

~~(e)~~*(v)* landfill or farm-based methane gas;

~~(f)~~*(vi)* gas produced during the treatment of wastewater;

~~(g)~~*(vii)* low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic fuels from wood, forest, or field residues, except that the term does not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic;

~~(h)~~*(viii)* hydrogen derived from any of the sources in this subsection ~~(10)~~ *(10)(a)* for use in fuel cells;

~~(i)~~*(ix)* the renewable energy fraction from the sources identified in ~~subsections (10)(a) through (10)(j)~~ *this subsection (10)(a)* of electricity production from a multiple-fuel process with fossil fuels; and

~~(j)~~*(x)* compressed air derived from any of the sources in this subsection ~~(10)~~ *(10)(a)* that is forced into an underground storage reservoir and later released, heated, and passed through a turbine generator.

*(b) The term does not include federal hydroelectric projects located in Montana or delivering electricity from another state into Montana.*

(11) "Local owners" means:

(a) Montana residents;

(b) general partnerships of which all partners are Montana residents;

(c) business entities organized under the laws of Montana that:

(i) have less than $50 million of gross revenue;

(ii) have less than $100 million of assets; and

(iii) have at least 50% of the equity interests, income interests, and voting interests owned by Montana residents;

(d) Montana nonprofit organizations;

(e) Montana-based tribal councils;

(f) Montana political subdivisions or local governments;

(g) Montana-based cooperatives other than cooperative utilities; or

(h) any combination of the individuals or entities listed in subsections (11)(a) through (11)(g).

(12) "Nonspinning reserve" means offline generation that can be ramped up to capacity and synchronized to the grid within 10 minutes and that is needed to maintain system frequency stability during emergency conditions, unforeseen load swings, and generation disruptions.

(13) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on January 1, 2005, including the public utility's successors or assignees.

(14) "Renewable energy credit" means a tradable certificate of proof of 1 megawatt hour of electricity generated by an eligible renewable resource that is tracked and verified by the commission and includes all of the environmental attributes associated with that 1 megawatt-hour unit of electricity production.

(15) "Seasonality" means the degree to which an electric generating resource is capable of producing electricity in each of the seasons of the year.

(16) "Small customer" means a retail customer that has an individual load with an average monthly demand of less than 5,000 kilowatts.

(17) "Spinning reserve" means the online reserve capacity that is synchronized to the grid system and immediately responsive to frequency control and that is needed to maintain system frequency stability during emergency conditions, unforeseen load swings, and generation disruptions.

(18) "Total calculated nameplate capacity" means the calculation of total nameplate capacity of the community renewable energy project and other eligible renewable resources that are:

(a) located within 5 miles of the project;

(b) constructed within the same 12-month period; and

(c) under common ownership."

Approved April 30, 2013

# CHAPTER NO. 362

[SB 69]

AN ACT CREATING A FINE FOR RECEIVING ASSETS THAT WERE TRANSFERRED TO QUALIFY AN APPLICANT OR RECIPIENT FOR MEDICAID.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Receipt of transferred assets for less than fair market value — fine.** (1) A person who receives an asset for less than fair market value from an applicant for or recipient of medical assistance for certain services under this part is subject to a civil fine payable to the department if the department initiates a judicial proceeding and shows by a preponderance of the evidence that:

(a) the asset was transferred to qualify the applicant or recipient for medical assistance for long-term care or home and community-based services;

(b) the transfer resulted in the imposition of a period of ineligibility for medical assistance under 53-6-166;

(c) the department advised the person who received the asset that the transfer would result in a period of ineligibility and the person refused to return the asset to the applicant or recipient; and

(d) the department provided medical assistance to the applicant or recipient during the period of ineligibility because the applicant or recipient received an undue hardship exception under 53-6-166.

(2) A court may impose a civil fine of 100% to 150% of the amount that the department paid for medical assistance for the applicant or recipient during the period of ineligibility that is attributable to the amount transferred to the person receiving the asset, plus the department's court costs and attorney fees.

(3) The department may petition a court to set aside a transfer that meets the requirements in subsection (1) and to require the return of the transferred asset to the applicant or recipient. Action under this subsection must be undertaken using available resources.

(4) All money collected under this section must be distributed to the state general fund and to the United States as required by applicable state and federal laws and regulations.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part 1, apply to [section 1].

Approved April 30, 2013

# CHAPTER NO. 363

[SB 84]

AN ACT ESTABLISHING STANDARDS FOR PATIENT-CENTERED MEDICAL HOMES; PROVIDING THAT PATIENT-CENTERED MEDICAL HOMES HAVE A STATE PURPOSE THAT PROVIDES STATE ACTION IMMUNITY ON ANTICOMPETITION CONCERNS; ALLOWING THE USE OF PATIENT-CENTERED MEDICAL HOMES IN THE MEDICAID AND HEALTHY MONTANA KIDS PROGRAMS; ALLOWING THE VOLUNTARY PARTICIPATION OF ALL STATE, UNIVERSITY, AND LOCAL GOVERNMENT PLANS, INCLUDING STATE-REGULATED MULTIPLE-WELFARE ARRANGEMENTS, THIRD-PARTY ADMINISTRATORS, AND SELF-INSURED STUDENT HEALTH PLANS AS POTENTIAL HEALTH PLAN PARTICIPANTS IN A PATIENT-CENTERED MEDICAL HOME PROGRAM; PROVIDING RULEMAKING AUTHORITY FOR THE STATE AUDITOR'S OFFICE AND THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AMENDING SECTIONS 20-25-1403, 33-1-102, 33-31-111, 33-35-306, AND 53-6-113, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title — legislative findings.** (1) [Sections 1 through 5] may be cited as the "Patient-Centered Medical Homes Act".

(2) The legislature finds that the increasing cost of health care makes health plans more difficult for individuals, families, and businesses to afford. These increases in health care costs are attributable in part to inadequate coordination of care among providers, difficulties in accessing primary care, and a lack of engagement between patients and their primary care providers. The purpose of [sections 1 through 5] is to enhance care coordination and promote high-quality, cost-effective care through patient-centered medical homes by engaging patients and their primary care providers.

(3) The legislature also finds that chronic diseases are one of the biggest threats to the health of Montana residents. The purpose of [sections 1 through 5] includes promoting episodic evidence-based care in the community to reduce hospital admissions, enhance chronic disease management, and reduce costs for treating chronic diseases.

(4) The legislature finds that there is a shortage of primary care providers in areas of Montana and that inconsistent access to health care services and variable quality of care have been shown to result in poorer health outcomes and health care disparities but that patient-centered medical homes offer a model of primary care that may attract new providers to Montana because the model is effective, sustainable, and replicable in small communities and provides a process to achieve higher quality health care for Montana citizens and a way to

help slow the continuing escalation of health care costs as well as improve health outcomes for Montana citizens.

(5) The legislature further finds that a single definition and common set of quality measures as well as a uniform payment methodology provide the best chance of success for the patient-centered medical homes model by increasing consistency in reporting across health plans and primary care practices.

(6) The legislature finds that best practices are most likely to be recognized and adopted by primary care practices if a state-structured patient-centered medical home program works with programs that may be developed for health plans and primary care practices and for any programs in Title 53 for medicaid and in Title 53, chapter 4, part 11, for the healthy Montana kids plan.

(7) The legislature also finds that an ongoing process is desirable to evaluate the effectiveness of patient-centered medical homes.

(8) Notwithstanding any state or federal law that prohibits the collaboration of insurers, other health plans, or providers regarding payment methods, the legislature finds that patient-centered medical homes are likely to result in the delivery of more efficient and effective health care services and are in the public interest.

**Section 2. State action immunity doctrine.** The state action immunity doctrine applies to the patient-centered medical home program in Montana, and federal or state antitrust laws that prohibit collusion do not apply to any standards used by the patient-centered medical home program regarding medical payments. The legislative findings, as provided in [section 1], and oversight by the insurance commissioner combine to determine that patient-centered medical homes are in the public interest and are likely to result in the delivery of more efficient and effective health care services sufficient to override concerns about collusion regarding medical payments among insurers, other health plans, or primary care practices.

**Section 3. Definitions.** As used in [sections 1 through 5], the following definitions apply:

(1) "Covered medical services" means the health care services that are included as benefits under a health plan.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) (a) "Health plan" means any public or private program that pays for medical care, including but not limited to a health benefit plan issued by or administered by an insurer, a health service corporation, a health maintenance organization, a multiple employer welfare arrangement, or a third-party administrator or a plan described under 33-1-102(7), (9), or (12).

(b) The term does not include the provision of services through the medicaid program or the healthy Montana kids program as authorized in Title 53.

(4) "Patient-centered medical home" means a model of health care that is:

(a) directed by a primary care provider offering family-centered, culturally effective care that is coordinated, comprehensive, continuous, and, whenever possible, located in the patient's community and integrated across systems;

(b) characterized by enhanced access, with an emphasis on prevention, improved health outcomes, and satisfaction;

(c) qualified by the commissioner under [section 4] as meeting the standards of a patient-centered medical home; and

(d) reimbursed under a payment system that recognizes the value of services that meet the standards of the patient-centered medical home program.

(5) "Prevention services" means health care services that include primary prevention services and clinical prevention services.

(6) "Primary care practice" means a solo health care provider or a health care practice that is organized by or includes licensees under Title 37 who provide primary medical care, including but not limited to pediatricians, internal medicine physicians, family medicine physicians, nurse practitioners, and physician assistants.

(7) "Qualified individual" means a policyholder, certificate holder, member, subscriber, enrollee, or other individual who is participating in a health plan and who is enrolled in a patient-centered medical home program.

**Section 4. Powers and duties of commissioner — rulemaking.** (1) The commissioner shall:

(a) adopt rules necessary to implement the provisions of [sections 1 through 5];

(b) in consultation with interested parties, qualify patient-centered medical homes that have been accredited by a nationally recognized accrediting organization approved by the commissioner and that meet any other standards established by the commissioner;

(c) oversee, promote, coordinate, and provide guidance concerning the creation and activities of any patient-centered medical homes doing business in Montana in order to ensure that the requirements of [sections 1 through 5] are met;

(d) consult with all interested parties in association with carrying out the activities required under [sections 1 through 5]; and

(e) develop and implement standards as set forth in [section 5] in consultation with interested parties.

(2) For the purposes of this section, interested parties include but are not limited to the department, public health agencies, health plans, government health plans, primary health care providers, and health care consumers. Interested parties must be organized as a stakeholder council with regular meetings, the scheduling of which must be determined by the commissioner.

**Section 5. Standards for patient-centered medical homes.** (1) The commissioner shall, in consultation with the stakeholder council of interested parties, set standards from the list provided in subsection (2).

(2) Standards may be set for one or more of the following or for other topics determined by the commissioner in consultation with stakeholders:

(a) payment methods used by health plans to pay patient-centered medical homes for services associated with the coordination of covered health care services;

(b) bonuses, fee-based incentives, bundled fees, or other incentives that a health plan may use to pay a patient-centered medical home based on the savings from reduced health care expenditures associated with improved health outcomes and care coordination by qualified individuals attributed to the participation in the patient-centered medical homes;

(c) a uniform set of health care quality and performance measures that include prevention services; and

(d) a uniform set of measures related to cost and medical usage.

(3) A patient-centered medical home must meet the standards in this section in full or in part by providing proof to the commissioner that it has been accredited by a nationally recognized accrediting organization approved by the commissioner.

(4) The commissioner may, in consultation with stakeholders, set standards that are specific to Montana and may be required in addition to nationally recognized accreditation standards.

(5) A patient-centered medical home shall report on its compliance with the uniform set of health care quality and performance measures adopted by the commissioner to:

(a) health plans and other payers with which the patient-centered medical home contracts;

(b) the commissioner; and

(c) the department, if the department is a participant.

(6) A health plan and other payers shall report to the patient-centered medical home regarding their compliance with the uniform set of cost and utilization measures adopted by the commissioner for patients covered under the health plan.

(7) In developing the standards described in subsection (2), the commissioner may consider:

(a) the use of health information technology, including electronic medical records;

(b) the relationship between the primary care practice, specialists, other health care providers, and hospitals;

(c) the access standards for individuals covered by a health plan to receive primary medical care in a timely manner;

(d) the ability of the primary care practice to foster a partnership with patients; and

(e) the use of comprehensive medication management to improve clinical outcomes.

(8) All health care providers and payers who participate in a patient-centered medical home shall, as a condition of participation, collectively commission one independent study on savings generated by the patient-centered medical home program and report to the children, families, health, and human services interim committee no later than September 30, 2016.

**Section 6. Participation in patient-centered medical home optional.** The participation of an insurance contract or plan issued under this part in a patient-centered medical home program is not required. If a plan chooses to participate in a patient-centered medical home program, the plan shall comply with the requirements of [sections 1 through 5].

**Section 7.** Section 20-25-1403, MCA, is amended to read:

**"20-25-1403. Authorization to establish self-insured health plan for students — requirements — exemption.** (1) The commissioner may establish a self-insured student health plan for enrolled students of the system and their dependents, including students of a community college district. In developing a self-insured student health plan, the commissioner shall:

(a) maintain the plan on an actuarially sound basis;

(b) maintain reserves sufficient to liquidate the unrevealed claims liability and other liabilities of the plan; and

(c) deposit all reserve funds, contributions and payments, interest earnings, and premiums paid to the plan. The deposits must be expended for claims under the plan and for the costs of administering the plan, including but not limited to the costs of hiring staff, consultants, actuaries, and auditors, purchasing necessary reinsurance, and repaying debts.

(2) Prior to the implementation of a self-insured student health plan, the commissioner shall consult with affected parties, including but not limited to the board of regents and representatives of enrolled students of the system.

(3) A self-insured student health plan developed under this part is not responsible for and may not cover any services or pay any expenses for which payment has been made or is due under an automobile, premises, or other private or public medical payment coverage plan or provision or under a workers' compensation plan or program, except when the other payor is required by federal law to be a payor of last resort. The term "services" includes but is not limited to all medical services, procedures, supplies, medications, or other items or services provided to treat an injury or medical condition sustained by a member of the plan.

(4) ~~The~~ *Except for the provisions of [sections 1 through 5], the* provisions of Title 33 do not apply to the commissioner when exercising the duties provided for in this part."

**Section 8.** Section 33-1-102, MCA, is amended to read:

**"33-1-102. Compliance required — exceptions — health service corporations — health maintenance organizations — governmental insurance programs — service contracts.** (1) A person may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) ~~This~~ *Except as provided in [sections 1 through 5], this* code does not apply to health maintenance organizations to the extent that the existence and operations of those organizations are governed by chapter 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, parts 21 and 23, and related sections.

(6) The department of public health and human services may limit the amount, scope, and duration of services for programs established under Title 53 that are provided under contract by entities subject to this title. The department of public health and human services may establish more restrictive eligibility requirements and fewer services than may be required by this title.

(7) ~~This~~ *This* code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8, or the Montana university system group benefits plans established in Title 20, chapter 25, part 13.

(8) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(9) (a) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

(10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making of, proposal to make, and administration of a service contract.

(b) A "service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair, replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service. A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from power surges or accidental damage from handling. A service contract does not include motor club service as defined in 61-12-301.

(11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable for the financial risk under the contract with the third party as provided in 7-34-103.

(b) If the financial risk for ambulance service insurance is with an entity other than the county, city, or town, the entity is subject to the provisions of this code.

(12) ~~This~~ *Except as provided in [sections 1 through 5], this* code does not apply to the self-insured student health plan established in Title 20, chapter 25, part 14.

(13) This code does not apply to private air ambulance services that are in compliance with 50-6-320 and that solicit membership subscriptions, accept membership applications, charge membership fees, and provide air ambulance services to subscription members and designated members of their households."

**Section 9.** Section 33-31-111, MCA, is amended to read:

**"33-31-111. Statutory construction and relationship to other laws.** (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, part 19;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) Title 33, chapter 1, parts 12 and 13, *[sections 1 through 5],* Title 33, chapter 2, part 19, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-401, 33-3-422, 33-3-431, 33-15-308, Title 33, chapter 17, Title 33, chapter 19, 33-22-107, 33-22-129, 33-22-131, 33-22-136, 33-22-137, 33-22-141, 33-22-142, 33-22-152, 33-22-244, 33-22-246, 33-22-247, 33-22-514, 33-22-515, 33-22-521, 33-22-523, 33-22-524, 33-22-526, and 33-22-706 apply to health maintenance organizations."

**Section 10.** Section 33-35-306, MCA, is amended to read:

**"33-35-306. Application of insurance code to arrangements.** (1) In addition to this chapter, self-funded multiple employer welfare arrangements are subject to the following provisions:

(a) 33-1-111;

*(b) [sections 1 through 5];*

~~(b)~~*(c)* Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare arrangement is limited to those matters to which the arrangement is subject to regulation under this chapter;

~~(c)~~*(d)* Title 33, chapter 1, part 7;

~~(d)~~*(e)* 33-3-308;

~~(e)~~*(f)* Title 33, chapter 18, except 33-18-242;

~~(f)~~*(g)* Title 33, chapter 19;

~~(g)~~*(h)* 33-22-107, 33-22-131, 33-22-134, 33-22-135, 33-22-141, 33-22-142, and 33-22-152; and

~~(h)~~*(i)* 33-22-512, 33-22-515, 33-22-525, and 33-22-526.

(2) Except as provided in this chapter, other provisions of Title 33 do not apply to a self-funded multiple employer welfare arrangement that has been issued a certificate of authority that has not been revoked."

**Section 11.** Section 53-6-113, MCA, is amended to read:

**"53-6-113. Department to adopt rules.** (1) The department shall adopt appropriate rules necessary for the administration of the Montana medicaid program as provided for in this part and that may be required by federal laws and regulations governing state participation in medicaid under Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as amended.

(2) The department shall adopt rules that are necessary to further define for the purposes of this part the services provided under 53-6-101 and to provide that services being used are medically necessary and that the services are the most efficient and cost-effective available. The rules may establish the amount, scope, and duration of services provided under the Montana medicaid program, including the items and components constituting the services.

(3) The department shall establish by rule the rates for reimbursement of services provided under this part. The department may in its discretion set rates of reimbursement that it determines necessary for the purposes of the program. In establishing rates of reimbursement, the department may consider but is not limited to considering:

(a) the availability of appropriated funds;

(b) the actual cost of services;

(c) the quality of services;

(d) the professional knowledge and skills necessary for the delivery of services; and

(e) the availability of services.

(4) The department shall specify by rule those professionals who may deliver or direct the delivery of particular services.

(5) The department may provide by rule for payment by a recipient of a portion of the reimbursements established by the department for services provided under this part.

(6) The department may adopt rules consistent with this part to govern eligibility for the Montana medicaid program, including the medicaid program provided for in 53-6-195. Rules may include but are not limited to financial standards and criteria for income and resources, treatment of resources, nonfinancial criteria, family responsibilities, residency, application, termination, definition of terms, confidentiality of applicant and recipient information, and cooperation with the state agency administering the child support enforcement program under Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq. The department may not apply financial criteria below $15,000 for resources other than income in determining the eligibility of a child under 19 years of age for poverty level-related children's medicaid coverage groups, as provided in 42 U.S.C. 1396a(l)(1)(B) through (l)(1)(D).

(7) The department may adopt rules limiting eligibility based on criteria more restrictive than that provided in 53-6-131 if required by Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, or if funds appropriated are not sufficient to provide medical care for all eligible persons.

(8) The department may adopt rules necessary for the administration of medicaid managed care systems. Rules to be adopted may include but are not limited to rules concerning:

(a) participation in managed care;

(b) selection and qualifications for providers of managed care; and

(c) standards for the provision of managed care.

(9) Subject to subsection (6), the department shall establish by rule income limits for eligibility for extended medical assistance of persons receiving section 1931 medicaid benefits, as defined in 53-4-602, who lose eligibility because of increased income to the assistance unit, as that term is defined in the rules of the department, as provided in 53-6-134, and shall also establish by rule the length of time for which extended medical assistance will be provided. The department, in exercising its discretion to set income limits and duration of assistance, may consider the amount of funds appropriated by the legislature.

*(10) The department may adopt rules for implementing and administering one or more patient-centered medical home programs. The rules may include but are not limited to provider qualifications, coverage groups, services coverage, measures to ensure the appropriateness and quality of services delivered, payment rates and fees, and utilization measures. In implementing and administering patient-centered medical home programs, the department shall use only health care providers that have been qualified by the commissioner and authorized to use the designation of a patient-centered medical home. The department shall use the standards adopted by the commissioner for patient-centered medical homes under [section 5], except for those standards relating to settling payment rates and fees and any standards that may conflict with federal medicaid requirements.*"

**Section 12. Codification instruction.** (1) [Sections 1 through 5] are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 1 through 5].

(2) [Section 6] is intended to be codified as an integral part of Title 2, chapter 18, part 7, and the provisions of Title 2, chapter 18, part 7, apply to [section 6].

**Section 13. Effective date.** [This act] is effective on passage and approval.

**Section 14. Termination.** [This act] terminates December 31, 2017.

Approved April 30, 2013

## CHAPTER NO. 364

[SB 348]

AN ACT RELATING TO MONTANA SCHOOL SAFETY; ADDING PUBLIC SCHOOL BUILDINGS TO THE EXEMPTIONS FROM DISCLOSURE TO PROTECT PUBLIC SAFETY OR SECURITY OF PUBLIC FACILITIES; REQUIRING SCHOOL DISTRICTS TO ADOPT A SCHOOL SAFETY PLAN; REVISING LAWS REGARDING DISASTER DRILLS IN PUBLIC SCHOOLS; REQUIRING SCHOOL DISTRICTS TO ANNUALLY REVIEW SUSPENSION AND EXPULSION POLICIES RELATED TO STUDENTS WITH WEAPONS OR FIREARMS AT SCHOOL; EXPANDING PUBLIC SCHOOL DISTRICT ACCESS TO INFORMATION IN POSSESSION OF LAW ENFORCEMENT REGARDING POTENTIAL CRIMINAL ACTIVITY OF STUDENTS; RENAMING THE COUNTY INTERDISCIPLINARY CHILD INFORMATION AND SCHOOL SAFETY TEAM AND REQUIRING COUNTIES TO FORM A TEAM; REVISING THE REQUIREMENTS FOR A YOUTH COURT TO PROVIDE NOTICE TO A SCHOOL REGARDING YOUTH OFFENDERS; ALLOWING SCHOOL DISTRICTS TEMPORARY AUTHORITY TO TRANSFER FUNDS INTO THE BUILDING RESERVE FUND FOR SCHOOL SAFETY AND SECURITY IMPROVEMENTS; AMENDING SECTIONS 2-6-102, 20-1-401, 20-1-402, 20-5-202, 41-3-205, 41-5-215, 52-2-211, AND

52-2-304, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-6-102, MCA, is amended to read:

**"2-6-102. Citizens entitled to inspect and copy public writings.** (1) Every citizen has a right to inspect and take a copy of any public writings of this state, except as provided in 22-1-1103, 22-3-807, or subsection (3) of this section and as otherwise expressly provided by statute.

(2) Every public officer having the custody of a public writing that a citizen has a right to inspect is bound to give the citizen on demand a certified copy of it, on payment of the legal fees for the copy, and the copy is admissible as evidence in like cases and with like effect as the original writing. The certified copy provision of this subsection does not apply to the public record of electronic mail provided in an electronic format.

(3) Records and materials that are constitutionally protected from disclosure are not subject to the provisions of this section. Information that is constitutionally protected from disclosure is information in which there is an individual privacy interest that clearly exceeds the merits of public disclosure, including legitimate trade secrets, as defined in 30-14-402, and matters related to individual or public safety.

(4) A public officer may withhold from public scrutiny information relating to individual privacy or individual or public safety or security of public facilities, including *public schools,* jails, correctional facilities, private correctional facilities, and prisons, if release of the information may jeopardize the safety of facility personnel, the public, *students in a public school,* or inmates of a facility. Security features that may be protected under this section include but are not limited to architectural floor plans, blueprints, designs, drawings, building materials, alarms system plans, surveillance techniques, and facility staffing plans, including staff numbers and locations. A public officer may not withhold from public scrutiny any more information than is required to protect an individual privacy interest or safety or security interest."

**Section 2.** Section 20-1-401, MCA, is amended to read:

**"20-1-401. Disaster drills to be conducted regularly — districts to identify disaster risks *and adopt school safety plan.*** (1) As used in this part, "disaster" ~~has the same meaning as in 10-3-103.~~ *means the occurrence or imminent threat of damage, injury, or loss of life or property.* Disaster drills must be conducted regularly in accordance with this part.

(2) A board of trustees shall identify the local hazards that exist within the boundaries of its school district and design *and incorporate* drills *in its school safety plan* to address those hazards.

*(3) A board of trustees shall adopt a school safety plan on or before July 1, 2014, that addresses issues of school safety relating to school buildings and facilities, communications systems, and school grounds with the input from the local community and that addresses coordination on issues of school safety, if any, with the county interdisciplinary child information and school safety team provided for in 52-2-211. The trustees shall certify to the office of public instruction on or before July 1, 2014, that a school safety plan has been adopted. The trustees shall review the school safety plan periodically and update the plan as determined necessary by the trustees based on changing circumstances pertaining to school safety.*"

**Section 3.** Section 20-1-402, MCA, is amended to read:

**"20-1-402. Number of disaster drills required — time of drills to vary.** There must be at least eight disaster drills a year in a school. ~~At least four of the drills must be fire exit drills.~~ Drills must be held at different hours of the day or evening to avoid distinction between drills and actual disasters."

**Section 4.** Section 20-5-202, MCA, is amended to read:

**"20-5-202. Suspension and expulsion.** (1) As provided in 20-4-302, 20-4-402, and 20-4-403, a pupil may be suspended by a teacher, superintendent, or principal. The trustees of the district shall adopt a policy defining the authority and procedure to be used by a teacher, superintendent, or principal in the suspension of a pupil and in defining the circumstances and procedures by which the trustees may expel a pupil. Expulsion is any removal of a pupil for more than 20 school days without the provision of educational services and is a disciplinary action available only to the trustees. A pupil may be suspended from school for an initial period not to exceed 10 school days. Upon a finding by a school administrator that the immediate return to school by a pupil would be detrimental to the health, welfare, or safety of others or would be disruptive of the educational process, a pupil may be suspended for one additional period not to exceed 10 school days if the pupil is granted an informal hearing with the school administrator prior to the additional suspension and if the decision to impose the additional suspension does not violate the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(2) *(a)* The trustees of a district shall adopt a policy for the expulsion of a student who is determined to have brought a firearm, as defined in 18 U.S.C. 921, to school and for referring the matter to the appropriate local law enforcement agency. A student who is determined to have brought a firearm to school under this subsection must be expelled from school for a period of not less than 1 year, except that the trustees may authorize the school administration to modify the requirement for expulsion of a student on a case-by-case basis. *The trustees shall annually review its weapons policy and any policy adopted under this subsection (2)(a) and update the policies as determined necessary by the trustees based on changing circumstances pertaining to school safety.*

*(b)* A decision to change the placement of a student with a disability who has been expelled pursuant to this section must be made in accordance with the Individuals With Disabilities Education Act.

(3) In accordance with 20-4-302, 20-4-402, 20-4-403, and subsection (1) of this section, a teacher, a superintendent, or a principal shall suspend immediately for good cause a student who is determined to have brought a firearm to school.

(4) Nothing in this section prevents a school district from:

(a) offering instructional activities related to firearms or allowing a firearm to be brought to school for instructional activities sanctioned by the district; or

(b) providing educational services in an alternative setting to a student who has been expelled from the student's regular school setting."

**Section 5.** Section 41-3-205, MCA, is amended to read:

**"41-3-205. Confidentiality — disclosure exceptions.** (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (7) and (8), a person who purposely or knowingly permits or

encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a juvenile probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information *and school safety* team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's assigned attorney, guardian ad litem, or special advocate.

(5) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

(6) The confidentiality provisions of this section must be construed to allow a court of this state to share information with other courts of this state or of another state when necessary to expedite the interstate placement of children.

(7) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(8) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (7) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(9) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(10) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost."

**Section 6.** Section 41-5-215, MCA, is amended to read:

**"41-5-215. Youth court and department records — notification of school.** (1) Formal youth court records, including reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, and orders and decrees on file with the clerk of court are public records and are open to public inspection until the records are sealed under 41-5-216.

(2) Social, medical, and psychological records, youth assessment materials, predispositional studies, and supervision records of probationers are open only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon the party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after emancipation or reaching the age of majority;

(g) a member of a county interdisciplinary child information *and school safety* team formed under 52-2-211 who is not listed in this subsection (2);

(h) members of a local interagency staffing group provided for in 52-2-203;

(i) persons allowed access to the reports referred to under 45-5-624(7);

(j) persons allowed access under 42-3-203; and

(k) persons conducting evaluations as required in 41-5-2003.

(3) (a) Notwithstanding the requirements of 20-5-321(1)(d) or (1)(e)*,* ~~and~~ subject to the provisions of subsection (3)(b) of this section, ~~the youth court shall~~ *and according to the guidelines in subsection (3)(f) of this section, the chief probation officer or other designee from the district that has jurisdiction over the*

*matter or the department of corrections for youth under the supervision of the department shall* notify the school district that the youth presently attends or the school district that the youth has applied to attend of a youth's ~~suspected~~ *past or current* drug use or criminal activity if after an investigation has been completed~~:~~

(i) ~~the youth has admitted the allegation or~~ a petition has been filed with the youth court *or charges are filed in district court alleging a violation of any section in Title 45, chapter 5*; ~~and~~ *or*

(ii) ~~a juvenile probation officer has reason to believe that a youth is currently involved with drug use or other criminal activity that has a bearing on the safety of children~~ *the youth has admitted the allegation and the acts involve any offense in which another youth was an alleged victim and the admitted activity has a bearing on the safety of children*.

(b) Notification under subsection (3)(a) may not be given for status offenses.

(c) ~~In addition to the notice requirements in subsection (3)(a), the youth court shall provide notice to the superintendent of a school district for a level 3 sexual offender as provided in 41-5-1513(3)~~ *Notification under subsection (3)(a) terminates upon the end of the youth court's supervision or the discharge of the youth by the department of corrections*.

(d) A school district may not refuse to accept the student if refusal violates the federal Individuals With Disabilities Education Act or the federal Americans With Disabilities Act of 1990.

(e) The administrative officials of the school district may enforce school disciplinary procedures that existed at the time of the admission or adjudication. The information may not be further disclosed and may not be made part of the student's permanent records.

*(f) Notification to the school district under subsection (3)(a) must be provided to:*

*(i) the school district superintendent or the superintendent's designee in districts that employ a superintendent;*

*(ii) the building principal or the principal's designee in school districts where the building principal is the only administrator; or*

*(iii) the county superintendent in school districts that do not employ an administrator*.

(4) In all cases, a victim is entitled to all information concerning the identity and disposition of the youth, as provided in 41-5-1416.

(5) The school district may disclose, without consent, personally identifiable information from an education record of a pupil to the youth court and law enforcement authorities pertaining to violations of the Montana Youth Court Act or criminal laws by the pupil. The youth court or law enforcement authorities receiving the information shall certify in writing to the school district that the information will not be disclosed to any other party except as provided under state law without the prior consent of the parent or guardian of the pupil.

(6) Any part of records information secured from records listed in subsection (2), when presented to and used by the court in a proceeding under this chapter, must also be made available to the counsel for the parties to the proceedings."

**Section 7.** Section 52-2-211, MCA, is amended to read:

**"52-2-211. County interdisciplinary child information *and school safety* team.** (1) The following persons and agencies operating within a county

~~may~~ *shall* by written agreement form a county interdisciplinary child information *and school safety* team:

(a) the youth court;

(b) the county attorney;

(c) the department of public health and human services;

(d) the county superintendent of schools;

(e) the sheriff;

(f) the chief of any police force;

(g) the superintendents of public school districts; and

(h) the department of corrections.

(2) The persons and agencies signing a written agreement under subsection (1) may by majority vote allow the following persons to sign the written agreement and join the team:

(a) physicians, psychologists, psychiatrists, nurses, and other providers of medical and mental health care;

(b) entities operating private elementary and secondary schools;

(c) attorneys; and

(d) a person or entity that has or may have a legitimate interest in one or more children that the team will serve.

(3) (a) The members of the team or their designees may form one or more auxiliary teams for the purpose of providing service to a single child, a group of children, or children with a particular type of problem or for any other purpose. Auxiliary teams are subject to the written agreement.

(b) A member of an auxiliary team must be a person who has personal knowledge of or experience with the child or children in the member's respective field.

(4) The purpose of the team and written agreement is to facilitate the exchange and sharing of information that one or more team members may be able to use in serving a child in the course of their professions and occupations, including but not limited to abused or neglected children, delinquent youth, and youth in need of intervention*, and of information relating to issues of school safety*. Information regarding a child that a team member supplies to other team members or that is disseminated to a team member under 41-3-205 or 41-5-215(2) and (3) may not be disseminated beyond the *organizations or departments that have an authorized member on the* team *under subsections (1) or (2)*.

(5) The terms of the written agreement must provide for the rules under which the team will operate, the method by which information will be shared, distributed, and managed, and any other matters necessary to the purpose and functions of the team.

(6) The terms of the written agreement must state how the team will coordinate its efforts with interdisciplinary child protective teams as provided in 41-3-108 and youth placement committees as provided for in 41-5-121.

(7) To the extent that the county interdisciplinary child information *and school safety* team is involved in a proceeding that is held prior to adjudication of a youth in youth court, the team satisfies the requirements of 20 U.S.C. 1232g(b)(1)(E)(ii)(I) of the Family Educational Rights and Privacy Act of 1974. Montana school districts may release education records to the team. The terms of the written agreement described in subsection (5) must include a requirement

that the officials and authorities to whom the information is disclosed certify in writing to the school district that is releasing the education records that the education records or information from the education records will not be disclosed to any other party without the prior written consent of the parent or guardian of the student."

**Section 8.** Section 52-2-304, MCA, is amended to read:

**"52-2-304. Committee duties.** (1) The committee established in 52-2-303 shall, to the extent possible within existing resources:

(a) develop policies aimed at eliminating or reducing barriers to the implementation of a system of care;

(b) promote the development of an in-state quality array of core services in order to assist in returning high-risk children with multiagency service needs from out-of-state placements, limiting and preventing the placement of high-risk children with multiagency service needs out of state, and maintaining high-risk children with multiagency service needs within the least restrictive and most appropriate setting;

(c) advise local agencies to ensure that the agencies comply with applicable statutes, administrative rules, and department policy in committing funds and resources for the implementation of unified plans of care for high-risk children with multiagency service needs and in making any determination that a high-risk child with multiagency service needs cannot be served by an in-state provider;

(d) encourage the development of local interagency teams with participation from representatives from child serving agencies who are authorized to commit resources and make decisions on behalf of the agency represented;

(e) specify outcome indicators and measures to evaluate the effectiveness of the system of care;

(f) develop mechanisms to elicit meaningful participation from parents, family members, and youth who are currently being served or who have been served in the children's system of care; and

(g) take into consideration the policies, plans, and budget developed by any service area authority provided for in 53-21-1006.

(2) The committee shall coordinate responsibility for the development of a stable system of care for high-risk children with multiagency service needs that may include, as appropriate within existing resources:

(a) pooling funding from federal, state, and local sources to maximize the most cost-effective use of funds to provide services in the least restrictive and most appropriate setting to high-risk children with multiagency service needs;

(b) applying for federal waivers and grants to improve the delivery of integrated services to high-risk children with multiagency service needs;

(c) providing for multiagency data collection and for analysis relevant to the creation of an accurate profile of the state's high-risk children with multiagency service needs in order to provide for the use of services based on client needs and outcomes and use of the analysis in the decisionmaking process;

(d) developing mechanisms for the pooling of human and fiscal resources; and

(e) providing training and technical assistance, as funds permit, at the local level regarding governance, development of a system of care, and delivery of integrated multiagency children's services.

(3) (a) In order to maximize integration and minimize duplication, the local interagency team, provided for in subsection (1)(d), may be facilitated in conjunction with an existing statutory team for providing youth services, including:

(i) a child protective team as provided for in 41-3-108;

(ii) a youth placement committee as provided for in 41-5-121 and 41-5-122;

(iii) a county interdisciplinary child information *and school safety* team or an auxiliary team as provided for in 52-2-211;

(iv) a foster care review committee as provided for in 41-3-115;

(v) a local citizen review board as provided for in 41-3-1003; and

(vi) a local advisory council as provided for in 53-21-702.

(b) If the local interagency team decides to coordinate and consolidate statutory teams, it shall ensure that all state and federal rules, laws, and policies required of the individual statutory teams are fulfilled."

**Section 9. Transfer of funds — improvements to school safety and security.** (1) For fiscal year 2013 through fiscal year 2015 only, a school district may transfer state or local revenue from any budgeted or nonbudgeted fund, other than the debt service fund or retirement fund, to its building reserve fund in an amount not to exceed the school district's estimated costs of improvements to school safety and security as follows:

(a) planning for improvements to school safety, including but not limited to the cost of services provided by architects, engineers, and other consultants;

(b) installing or updating locking mechanisms and ingress and egress systems at public school access points, including but not limited to systems for exterior egress doors and interior passageways and rooms, using contemporary technologies;

(c) installing or updating bullet-resistant windows and barriers; and

(d) installing or updating emergency response systems using contemporary technologies.

(2) Any transfers made pursuant to subsection (1) are not considered expenditures to be applied against budget authority. Any revenue transfers that are not encumbered for expenditures in compliance with subsection (1) by June 30, 2015, must be transferred back to the originating fund from which the revenue was transferred.

(3) The intent of this section is to increase the flexibility and efficiency of school districts without an increase in local taxes. In furtherance of this intent, if transfers of funds are made from any school district fund supported by a nonvoted levy, the district may not increase its nonvoted levy for the purpose of restoring the transferred funds.

**Section 10. Codification instruction.** [Section 9] is intended to be codified as an integral part of Title 20, chapter 9, and the provisions of Title 20, chapter 9, apply to [section 9].

**Section 11. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective July 1, 2013.

(2) [Section 9 and this section] are effective on passage and approval.

**Section 12. Termination.** [Section 9] terminates June 30, 2015.

Approved April 30, 2013

# CHAPTER NO. 365

[HB 8]

AN ACT APPROVING RENEWABLE RESOURCE PROJECTS AND AUTHORIZING LOANS; REAUTHORIZING RENEWABLE RESOURCE PROJECTS AUTHORIZED BY THE 62ND LEGISLATURE; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING THE ISSUANCE OF COAL SEVERANCE TAX BONDS; AUTHORIZING THE CREATION OF A STATE DEBT AND APPROPRIATING COAL SEVERANCE TAXES FOR DEBT SERVICE; PLACING CERTAIN CONDITIONS UPON LOANS; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Approval of renewable resource projects and authorization to provide loans.** (1) The legislature finds that the renewable resource project listed in this section meets the provisions of 17-5-702. The department of natural resources and conservation is authorized to make loans to the political subdivisions of state government and local governments listed in subsection (2) in amounts not to exceed the loan amounts listed for each project from the proceeds of the bonds authorized in [section 3].

(2) The interest rate for the project in this group is 3.0% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

| Loan | Amount |
|---|---|
| DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION - CONSERVATION AND RESOURCE DEVELOPMENT DIVISION | |
| Refinance Existing Debt or Rehabilitation of Water and Sewer Facilities | $3,000,000 |

(3) The interest rate for the projects in this group is 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 30 years.

| Loan | Amount |
|---|---|
| DRY PRAIRIE REGIONAL WATER AUTHORITY | |
| Local Match for Dry Prairie Projects | $6,000,000 |
| NORTH CENTRAL REGIONAL WATER AUTHORITY | |
| Local Match for North Central Projects | $10,000,000 |

**Section 2. Projects not completing requirements — projects reauthorized.** (1) The legislature finds that the following renewable resource projects that were approved by the 62nd legislature in Chapter 366, Laws of 2011, may not complete the requirements necessary to obtain the loan funds prior to June 30, 2013. The projects described in this section are reauthorized. The department of natural resources and conservation is authorized to make loans to the political subdivisions of state government and local governments listed in subsections (2) and (3) in amounts not to exceed the loan amounts listed for each project from the proceeds of the bonds authorized in [section 3].

(2) The interest rate for the project in this group is 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 15 years.

| Loan | Amount |
|---|---|
| DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION - WATER RESOURCES DIVISION | |
| Ruby Dam Rehabilitation Project - Phase 2 | $2,000,000 |

(3) The interest rate for the project in this group is 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 30 years.

| Loan | Amount |
|---|---|
| SUNSET IRRIGATION DISTRICT | |
| Gravity Flow Irrigation Pipelines | $1,465,266 |

**Section 3. Coal severance tax bonds authorized.** (1) The legislature finds that Title 17, chapter 5, part 7, provides for the issuance of coal severance tax bonds for financing specific approved renewable resource projects as part of the state renewable resource grant and loan program. Available funds from previous sales of coal severance tax bonds, plus any additional principal amount on bonds as may be necessary, pursuant to the conditions in 85-1-605, to fund emergency loans, as authorized and approved in accordance with 85-1-605(4), may also be used for the projects approved in [sections 1 through 7]. The board of examiners is authorized to issue coal severance tax bonds in an amount not to exceed $24,711,793 in the 2015 biennium, of which up to $2,246,527 is to be used to establish a reserve for the bonds. Proceeds of the bonds are appropriated to the department of natural resources and conservation for financing the projects identified in [sections 1 and 2] and may be used as authorized in 85-1-605(4). Loans made under 85-1-605(4) must bear interest at the rate borne by the state bonds unless the legislature in a subsequent session provides for a lower interest rate, in which case the rate must be reduced to the rate specified by the legislature.

(2) In connection with the issuance of coal severance tax bonds, the board of examiners may pay the principal and interest on the bonds when due from the debt service account and in all other respects manage and use the funds within each special bond account for the benefit of the bonds. The board of examiners shall exercise its discretion to enhance the marketability of the bonds and to secure the most advantageous financial arrangements for the state.

(3) Earnings on bond proceeds prior to the completion of any loan must be allocated to the debt service account to pay the debt service on the bonds during this period. Earnings in excess of debt service, if any, must be allocated to the natural resources projects state special revenue account established in 15-38-302.

(4) Loan repayments from loans financed with coal severance tax bonds are pledged, dedicated, and appropriated to the debt service account in the state treasury for the benefit of bonds approved for loans under this section.

**Section 4. Conditions of loans.** (1) Disbursement of funds under [sections 1 and 2] for loans is subject to the following conditions that must be met by project sponsors:

(a) approval of a scope of work and budget for the project by the department of natural resources and conservation. Reductions in a scope of work or budget may not affect priority activities or improvements.

(b) documented commitment of other funds required for project completion;

(c) satisfactory completion of conditions described in the recommendations section of the project narrative in the renewable resource grant and loan program project evaluations and recommendations report;

(d) execution of a loan agreement with the department of natural resources and conservation; and

(e) accomplishment of other specific requirements considered necessary by the department of natural resources and conservation to accomplish the

purpose of the loan as evidenced from the application to the department or from the proposal to the legislature.

(2) Each sponsor authorized for a loan from coal severance tax bond proceeds may be required to pay to the department a pro rata share of the bond issuance costs and the administrative costs incurred by the department to complete the loan transaction.

**Section 5. Private and discount purchase of loans.** Loans to political subdivisions and local government entities and bonds, warrants, and notes issued in evidence of the loans may be made, purchased by, and sold to the department of natural resources and conservation at a discount and at a private negotiated sale, notwithstanding the provisions of any other law applicable to political subdivisions or local government entities.

**Section 6. Appropriations established.** For any entity of state government that receives a loan under [sections 1 and 2], an appropriation is established for the amount of the loan upon award of the loan by the department of natural resources and conservation.

**Section 7. Creation of state debt — appropriation of coal severance tax — bonding provisions.** (1) Because [section 3] authorizes the creation of a state debt, a vote of two-thirds of the members of each house is required for enactment of [section 3].

(2) The legislature, through the enactment of [sections 1 through 7] by a vote of three-fourths of the members of each house of the legislature, as required by Article IX, section 5, of the Montana constitution, pledges, dedicates, and appropriates from the coal severance tax bond fund all money necessary for the payment of principal and interest not otherwise provided for on the coal severance tax bonds authorized by [section 3] to be issued pursuant to Title 17, chapter 5, part 7, and pursuant to the provisions of [sections 1 through 7] and the general resolution for this bond program that has been adopted by the board of examiners under the authority provided in Title 17, chapter 5, part 7.

**Section 8. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

**Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 10. Effective date.** [This act] is effective July 1, 2013.

Approved May 1, 2013

# CHAPTER NO. 366

[HB 54]

AN ACT GENERALLY REVISING ADMINISTRATIVE AND FEDERAL TAX QUALIFICATION PROVISIONS OF THE TEACHERS' RETIREMENT SYSTEM; CLARIFYING DEFINITIONS AND TERMINOLOGY RELATED TO TERMINATION OF EMPLOYMENT, POSITIONS REPORTABLE TO THE RETIREMENT SYSTEMS, RETIREMENT STATUS, AND SERVICE CREDIT; SPECIFYING JURISDICTION AND VENUE FOR JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS; CLARIFYING TERMINATION PAY PROCEDURES; REVISING CERTAIN NORMAL RETIREMENT AGE AND NONFORFEITABILITY OF BENEFIT

PROVISIONS AS REQUIRED FOR FEDERAL TAX QUALIFICATION; AMENDING SECTIONS 19-20-101, 19-20-201, 19-20-409, 19-20-716, 19-20-733, 19-20-801, 19-20-802, 19-20-805, AND 19-20-1101, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 19-20-101, MCA, is amended to read:

**"19-20-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to the member's individual account in the annuity savings account, together with interest. Regular interest must be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumption set by the retirement board.

(3) "Average final compensation" means a member's highest average earned compensation ~~in 3 consecutive years~~, determined pursuant to 19-20-805, on which *all required* contributions have been made.

(4) "Beneficiary" means one or more persons formally designated by a member or retiree to receive a retirement allowance or payment upon the death of the member or retiree, except for a joint annuitant.

(5) "Benefit recipient" means a retired member, a joint annuitant, or a beneficiary who is receiving a retirement allowance.

(6) "Creditable service" is that service defined by 19-20-401.

*(7) "Date of termination" or "termination date" means the last date on which a member performed service in a position reportable to the retirement system.*

~~(7)~~*(8)* (a) "Earned compensation" means, except as limited by subsections ~~(7)(b)~~ *(8)(b)* and ~~(7)(c)~~ *(8)(c)* or by 19-20-715, remuneration paid for the service of a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted.

(b) Earned compensation does not include:

(i) direct employer premium payments on behalf of members for medical, pharmaceutical, disability, life, vision, dental, or any other insurance;

(ii) any direct employer payment or reimbursement for:

(A) professional membership dues;

(B) maintenance;

(C) housing;

(D) day care;

(E) automobile, travel, lodging, or entertaining expenses; or

(F) any similar form of maintenance, allowance, or expenses;

(iii) the imputed value of health, life, or disability insurance or any other fringe benefits;

(iv) any noncash benefit provided by an employer to or on behalf of a member;

(v) termination pay unless included pursuant to 19-20-716;

(vi) compensation paid to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f);

(vii) payment for sick, annual, or other types of leave paid to a member prior to termination from employment or accrued in excess of that normally allowed;

(viii) incentive or bonus payments paid to a member that are not part of a series of annual payments; or

(ix) any similar payment or reimbursement made to or on behalf of a member by an employer.

(c) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or a similar amount as a pretax deduction is considered a fringe benefit and not earned compensation.

~~(8)~~*(9)* "Employer" means:

(a) the state of Montana;

(b) a public school district, as provided in 20-6-101 and 20-6-701;

(c) the office of public instruction;

(d) the board of public education;

(e) an education cooperative;

(f) the Montana school for the deaf and blind, as described in 20-8-101;

(g) the Montana youth challenge program, as defined in 10-1-101;

(h) a state youth correctional facility, as defined in 41-5-103;

(i) the Montana university system;

(j) a community college; or

(k) any other agency*,* ~~or~~ *political* subdivision*, or instrumentality* of the state that employs a person who is designated a member of the retirement system pursuant to 19-20-302.

~~(9)~~*(10)* "Full-time service" means service that is:

(a) at least 180 days in a fiscal year;

(b) at least 140 hours a month during at least 9 months in a fiscal year; or

(c) at least 1,080 hours in a fiscal year under an alternative school calendar adopted by a school board and reported to the office of public instruction as required by 20-1-302. The standard for full-time service for a school district operating under an alternative school calendar must be applied uniformly to all employees of the school district required to be reported to the retirement system.

~~(10)~~*(11)* "Internal Revenue Code" has the meaning provided in 15-30-2101.

~~(11)~~*(12)* "Joint annuitant" means the one person that a retired member who has elected an optional allowance under 19-20-702 has designated to receive a retirement allowance upon the death of the retired member.

~~(12)~~*(13)* "Member" means a person who has an individual account in the annuity savings account. An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.

~~(13)~~*(14)* "Normal form" or "normal form benefit" means a monthly retirement benefit payable during the lifetime of the retired member.

~~(14)~~*(15)* "Normal retirement age" means an age no earlier than ~~55~~ *60* years of age~~, with the right to receive immediate retirement benefits without an actuarial reduction in the benefits~~.

~~(15)~~*(16)* "Part-time service" means service that is not full-time service. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

*(17) "Position reportable to the retirement system" means a position in which an individual performs duties that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.*

~~(16)~~*(18)* "Regular interest" means interest at a rate set by the retirement board in accordance with 19-20-501(2).

~~(17)~~*(19)* "Retired", "retired member", or "retiree" means a person who ~~has terminated employment that qualifies the person for membership and who has received at least one monthly retirement benefit paid pursuant to this chapter~~ *is considered in retired member status under the provisions of [section 9]*.

~~(18)~~*(20)* "Retirement allowance" or "retirement benefit" means a monthly payment due to a retired member who has qualified for service or disability retirement or due to a joint annuitant or beneficiary.

~~(19)~~*(21)* "Retirement board" or "board" means the retirement system's governing board provided for in 2-15-1010.

~~(20)~~*(22)* "Retirement system", "system", or "plan" means the teachers' retirement system of the state of Montana provided for in 19-20-102.

~~(21)~~*(23)* "Service" means the performance of duties that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

~~(22)~~*(24)* "Termination" or "terminate" means that the ~~member has severed the~~ employment relationship ~~with~~ *between the member and* the member's employer ~~and that all, if any, payments due upon termination of employment, including but not limited to accrued sick and annual leave balances, have been paid to the member~~ *has been terminated as required in [section 9]*.

~~(23)~~*(25)* (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other payments contingent on the employee terminating employment.

(b) Termination pay does not include:

(i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) amounts that are payable to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f).

~~(24)~~*(26)* "Vested" means that a member has been credited with at least 5 full years of membership service upon which contributions have been made and has a right to a future retirement benefit.

~~(25)~~*(27)* "Written application" or "written election" means a written instrument, required by statute or the rules of the board, properly signed and filed with the board, that contains all the required information, including documentation that the board considers necessary."

**Section 2.** Section 19-20-201, MCA, is amended to read:

**"19-20-201. Administration by retirement board — *jurisdiction and venue for judicial review.*** (1) The retirement board shall administer and operate the retirement system within the limitations prescribed by this chapter, and it is the duty of the retirement board to:

(a) establish rules necessary for the proper administration and operation of the retirement system;

(b) approve or disapprove all expenditures necessary for the proper operation of the retirement system;

(c) keep a record of all its proceedings, which must be open to public inspection;

(d) submit a report to the office of budget and program planning detailing the fiscal transactions for the 2 fiscal years immediately preceding the report due date, the amount of the accumulated cash and securities of the retirement system, and the last fiscal year balance sheet showing the assets and liabilities of the retirement system;

(e) keep in convenient form the data that is necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the retirement system;

(f) prepare an annual valuation of the assets and liabilities of the retirement system that includes an analysis of how market performance is affecting the actuarial funding of the retirement system;

(g) prescribe a form for membership application that will provide adequate and necessary information for the proper operation of the retirement system;

(h) annually determine the rate of regular interest as prescribed in 19-20-501;

(i) establish and maintain the funds of the retirement system in accordance with the provisions of part 6 of this chapter; and

(j) perform other duties and functions as are required to properly administer and operate the retirement system.

(2) In discharging its duties, the board, or an authorized representative of the board, may conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records. Subpoenas must be issued and enforced pursuant to 2-4-104.

(3) The board may send retirement-related material to employers and the campuses of the Montana university system for delivery to employees. To facilitate distribution, employers and those campuses shall each provide the board with a point of contact who is responsible for distribution of the material provided by the board.

(4) The board shall make available to the legislature pursuant to 5-11-210 copies of the annual actuarial valuation and report required pursuant to subsections (1)(d) and (1)(f).

*(5) Jurisdiction and venue for judicial review of the board's final administrative decisions is the first judicial district, Lewis and Clark County, unless otherwise stipulated by the parties.*"

**Section 3.** Section 19-20-409, MCA, is amended to read:

**"19-20-409. Transfer of service credits and contributions from public employees' retirement system.** (1) An active member may at any time before retirement file a written application with the retirement board to purchase all of the member's previous ~~creditable~~ service *credit* in the public employees' retirement system. The amount that must be paid to the retirement system to purchase this service under this section is the sum of subsections (2) and (3).

(2) The public employees' retirement system shall transfer to the teachers' retirement system an amount equal to 72% of the amount paid by the member.

(3) The member shall pay either directly or by transferring contributions on account with the public employees' retirement system an amount equal to the

member's accumulated contributions at the time that active membership was terminated, plus accrued interest. Interest must be calculated from the date of termination until a transfer is received by the retirement system, based on the interest tables in use by the public employees' retirement system.

(4) A member who purchases service from the public employees' retirement system in the teachers' retirement system must have completed 5 years of membership service in the teachers' retirement system to receive credit or purchase military service, out-of-state service, employment while on leave, and private school employment.

(5) The retirement board shall determine the service credits that may be transferred.

(6) If an active member who also has ~~creditable~~ service *credit* in the public employees' retirement system before becoming a member of the teachers' retirement system dies before purchasing this service in the teachers' retirement system and if the member's service credits from both systems, when combined, entitle the member's beneficiary to a death benefit, the payment of the death benefit is the liability of the teachers' retirement system. Before payment of the death benefit, the public employees' retirement board must transfer to the teachers' retirement system the contributions necessary to purchase this service in the teachers' retirement system as provided in subsections (2) and (3).

(7) (a) If the teachers' retirement board determines that an individual's membership was erroneously classified and reported to the public employees' retirement system, the public employees' retirement board shall transfer to the teachers' retirement system the member's accumulated contributions and service, together with employer contributions plus interest.

(b) For the period of time that the employer contributions are held by the public employees' retirement system, interest paid on employer contributions transferred under this subsection (7) must be calculated at the short-term investment pool rate earned by the board of investments in the fiscal year preceding the transfer request.

(c) Any employee and employer contributions due as calculated in 19-20-602 and 19-20-605, plus interest, are the liability of the employee and the employing entity where the error occurred.

(8) A member who participated in the public employees' retirement system defined contribution plan provided for in Title 19, chapter 3, part 21, may purchase creditable service for the time spent as a participant in the defined contribution plan if:

(a) the member has 5 years of membership service and has completed at least 1 full year in the teachers' retirement system following the member's public employees' retirement system service;

(b) for each full year or portion of a year to be purchased pursuant to this subsection (8), the member contributes the actuarial cost of the service based on the most recent valuation of the system; and

(c) the member has withdrawn the member's money in the member's public employees' retirement system defined contribution plan account or has rolled over the amount required to purchase service in accordance with this subsection (8).

(9) Creditable service purchased under subsection (8) must be determined according to the laws and rules governing service credit in the public employees' retirement system."

**Section 4.** Section 19-20-716, MCA, is amended to read:

**"19-20-716. Termination pay.** (1) If a member terminates and receives termination pay at the time of retirement, the member shall select, subject to subsections ~~(5)~~ *(4)* and ~~(6)~~ *(5)*, ~~by signing a binding, irrevocable written election at least 90 days before the member's termination date,~~ one of the following options:

(a) Option 1—The member may use the total termination pay in the calculation of the member's average final compensation. The member and the employer shall pay contributions to the retirement system as determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time of termination.

(b) Option 2—The member may use a yearly amount of the total termination pay added to each of the 3 consecutive years' salary used in the calculation of the member's average final compensation. To determine the amount of termination pay used in the calculation of average final compensation, termination pay must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602 and 19-20-605(1). For the purposes of this subsection (1)(b), the employer shall also pay as a contribution an amount equal to the termination pay multiplied by the rate established in 19-20-607 that would have been payable by the state as a supplemental contribution. The contributions must be made at the time of termination.

(c) Option 3—The member may exclude the termination pay from the average final compensation. A contribution is not required of either the member or the employer.

(2) ~~A~~ *If a member signs a* binding, irrevocable written election ~~required by this section must be signed by both the member and the employer~~ *for either an option 1 or option 2 benefit* at least 90 days prior to the member's termination date*, the employee contributions required by this section must be picked up by the employer. The binding, irrevocable written election required by this subsection (2) must be signed by both the member and the employer* and must contain statements with regard to the contributions required to be made by the member under subsections (1)(a) and (1)(b) that:

(a) the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the system in lieu of contributions by the member and that the picked up contributions are paid from the same source as compensation is paid;

(b) the member may not choose to directly receive the amounts deducted from the member's termination pay instead of having them paid by the employer to the system;

(c) the member may not prepay any portion of the contributions; and

(d) the effective date of the pickup is the date that the irrevocable written election is signed by both the member and employer. The effective date must be at least 90 days prior to ~~the date of~~ the member's *date of* termination. The pickup does not apply to a contribution made before the effective date of the pickup.

~~(3) For the purpose of this section, the date of termination is the last day the member is performing any services covered under this chapter.~~

~~(4)~~*(3)* Pursuant to subsection (2), contributions required under subsection (1)(a) or (1)(b) must be:

(a) deducted from the portion of termination pay that:

(i) constitutes wages for the purposes of section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) can be included in the member's gross income for federal tax purposes; and

(b) picked up by the employer, except as provided in subsections ~~(5)~~ *(4)* and ~~(6)~~ *(5)*.

~~(5)~~*(4)* A member's contributions greater than the total amount of the member's termination pay may not be picked up by the employer and are subject to the limitations of section 415 of the Internal Revenue Code.

~~(6)~~*(5)* If a member and the member's employer fail to sign the written election within the time period required in subsection (1), the member may contribute for the purposes specified in subsections (1)(a) and (1)(b) on all or any part of the termination pay received. A contribution made pursuant to this subsection may not be picked up by the employer and is subject to the limitations of section 415 of the Internal Revenue Code."

**Section 5.** Section 19-20-733, MCA, is amended to read:

**"19-20-733. Resumption of employment by retired member — suspension of benefits.** (1) [Except as provided in 19-20-732,] if a retired member returns to employment in a position covered by the retirement system and becomes an active contributing member, benefits must be suspended until the member terminates all employment and applies to have benefits reinstated.

(2) ~~Except as provided in subsection (4), upon~~ *Upon* termination and retirement of a previously retired member who was reinstated to active membership pursuant to 19-20-731 before July 1, 2009:

(a) if the member earned less than 1 year of creditable service, the original benefit and retirement option that the member was receiving at the time of suspension of benefits must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later; or

(b) if the member earned 1 year or more of creditable service, retirement benefits must be recalculated under 19-20-804 if the member would qualify for a service retirement benefit under 19-20-801 or under 19-20-802 if the member is eligible for early retirement. The recalculated benefit must include the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were suspended.

(3) (a) Except as provided in subsection ~~(4)~~ *(3)(c)*, upon the subsequent retirement of a formerly retired member who was reinstated to active membership pursuant to 19-20-731 on or after July 1, 2009, and earned:

(i) at least 3 years of membership service following suspension of benefits, the member is entitled to resume receiving the suspended benefit in accordance with the retirement benefit option and joint annuitant previously selected, plus an additional benefit based upon the new creditable service and compensation earned. The second benefit must be calculated as provided under 19-20-804 if the member is eligible for a service retirement benefit or under 19-20-802 if the member is eligible for early retirement. The second benefit must be paid under the same retirement benefit option and with the same joint annuitant originally elected.

(ii) less than 3 years of membership service following suspension of benefits, the member is entitled to resume receiving the suspended benefit in accordance with the retirement benefit option previously selected, plus a refund of the employee contributions contributed after the member was reinstated to active service, plus interest.

(b) If a member dies during the period of reemployment following an initial retirement, the member must be considered as retiring on the day preceding the date of death and benefits must be determined according to the following:

(i) If the member elected the normal form benefit prior to reemployment, the member's designated beneficiary must receive an amount equal to the member's *remaining* accumulated contributions on deposit.

(ii) If the member elected a retirement option pursuant to 19-20-702 prior to reemployment, the benefits due are payable in accordance with the terms of the original option elected and this subsection (3).

~~(4) If a retired member who has not attained normal retirement age is reemployed with the same employer within 30 days from the member's effective date of retirement or if that member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled.~~

*(c) If the joint annuitant nominated prior to the member's reemployment under retirement option A, B, or C dies prior to the member reretiring, the member will be given the option to select either the normal form retirement benefit or a retirement option as provided in 19-20-702.* (Bracketed language terminates June 30, 2015—sec. 5, Ch. 129, L. 2009.)"

**Section 6.** Section 19-20-801, MCA, is amended to read:

**"19-20-801. Eligibility for service retirement.** *(1)* A member who has at least 5 full years of creditable service and who has attained the age of 60 or has been credited with full-time or part-time creditable service in 25 or more years may retire from service if the member has terminated employment in all positions ~~from which the member is eligible to retire~~ *reportable to the retirement system* and files with the retirement board a written application.

*(2) A vested member who has attained normal retirement age has a nonforfeitable right to the benefits accrued and payable under the provisions of this chapter, subject to the member's right to withdraw the member's accumulated contributions under 19-20-603.*"

**Section 7.** Section 19-20-802, MCA, is amended to read:

**"19-20-802. Early retirement.** (1) A member who is not eligible for service retirement but who has at least 5 years of creditable service and who has attained the age of 50 may retire from service and be eligible for an early retirement allowance if the member *terminates employment in all positions reportable to the retirement system and* files with the retirement board ~~the member's~~ *a* written application.

(2) The early retirement allowance must be determined as prescribed in 19-20-804, with the exception that the allowance will be reduced using actuarially equivalent factors based on the most recent valuation of the system."

**Section 8.** Section 19-20-805, MCA, is amended to read:

**"19-20-805. Calculation of average final compensation.** (1) Except as limited by this section, average final compensation is calculated by averaging

the earned compensation paid to a member in 3 consecutive fiscal years of full-time service that yields the highest average.

(2) The earned compensation of a member who retires under 19-20-802, 19-20-804, or 19-20-902 and has less than 3 consecutive years of full-time service during the 5 years immediately preceding the member's termination is the compensation that the member would have earned in the 3 years used to calculate average final compensation had the member's part-time service been full-time service. To determine the compensation that the member would have earned, the compensation reported must be divided by the part-time service credited to the member's account.

(3) (a) Subject to subsection (3)(b), if a member has transferred service from the public employees' retirement system as provided under 19-20-409 and does not have 3 consecutive years of full-time service reported to the teachers' retirement system, the member's average final compensation must be calculated as follows:

(i) if the member's part-time service credit in the public employees' retirement system plus the member's part-time service credit in the teachers' retirement system equals 1 year in any of the fiscal years used in determining average final compensation, then the member's annual salary for that fiscal year must be the member's salary as a member of the public employees' retirement system plus the member's salary as a member of the teachers' retirement system; or

(ii) if the member's part-time service credit in the public employees' retirement system plus the member's part-time service credit in the teachers' retirement system equals less than 1 year in any of the fiscal years used to determine average final compensation, then the member's part-time salary as a member of the public employees' retirement system plus the member's part-time salary as a member of the teachers' retirement system must be divided by the sum of the member's part-time teachers' retirement system service credit and the member's part-time public employees' retirement system service credit.

(b) Compensation reported to the public employees' retirement system used to calculate average final compensation must be adjusted to exclude any compensation that would be considered termination pay under this chapter.

(4) (a) If the benefits excluded from earned compensation pursuant to 19-20-101~~(7)(b)~~*(8)(b)* have been converted by an employer to earned compensation for all members and have been continuously reported as earned compensation in a like amount for at least 5 fiscal years preceding a member's retirement, the converted benefit amounts must be included in the calculation of average final compensation.

(b) If benefits have been converted to earned compensation as described in subsection (4)(a) but have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have benefits converted to earned compensation, any converted benefits reported as earned compensation in the 3 years used to calculate average final compensation may be included in the calculation of average final compensation only as termination pay under 19-20-716(1)(b)."

**Section 9. Termination of employment — retired member status — certification of termination date.** (1) A member shall terminate employment in all positions reportable to the retirement system to be eligible for service retirement under 19-20-801, early retirement under 19-20-802,

disability retirement under 19-20-901, or withdrawal of the member's accumulated contributions under 19-20-603.

(2) Except as provided in subsections (3) and (4), a member has terminated employment in a position reportable to the retirement system when the employment relationship with the employer has been fully and completely severed and all, if any, payments due upon termination of employment, including but not limited to payment of accrued sick and annual leave balances, have been paid to the member.

(3) (a) A member who has not attained normal retirement age has not terminated employment in a position reportable to the retirement system if the member and the employer have a prearranged agreement for postretirement service.

(b) For purposes of this subsection (3), a "prearranged agreement for postretirement service" means an oral or written agreement between a member and an employer made before the member attains retired member status for the member to provide service or perform work, in any capacity, on behalf of the employer in the future.

(4) A member has not terminated employment in a position reportable to the retirement system if the member provides any service or performs any work, in any capacity, on behalf of the employer after the certified date of termination but prior to attaining retired member status.

(5) A member must be in retired member status before the member is eligible to be employed as a working retiree pursuant to 19-20-731. Service provided by a member in a position reportable to the retirement system before the member attains retired member status is service provided as an active member, and the member shall terminate from the position to be eligible for retirement benefits.

(6) (a) A member attains retired member status when the member has terminated employment in all positions reportable to the retirement system and has actually received at least one monthly retirement benefit payment.

(b) A retired member who returns to active member status for any reason ceases to be in retired member status until the member again applies for a retirement benefit and actually receives at least one monthly retirement benefit payment.

(7) (a) Unless waived by the board, the member and the employer for each position from which the member is terminating or has terminated must certify on a form provided by the retirement system the member's date of termination and whether there is a prearranged agreement for postretirement service.

(b) The certification obligation of the member and the employer is ongoing and must be immediately updated if the information previously provided was in error or has changed.

**Section 10.** Section 19-20-1101, MCA, is amended to read:

**"19-20-1101. Withholding of group insurance premium from retirement allowance.** (1) A retired member who is a participant in an approved employer-sponsored group insurance plan may elect to have the monthly premium for the group insurance withheld from the member's retirement allowance by the retirement system. Premiums withheld may be paid directly to the insurance carrier or employer of record at the time of retirement.

(2) Upon the death of a retired member, the joint annuitant or beneficiary, if eligible, may elect to continue to have the monthly insurance premium withheld

from a monthly retirement benefit and paid directly to the employer or the employer's insurance carrier.

(3) Each month, using the retirement system's online employer reporting system, the employer shall ~~verify~~ *commence withholding, cease withholding, or process any necessary adjustments to the premium amount on behalf of the benefit recipient, including verification* that all authorized insurance deductions are correct. ~~and~~

*(4) The employer shall* notify the ~~retired member~~ *benefit recipient* of any changes *related to the premiums, including any changes to the premium amount, prior to the effective date of the change*."

**Section 11. Codification instruction.** [Section 9] is intended to be codified as an integral part of Title 19, chapter 20, part 8, and the provisions of Title 19, chapter 20, part 8, apply to [section 9].

**Section 12. Coordination instruction.** If House Bill No. 78 and [this act] are both passed and approved and if both contain sections amending 19-20-733, then the sections amending 19-20-733 are void and 19-20-733 must be amended as follows:

**"19-20-733. Resumption of employment by retired member — suspension of benefits.** ~~(1)~~ [Except as provided in 19-20-732, *and*] *subject to [section 2 of House Bill No. 78], the following provisions apply:*

*(1)* ~~if~~ *If* a retired member returns to employment in a position covered by the retirement system and becomes an active contributing member, benefits must be suspended until the member terminates all employment and applies to have benefits reinstated.

(2) ~~Except as provided in subsection (4), upon~~ *Upon* termination and retirement of a previously retired member who was reinstated to active membership pursuant to 19-20-731 before July 1, 2009:

(a) if the member earned less than 1 year of creditable service, the original benefit and retirement option that the member was receiving at the time of suspension of benefits must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later; or

(b) if the member earned 1 year or more of creditable service, retirement benefits must be recalculated under 19-20-804 if the member would qualify for a service retirement benefit under 19-20-801 or under 19-20-802 if the member is eligible for early retirement. The recalculated benefit must include the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were suspended.

(3) (a) Except as provided in subsection ~~(4)~~ *(3)(c)*, upon the subsequent retirement of a formerly retired member who was reinstated to active membership pursuant to 19-20-731 on or after July 1, 2009, and earned:

(i) at least 3 years of membership service following suspension of benefits, the member is entitled to resume receiving the suspended benefit in accordance with the retirement benefit option and joint annuitant previously selected, plus an additional benefit based upon the new creditable service and compensation earned. The second benefit must be calculated as provided under 19-20-804 if the member is eligible for a service retirement benefit or under 19-20-802 if the member is eligible for early retirement. The second benefit must be paid under

the same retirement benefit option and with the same joint annuitant originally elected.

(ii) less than 3 years of membership service following suspension of benefits, the member is entitled to resume receiving the suspended benefit in accordance with the retirement benefit option previously selected, plus a refund of the employee contributions contributed after the member was reinstated to active service, plus interest.

(b) If a member dies during the period of reemployment following an initial retirement, the member must be considered as retiring on the day preceding the date of death and benefits must be determined according to the following:

(i) If the member elected the normal form benefit prior to reemployment, the member's designated beneficiary must receive an amount equal to the member's accumulated contributions on deposit.

(ii) If the member elected a retirement option pursuant to 19-20-702 prior to reemployment, the benefits due are payable in accordance with the terms of the original option elected and ~~this~~ subsection (3).

~~(4) If a retired member who has not attained normal retirement age is reemployed with the same employer within 30 days from the member's effective date of retirement or if that member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled.~~

*(c) If the joint annuitant nominated prior to the member's reemployment under retirement option A, B, or C dies prior to the member reretiring, the member will be given the option to select either the normal form retirement benefit or a retirement option as provided in 19-20-702.* (Bracketed language terminates June 30, 2015—sec. 5, Ch. 129, L. 2009.)"

**Section 13. Coordination instruction.** If House Bill No. 377 and [this act] are both passed and approved and if both contain sections amending 19-20-801, then the sections amending 19-20-801 are void and 19-20-801 must be amended as follows:

**"19-20-801. Eligibility for service retirement.** *(1)* A *tier one* member ~~who~~ *is eligible to receive a service retirement allowance calculated under 19-20-804(1) if the member:*

*(a)* has *been credited with* at least 5 full years of creditable service and ~~who~~ has attained the age of 60*;* or

*(b)* has been credited with full-time or part-time creditable service in 25 or more years ~~may retire from service if the member has~~.

*(2) Except as provided in subsection (3), a tier two member is eligible to receive a service retirement allowance calculated under 19-20-804(1) if the member:*

*(a) has been credited with at least 5 full years of creditable service and has attained the age of 60; or*

*(b) has been credited with full-time or part-time creditable service in 30 or more years and has attained the age of 55.*

*(3) A tier two member who has been credited with 30 or more years of creditable service and has attained the age of 60 is eligible for a professional retirement option allowance calculated under 19-20-804(2).*

*(4) To receive a retirement allowance under 19-20-804, the member must have* terminated employment in all positions ~~from which the member is eligible to retire and files~~ *reportable to the retirement system and must file a written application* with the retirement board ~~a written application~~.

*(5) A vested member who has attained normal retirement age has a nonforfeitable right to the benefits accrued and payable under the provisions of this chapter, subject to the member's right to withdraw the member's accumulated contributions under 19-20-603.*"

**Section 14. Coordination instruction.** If House Bill No. 377 is passed and approved and if it includes a section amending 19-20-802, then [section 7 of this act] amending 19-20-802 is void.

**Section 15. Effective date.** [This act] is effective July 1, 2013.

Approved May 1, 2013

# CHAPTER NO. 367

[HB 129]

AN ACT REVISING CAMPAIGN FINANCE AND DISCLOSURE LAWS; REVISING WHEN PRINTED ELECTION MATERIAL MUST DISCLOSE CONTRASTING VOTES MADE BY A CANDIDATE; REVISING THE POLITICAL-CIVIL LIBEL LAW; AND AMENDING SECTIONS 13-35-225 AND 13-37-131, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 13-35-225, MCA, is amended to read:

**"13-35-225. Election materials not to be anonymous — statement of accuracy.** (1) All communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, internet website, or other form of general political advertising must clearly and conspicuously include the attribution "paid for by" followed by the name and address of the person who made or financed the expenditure for the communication. When a candidate or a candidate's campaign finances the expenditure, the attribution must be the name and the address of the candidate or the candidate's campaign. In the case of a political committee, the attribution must be the name of the committee, the name of the committee treasurer, and the address of the committee or the committee treasurer.

(2) Communications in a partisan election financed by a candidate or a political committee organized on the candidate's behalf must state the candidate's party affiliation or include the party symbol.

(3) (a) Printed election material described in subsection (1) that includes information about another candidate's voting record must include *the following*:

(i) a reference to the particular vote or votes upon which the information is based;

(ii) a disclosure of contrasting votes known to have been made by the candidate on the same issue if ~~closely related in time~~ *the contrasting votes were made in any of the previous 6 years*~~; and~~*; and*

(iii) a statement, signed as provided in subsection (3)(b), that to the best of the signer's knowledge, the statements made about the other candidate's voting record are accurate and true.

(b) The statement required under subsection (3)(a) must be signed:

(i) by the candidate if the election material was prepared for the candidate or the candidate's political committee and includes information about another candidate's voting record; or

(ii) by the person financing the communication or the person's legal agent if the election material was not prepared for a candidate or a candidate's political committee.

(4) If a document or other article of advertising is too small for the requirements of subsections (1) through (3) to be conveniently included, the candidate responsible for the material or the person financing the communication shall file a copy of the article with the commissioner of political practices, together with the required information or statement, at the time of its public distribution.

(5) If information required in subsections (1) through (3) is omitted or not printed, upon discovery of or notification about the omission, the candidate responsible for the material or the person financing the communication shall:

(a) file notification of the omission with the commissioner of political practices within 5 days of the discovery or notification;

(b) bring the material into compliance with subsections (1) through (3); and

(c) withdraw any noncompliant communication from circulation as soon as reasonably possible."

**Section 2.** Section 13-37-131, MCA, is amended to read:

**"13-37-131. Misrepresentation of voting record — ~~political civil libel~~.** (1) It is unlawful for a person to misrepresent a candidate's public voting record ~~or any other matter that is relevant to the issues of the campaign~~ with knowledge that the assertion is false or with a reckless disregard of whether or not the assertion is false.

(2) It is unlawful for a person to misrepresent to a candidate another candidate's public voting record ~~or any other matter that is relevant to the issues of the campaign~~ with knowledge that the assertion is false or with a reckless disregard of whether or not the assertion is false.

(3) For the purposes of this section, the public voting record of a candidate who was previously a member of the legislature includes a vote of that candidate recorded in committee minutes or in journals of the senate or the house of representatives. Failure of a person to verify a public voting record is evidence of the person's reckless disregard if the statement made by the person or the information provided to the candidate is false.

(4) A person violating subsection (1) or (2) is liable in a civil action brought by the commissioner or county attorney pursuant to 13-37-124 for an amount up to $1,000. An action pursuant to this section is subject to the provisions of 13-37-129 and 13-37-130."

Approved May 1, 2013

# CHAPTER NO. 368

[HB 354]

AN ACT REVISING THE LAWS GOVERNING THE FIRE SUPPRESSION ACCOUNT; REQUIRING THE CONSIDERATION OF WILDLAND FIRE SUPPRESSION ACTIVITIES IN DETERMINING THE AMOUNT OF THE PROJECTED GENERAL FUND BUDGET DEFICIT; REQUIRING

TRANSFER OF THE UNOBLIGATED BALANCE OF THE APPROPRIATION FOR GOVERNOR-DECLARED DISASTERS TO THE FIRE SUPPRESSION ACCOUNT; REQUIRING TRANSFER OF A CERTAIN PERCENTAGE OF UNEXPENDED GENERAL FUND MONEY TO THE FIRE SUPPRESSION ACCOUNT; PROVIDING THAT THE MONEY IN THE FIRE SUPPRESSION ACCOUNT MAY NOT EXCEED $100 MILLION; REQUIRING TRANSFER OF AN EXCESS AMOUNT OF CORPORATION LICENSE TAX REVENUE INTO THE FIRE SUPPRESSION ACCOUNT; STATUTORILY APPROPRIATING THE MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AMENDING SECTIONS 10-3-312, 17-7-140, 17-7-502, AND 76-13-150, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 10-3-312, MCA, is amended to read:

**"10-3-312. Maximum expenditure by governor — appropriation.** (1) Whenever a disaster or an emergency, including an energy emergency as defined in 90-4-302 or an invasive species emergency declared under 80-7-1013, is declared by the governor, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and, subject to subsection (2), the governor is authorized to expend from the general fund an amount not to exceed $16 million in any biennium, minus any amount appropriated pursuant to 10-3-310 in the same biennium. The statutory appropriation in this subsection may be used by any state agency designated by the governor.

(2) In the event of the recovery of money expended under this section, the spending authority must be reinstated to a level reflecting the recovery.

(3) If a disaster is declared by the president of the United States, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general fund an amount not to exceed $500,000 during the biennium to meet the state's share of the individual and family grant programs as provided in 42 U.S.C. 5178. The statutory appropriation in this subsection may be used by any state agency designated by the governor.

*(4) At the end of each biennium, an amount equal to the unexpended and unencumbered balance of the $16 million statutory appropriation in subsection (1), minus any amount appropriated pursuant to 10-3-310 in the same biennium, must be transferred by the state treasurer from the state general fund to the fire suppression account provided for in 76-13-150.*"

**Section 2.** Section 17-7-140, MCA, is amended to read:

**"17-7-140. Reduction in spending.** (1) (a) As the chief budget officer of the state, the governor shall ensure that the expenditure of appropriations does not exceed available revenue. Except as provided in subsection (2), in the event of a projected general fund budget deficit, the governor, taking into account the criteria provided in subsection (1)(b), shall direct agencies to reduce spending in an amount that ensures that the projected ending general fund balance for the biennium will be at least 1% of all general fund appropriations during the biennium. An agency may not be required to reduce general fund spending for any program, as defined in each general appropriations act, by more than 10% during a biennium. Departments or agencies headed by elected officials or the board of regents may not be required to reduce general fund spending by a percentage greater than the percentage of general fund spending reductions required for the total of all other executive branch agencies. The legislature may

exempt from a reduction an appropriation item within a program or may direct that the appropriation item may not be reduced by more than 10%.

(b) The governor shall direct agencies to manage their budgets in order to reduce general fund expenditures. Prior to directing agencies to reduce spending as provided in subsection (1)(a), the governor shall direct each agency to analyze the nature of each program that receives a general fund appropriation to determine whether the program is mandatory or permissive and to analyze the impact of the proposed reduction in spending on the purpose of the program. An agency shall submit its analysis to the office of budget and program planning and shall at the same time provide a copy of the analysis to the legislative fiscal analyst. The office of budget and program planning shall review each agency's analysis, and the budget director shall submit to the governor a copy of the office of budget and program planning's recommendations for reductions in spending. The budget director shall provide a copy of the recommendations to the legislative fiscal analyst at the time that the recommendations are submitted to the governor and shall provide the legislative fiscal analyst with any proposed changes to the recommendations. The legislative finance committee shall meet within 20 days of the date that the proposed changes to the recommendations for reductions in spending are provided to the legislative fiscal analyst. The legislative fiscal analyst shall provide a copy of the legislative fiscal analyst's review of the proposed reductions in spending to the budget director at least 5 days before the meeting of the legislative finance committee. The committee may make recommendations concerning the proposed reductions in spending. The governor shall consider each agency's analysis and the recommendations of the office of budget and program planning and the legislative finance committee in determining the agency's reduction in spending. Reductions in spending must be designed to have the least adverse impact on the provision of services determined to be most integral to the discharge of the agency's statutory responsibilities.

(2) Reductions in spending for the following may not be directed by the governor:

(a) payment of interest and principal on state debt;

(b) the legislative branch;

(c) the judicial branch;

(d) the school BASE funding program, including special education;

(e) salaries of elected officials during their terms of office; and

(f) the Montana school for the deaf and blind.

(3) (a) As used in this section, "projected general fund budget deficit" means an amount, certified by the budget director to the governor, by which the projected ending general fund balance for the biennium is less than:

(i) 2% of the general fund appropriations for the second fiscal year of the biennium prior to October of the year preceding a legislative session;

(ii) 3/4 of 1% in October of the year preceding a legislative session;

(iii) 1/2 of 1% in January of the year in which a legislative session is convened; and

(iv) 1/4 of 1% in March of the year in which a legislative session is convened.

(b) In determining the amount of the projected general fund budget deficit, the budget director shall take into account revenue, established levels of appropriation, anticipated supplemental appropriations for school equalization

aid *and the cost of the state's wildland fire suppression activities exceeding the amount statutorily appropriated in 10-3-312*, and anticipated reversions.

(4) If the budget director determines that an amount of actual or projected receipts will result in an amount less than the amount projected to be received in the revenue estimate established pursuant to 5-5-227, the budget director shall notify the revenue and transportation interim committee of the estimated amount. Within 20 days of notification, the revenue and transportation interim committee shall provide the budget director with any recommendations concerning the amount. The budget director shall consider any recommendations of the revenue and transportation interim committee prior to certifying a projected general fund budget deficit to the governor."

**Section 3.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; *76-13-150;* 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; 87-1-230; 87-1-603; 87-1-621; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 17, Ch. 593, L. 2005, and sec. 1, Ch. 186, L. 2009,

the inclusion of 15-31-906 terminates January 1, 2015; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 8, Ch. 330, L. 2009, the inclusion of 87-1-621 terminates June 30, 2013; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 8, Ch. 427, L. 2009, the inclusion of 87-1-230 terminates June 30, 2013; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 47, Ch. 19, L. 2011, the inclusion of 87-1-621 terminates June 30, 2013; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; and pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017.)"

**Section 4.** Section 76-13-150, MCA, is amended to read:

**"76-13-150. Fire suppression account — fund transfer.** (1) There is a fire suppression account in the state special revenue fund to the credit of the department.

(2) The legislature may transfer money from other funds to the account, and the money in the account is subject to legislative fund transfers.

(3) Funds received for restitution by private parties must be deposited in the account.

(4) Money in the account may be used only for the purpose of paying expenses for fire prevention, including fuel *reduction and* mitigation, *forest restoration,* grants for the purchase of fire suppression equipment for county cooperatives, and fire suppression costs.

(5) Interest earned on the balance of the account is retained in the account.

*(6) Except as provided in subsections (7) and (8), by August 15 following the end of each fiscal year, an amount equal to the balance of unexpended and unencumbered general fund money appropriated in excess of 0.5% of the total general fund money appropriated for that fiscal year must be transferred by the state treasurer from the general fund to the fire suppression account. General fund appropriations that continue from a fiscal year to the next fiscal year and any general fund appropriations made pursuant to 10-3-310 or 10-3-312 are excluded from the calculation.*

*(7) The provisions of subsection (6) do not apply in a fiscal year in which reductions required by 17-7-140 occur or if a transfer pursuant to subsection (6) would require reductions pursuant to 17-7-140.*

*(8) The fund balance in the account may not exceed $100 million.*

*(9) Up to $5 million each biennium may be used for the purpose of fuel reduction and mitigation and forest restoration.*

*(10) Money in the account is statutorily appropriated, as provided in 17-7-502, to the department for the purposes described in subsection (4).*"

**Section 5. Fund transfer.** Subject to 76-13-150(8), the following amounts collected from the corporation license tax pursuant to Title 15, chapter 31, and deposited into the state general fund must be transferred to the fire suppression account provided for in 76-13-150:

(1) by August 15, 2013, funds in excess of $152 million collected for the fiscal year ending June 30, 2013;

(2) by August 15, 2014, funds in excess of $156.2 million collected for the fiscal year ending June 30, 2014; and

(3) by August 15, 2015, funds in excess of $157.5 million collected for the fiscal year ending June 30, 2015.

**Section 6. Effective date.** [This act] is effective on passage and approval.

Approved May 1, 2013

# CHAPTER NO. 369

[HB 395]

AN ACT REVISING THE MEMBERSHIP OF THE LIVESTOCK LOSS BOARD; REDUCING BOARD MEMBERSHIP; CHANGING MEMBERSHIP REQUIREMENTS; AND AMENDING SECTION 2-15-3110, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-15-3110, MCA, is amended to read:

**"2-15-3110. Livestock loss board — purpose, membership, and qualifications.** (1) There is a livestock loss board. The purpose of the board is to administer the programs called for in the Montana gray wolf management plan and established in 2-15-3111 through 2-15-3113, with funds provided through the accounts established in 81-1-110, in order to minimize losses caused by wolves to livestock producers and to reimburse livestock producers for livestock losses from wolf predation.

(2) The board consists of ~~seven~~ *five* members, appointed by the governor, as follows:

(a) three members ~~from a list of names recommended by the board of livestock~~ *who are actively involved in the livestock industry and who have knowledge and experience with regard to wildlife impacts or management*; *and*

~~(b) three members from a list of names recommended by the fish, wildlife, and parks commission; and~~

~~(c)~~*(b)* ~~one member~~ *two members* ~~of the general public~~ *of the general public who are or have been actively involved in wildlife conservation or wildlife management and who have knowledge and experience with regard to livestock production or management*.

~~(3) Each board member must have knowledge of or have experience in at least one of the following:~~

~~(a) the raising of livestock in Montana;~~

~~(b) livestock marketing, valuations, sales, or breeding associations;~~

~~(c) the interaction of wolves with livestock and livestock mortality caused by wolves;~~

~~(d) wildlife conservation;~~

~~(e) administration; and~~

~~(f) fundraising.~~

~~(4)~~*(3)* The board is designated as a quasi-judicial board for the purposes of 2-15-124. Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the board.

~~(5)~~*(4)* The board is allocated to the department of livestock for administrative purposes only as provided in 2-15-121.

~~(6)~~*(5)* The board shall adopt rules to implement the provisions of 2-15-3110 through 2-15-3114 and 81-1-110 through 81-1-112."

Approved May 1, 2013

# CHAPTER NO. 370

[HB 414]

AN ACT ALLOWING A NONRESIDENT WHO HAS AN INTEREST IN REAL PROPERTY IN MONTANA TO REGISTER A MOTOR VEHICLE IN THE COUNTY WHERE THE REAL PROPERTY IS LOCATED; AND AMENDING SECTIONS 61-3-201 AND 61-3-303, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-3-201, MCA, is amended to read:

**"61-3-201. Certificate of title required — exclusions.** (1) Except as provided in subsection (2), the owner of a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile that is in this state and for which a certificate of title has not been issued by or an electronic record of title has not been created by the department shall apply to the department, its authorized agent, or a county treasurer for a certificate of title for the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile.

(2) The following motor vehicles, trailers, semitrailers, pole trailers, campers, motorboats, personal watercraft, sailboats, or snowmobiles are exempt from the requirements of this part:

(a) a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile owned by the United States, unless the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile is registered in this state;

(b) except as required in 61-4-111, a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile that is:

(i) owned by a manufacturer, a dealer, a wholesaler, or an auto auction; and

(ii) held for sale, even though incidentally moved on the highway, used for purposes of testing or demonstration, or used solely by a manufacturer for testing;

(c) a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile owned by a nonresident ~~of this state~~ *or a nonresident who has an interest in real property in Montana who chooses not to register a motor vehicle in this state as provided in 61-3-303*;

(d) a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile regularly engaged in the interstate transportation of persons or property and:

(i) for which a currently effective certificate of title has been issued in another state or jurisdiction; or

(ii) that is properly registered under the provisions of Title 61, chapter 3, part 7;

(e) a vehicle moved solely by human or animal power;

(f) an implement of husbandry;

(g) special mobile equipment or a motor vehicle or trailer designed and used to apply fertilizer to agricultural land;

(h) a self-propelled wheelchair or tricycle used by a person with a disability;

(i) a dolly or converter gear;

(j) a mobile home or housetrailer;

(k) a manufactured home declared to be an improvement to real property under 15-1-116; or

(l) a golf cart unless it is operated by a person with a low-speed restricted driver's license."

**Section 2.** Section 61-3-303, MCA, is amended to read:

**"61-3-303. Original registration — process — fees.** (1) Except as provided in 61-3-324, a Montana resident who owns a motor vehicle, trailer, semitrailer, or pole trailer operated or driven upon the public highways of this state shall register the motor vehicle, trailer, semitrailer, or pole trailer in the office of the county treasurer in the county where the owner is domiciled. *A nonresident who has an interest in real property in Montana may register in the county where the real property is located a motor vehicle, trailer, semitrailer, or pole trailer operated or driven upon the public highways of this state.*

(2) Except as provided in subsections (3) and (11), the county treasurer shall register any vehicle for which:

(a) as of the date that the motor vehicle, trailer, semitrailer, or pole trailer is to be registered, the owner delivers an application for a certificate of title to the department, its authorized agent, or a county treasurer; or

(b) the county treasurer confirms that the department has an electronic record of title for the motor vehicle, trailer, semitrailer, or pole trailer as provided under 61-3-101.

(3) (a) A county treasurer may register a motor vehicle, trailer, semitrailer, or pole trailer for which a certificate of title and registration were issued in another jurisdiction and for which registration is required under 61-3-701 after the county treasurer examines the current out-of-jurisdiction registration certificate or receipt and receives payment of the fees required in 61-3-701. The county treasurer may ask the motor vehicle, trailer, semitrailer, or pole trailer owner to provide additional information, prescribed by the department, to ensure that the electronic record of registration maintained by the department is complete.

(b) A county treasurer may register a motor vehicle, trailer, semitrailer, or pole trailer for which the new owner cannot, due to circumstances beyond the new owner's control, surrender a previously assigned certificate of title. The new owner may submit an application for certificate of title, subject to the registration renewal limitations of 61-3-312.

(4) Upon registering a motor vehicle, trailer, semitrailer, or pole trailer for the first time in this state, the county treasurer shall:

(a) update the electronic record of title, if any, maintained for the vehicle by the department under 61-3-101;

(b) assign a registration period for the vehicle under 61-3-311;

(c) determine the vehicle's age, if required, under 61-3-501;

(d) determine the amount of fees, including local option taxes or fees, to be paid under subsection (5); and

(e) assign and issue license plates for the vehicle under 61-3-331.

(5) Unless otherwise provided by law, a person registering a motor vehicle shall pay to the county treasurer:

(a) the fees in lieu of tax or registration fees as required for:

(i) a light vehicle under 61-3-321 or 61-3-562, in addition to, if applicable, any local option tax or fee under 61-3-537 or 61-3-570;

(ii) a motor home under 61-3-321;

(iii) a travel trailer under 61-3-321;

(iv) a motorcycle or quadricycle under 61-3-321;

(v) a bus, a truck having a manufacturer's rated capacity of more than 1 ton, or a truck tractor under 61-3-321 and 61-3-529; or

(vi) a trailer under 61-3-321;

(b) a donation of $1 or more if the person indicates that the person wishes to donate to promote awareness and education efforts for procurement of organ and tissue donations in Montana to favorably impact anatomical gifts; and

(c) a donation of $1 or more if the person indicates that the person wishes to donate to promote education on, support for, and awareness of traumatic brain injury.

(6) The county treasurer may not issue a registration receipt or license plates for the motor vehicle, trailer, semitrailer, or pole trailer to the owner unless the owner makes the payments required by subsection (5).

(7) The department may make full and complete investigation of the registration status of the motor vehicle, trailer, semitrailer, or pole trailer. A person seeking to register a motor vehicle, trailer, semitrailer, or pole trailer under this section shall provide additional information to support the registration to the department if requested.

(8) Revenue that accrues from the voluntary donation provided in subsection (5)(b) must be forwarded by the respective county treasurer to the department for deposit in the state special revenue fund to the credit of an account established by the department of public health and human services to support activities related to awareness and education efforts for procurement of organ and tissue donations for anatomical gifts.

(9) (a) Except as provided in subsection (9)(b), the fees in lieu of tax, taxes, and fees imposed on or collected from the registration of a travel trailer, motorcycle, or quadricycle or a trailer, semitrailer, or pole trailer that has a declared weight of less than 26,000 pounds are required to be paid only once during the time that the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is owned by the same person who registered the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer. Once registered, a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is registered permanently unless ownership is transferred.

(b) Whenever ownership of a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is transferred, the new owner is required to register the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer as if it were being registered for the first time, including paying all of the required fees in lieu of tax, taxes, and fees.

(10) Revenue that accrues from the voluntary donation provided in subsection (5)(c) must be forwarded by the respective county treasurer to the department for deposit in the state special revenue fund to the credit of the account established in 2-15-2218 to support activities related to education regarding prevention of traumatic brain injury.

(11) Beginning January 1, 2013, the county treasurer shall use the online motor vehicle liability insurance verification system provided in 61-6-157 to verify that the vehicle owner has complied with the requirements of 61-6-301."

Approved May 1, 2013

# CHAPTER NO. 371

[HB 417]

AN ACT GENERALLY REVISING EMINENT DOMAIN LAWS; REQUIRING THAT A FINAL WRITTEN OFFER BE REJECTED BEFORE A CONDEMNATION COMPLAINT IS FILED; ALLOWING FOR ADDITIONAL OFFERS; REQUIRING THAT THE CLAIM REQUIRED IN THE CONTENTS OF A COMPLAINT FOR CONDEMNATION BE EQUAL TO THE FINAL WRITTEN OFFER MADE BY THE STATE OR ITS AGENT; AMENDING SECTIONS 70-30-110, 70-30-111, 70-30-203, 70-30-206, AND 70-30-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 70-30-110, MCA, is amended to read:

**"70-30-110. Survey and location of property to be taken — greatest public good — least private injury.** (1) In all cases in which land is required for public use, the state or its agents in charge of the public use may survey and locate the land to be used. The use must be located in the manner that will be most compatible with the greatest public good and the least private injury, and the location is subject to the provisions of 70-30-206. The state or its agents in charge of the public use may, after giving 30 days' written notice to the owners and persons in possession of the land, enter upon the land and make examination, surveys, and maps of the land. The entry does not constitute a cause of action in favor of the owners of the land except from injuries resulting from negligence or intentional acts. Upon written request of the state or its agents, the owner shall provide the names and addresses of all persons who are in possession of the owner's land within 14 days from receipt of the written notice. The state or its agents shall within 14 days from receipt of that information furnish written notice to the listed persons.

(2) Prior to or at the time of rejection of the final written offer as referred to in ~~70-30-111(4)~~ *70-30-111(1)(d)*, the condemnee may provide to the condemnor the condemnee's claim of appropriate measures that the condemnee considers necessary to minimize damages to the property directly affected by the project as well as to minimize damages incurred to the remaining parcel of property."

**Section 2.** Section 70-30-111, MCA, is amended to read:

**"70-30-111. Facts necessary to be found before condemnation.** *(1)* Before property can be taken, the condemnor shall show by a preponderance of the evidence that the public interest requires the taking based on the following findings:

~~(1)~~*(a)* the use to which the property is to be applied is a public use pursuant to 70-30-102;

~~(2)~~*(b)* the taking is necessary to the public use;

~~(3)~~*(c)* if already being used for a public use, that the public use for which the property is proposed to be used is a more necessary public use;

~~(4)~~*(d)* an effort to obtain the property interest sought to be taken was made by submission of a *final* written offer *prior to initiating condemnation proceedings* and the *final written* offer was rejected.

*(2) Subsection (1)(d) does not prohibit the condemnor from making further offers in an effort to obtain the property interest sought to be taken, but offers made after the final written offer is submitted pursuant to subsection (1)(d) may not be used to determine whether the condemnee prevails pursuant to 70-30-305.*

*The condemnor shall disclose to a property owner that further offers made in accordance with this subsection (2) are not considered the final written offer.*"

**Section 3.** Section 70-30-203, MCA, is amended to read:

**"70-30-203. Contents of complaint.** (1) The complaint for condemnation must contain:

(a) the name of the corporation, association, commission, or person in charge of the public use for which the property is sought to be taken, who is the plaintiff;

(b) the names of all owners, purchasers under contracts for deed, mortgagees, and lienholders of record and any other claimants of record of the property sought to be taken, if known, or a statement that they are unknown, who are the defendants;

(c) a statement of the right of the plaintiff to take the property for public use;

(d) statements of each of the facts necessary to be found in ~~70-30-111~~ *70-30-111(1)*;

(e) a description of each interest in real property sought to be taken, a statement of whether the property sought to be taken includes the whole or only a part of the entire parcel or tract, and a statement that the interest sought is the minimum necessary interest. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties.

(f) a statement of the condemnor's claim of appropriate payment for damages to the property proposed to be taken as well as to any remaining parcel of property. *The condemnor's claim of appropriate payment for damages must be the same amount as the final written offer that was rejected pursuant to the facts necessary in 70-30-111(1)(d).*

(2) If a right-of-way is sought, in addition to the items listed in subsection (1), the complaint must show the location, general route, and termini and must be accompanied with a map of the route, so far as the route is involved in the action or proceeding.

(3) (a) If a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir is sought to be taken, in addition to the items listed in subsection (1), the complaint must include a description of the reservoir and of the land in which the reservoir is alleged to be contained and a description of all other property and rights sought to be taken for use in connection with the right to store natural gas in and withdraw natural gas from the reservoir.

(b) In addition, the complaint must state facts showing that:

(i) the reservoir is subject to being taken by the plaintiff;

(ii) the underground storage of natural gas in the land sought to be taken is in the public interest;

(iii) the reservoir is suitable and practicable for natural gas storage;

(iv) the plaintiff in good faith has been unable to acquire the rights sought to be taken; and

(v) ~~a statement that~~ the rights and property sought to be taken are not prohibited by law from being taken.

(c) The complaint must be accompanied by a certificate from the board of oil and gas conservation as provided in 82-10-304."

**Section 4.** Section 70-30-206, MCA, is amended to read:

**"70-30-206. Powers of court — preliminary condemnation order.** (1) In a condemnation proceeding, the court may:

(a) regulate and determine the place and manner of:

(i) making the connections and crossings and enjoying the common uses mentioned in 70-30-103(1)(e); and

(ii) occupying canyons, passes, and defiles for railroad purposes, as permitted and regulated by the laws of this state or of the United States; or

(b) subject to 70-30-104(2), limit the interest in real property sought to be taken if in the opinion of the court the interest sought is not necessary.

(2) If the court finds and concludes from the evidence presented that the public interest requires the taking of an interest in real property and that the condemnor has met the burden of proof under ~~70-30-111~~ *70-30-111(1)*, the court shall enter a preliminary condemnation order providing that the condemnation of the interest in real property may proceed in accordance with the provisions of this chapter.

(3) (a) If the property sought to be taken is a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir and the existence and suitability of the property for that use has been proved by the condemnor based upon substantial evidence, the order of the court must direct the condemnation commissioners to determine the amount to be paid by the condemnor to each person for each person's interest in the property sought to be taken for use as an underground natural gas storage reservoir.

(b) In addition to or in lieu of the amount paid under subsection (3)(a), the court may direct the commissioners to determine the annual rental for:

(i) the use of the underground natural gas storage reservoir;

(ii) the use of so much of the surface as is required in the operation of the reservoir and for the use in connection with the creation, operation, and maintenance of the reservoir; and

(iii) all the native gas contained in the reservoir. However, the amount to be paid for the native gas may not be less than the market value of the gas.

(4) The court shall appoint three persons, qualified and recommended as experts by the board of oil and gas conservation, to assist and advise the commissioners in determining the compensation and damages to be paid by the condemnor to each person for each person's interest in the property sought to be taken. The fees and expenses of the experts are chargeable as costs of the proceedings to be paid by the condemnor.

(5) After a complaint as described in 70-30-203 is filed and prior to the issuance of the preliminary condemnation order, all parties shall proceed as expeditiously as possible, but without prejudicing any party's position, with all aspects of the preliminary condemnation proceeding, including discovery and trial. The court shall give the proceedings expeditious and priority consideration. The preliminary condemnation proceeding must be tried by the court ~~sitting without a jury~~ *sitting without a jury*."

**Section 5.** Section 70-30-305, MCA, is amended to read:

**"70-30-305. Condemnor to make offer upon appeal — award of expenses of litigation.** (1) The condemnor shall, within 30 days after an appeal is perfected from the condemnation commissioner's award or report or not more than 60 days after the waiver of appointment of commissioners, submit to the condemnee a written final offer of judgment for the property sought to be

taken, together with the accrued necessary expenses of the condemnee. If at any time prior to 10 days before trial the condemnee serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with proof of service of the acceptance, and judgment must be entered. An offer not accepted is considered withdrawn and evidence of the offer is not admissible at the trial except in a proceeding to determine costs. The fact that an offer is made but not accepted does not preclude a subsequent offer.

(2) In the event of litigation and when the condemnee prevails *either by the court not allowing condemnation or* by *the condemnee* receiving an award in excess of the final *written* offer of the condemnor *that was rejected pursuant to the facts necessary in 70-30-111(1)(d)*, the court shall award necessary expenses of litigation to the condemnee."

**Section 6. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 7. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 8. Effective date.** [This act] is effective on passage and approval.

**Section 9. Applicability.** [This act] applies to complaints for condemnation filed on or after [the effective date of this act].

Approved April 30, 2013

# CHAPTER NO. 372

[HB 447]

AN ACT ESTABLISHING A STATE SCHOLARSHIP PROGRAM FOR ELIGIBLE PURPLE HEART RECIPIENTS; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. State scholarship for eligible purple heart recipients.** (1) There is a state scholarship program for eligible purple heart recipients. The board shall administer the program pursuant to this section.

(2) A person is eligible for the scholarship provided in subsection (3) if the person:

(a) is a recipient of the purple heart as verified by an authentic department of defense form 214 (DD 214) or other authentic military discharge form listing awards;

(b) is a resident of Montana;

(c) has been enrolled for a full academic year as a full-time or part-time student at an accredited state university or state vocational or technical school either prior to or after military service, has maintained a grade point average of at least 2.0 on a 4.0 grade point scale, and has reenrolled to continue the student's higher education at an accredited state university or state vocational or technical school.

(3) Each student who meets the criteria set forth in subsection (2) is eligible to receive a $1,000 scholarship as provided in subsection (4).

(4) (a) The state educational institution in which the eligible student is enrolled shall verify the student's eligibility and apply to the board, on a form

prescribed by the board, for the scholarship. Except as provided in subsection (5), upon receipt of the scholarship application, the board shall pay the scholarship money to the educational institution.

(b) The educational institution shall provide the scholarship money to the eligible student in the form of a voucher that the eligible student may apply toward the cost of tuition, books, transportation, or housing.

(5) The scholarship may be paid only to the extent that funding is available. Scholarship awards must be paid in the order that the applications are received by the board.

**Section 2. Appropriation.** There is appropriated from the general fund to the department of military affairs $50,000 for the biennium ending June 30, 2015, for the administration of the purple heart scholarship program established in [section 1].

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 10, chapter 2, part 1, and the provisions of Title 10, chapter 2, part 1, apply to [section 1].

**Section 4. Effective date.** [This act] is effective July 1, 2013.

Approved May 1, 2013

# CHAPTER NO. 373

[HB 464]

AN ACT GENERALLY REVISING LAWS PERTAINING TO PREVAILING WAGES; CLARIFYING THE CEILING FOR WAGE RATES AND FRINGE BENEFIT RATES; REDUCING THE NUMBER OF PREVAILING WAGE RATE DISTRICTS FROM A MAXIMUM OF 10 DISTRICTS TO A MAXIMUM OF 5 DISTRICTS; REVISING THE METHOD OF DETERMINING PREVAILING FRINGE BENEFITS; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO ESTABLISH THE PREVAILING WAGE RATES FOR HEAVY CONSTRUCTION SERVICES, HIGHWAY CONSTRUCTION SERVICES, AND BUILDING CONSTRUCTION SERVICES ANNUALLY; REVISING PROVISIONS RELATED TO PREVAILING WAGES FOR HEAVY CONSTRUCTION SERVICES AND HIGHWAY CONSTRUCTION SERVICES; ESTABLISHING A METHOD FOR CALCULATING ZONE PAY OR PER DIEM; AND AMENDING SECTIONS 18-2-402, 18-2-411, 18-2-413, AND 18-2-414, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 18-2-402, MCA, is amended to read:

**"18-2-402. Standard prevailing rate of wages.** (1) The commissioner may determine the standard prevailing rate of wages*, including fringe benefits,* applicable to public works contracts under this part. The commissioner shall keep and maintain copies of collective bargaining agreements and other information on which the rates are based.

(2) The provisions of this part do not apply in those instances in which the standard prevailing rate of wages is determined by federal law.

(3) Whenever this part is applicable, the standard prevailing rate of wages*, including fringe benefits, is the* ~~may be equal to but not~~ greater ~~than~~ *of* the highest applicable rate of wages in the area for the particular work in question as negotiated under existing and current collective bargaining agreements *or the rate determined by the applicable survey under this part*."

**Section 2.** Section 18-2-411, MCA, is amended to read:

**"18-2-411. Creation of prevailing wage rate districts.** (1) Without taking into consideration heavy construction services and highway construction services wage rates, the commissioner shall divide the state into not more than ~~10~~ *5* prevailing wage rate districts for building construction services and nonconstruction services.

(2) In initially determining the districts, the commissioner shall:

(a) follow the rulemaking procedures in the Montana Administrative Procedure Act; and

(b) publish the reasons supporting the creation of each district.

(3) A district boundary may not be changed except for good cause and in accordance with the rulemaking procedures in the Montana Administrative Procedure Act.

(4) The presence of collective bargaining agreements in a particular area may not be the sole basis for the creation of boundaries of a district, nor may the absence of collective bargaining agreements in a particular area be the sole basis for changing the boundaries of a district.

(5) For each prevailing wage rate district established under this section, the commissioner shall determine the standard prevailing rate of wages to be paid employees, as provided in this part. The standard prevailing rate of wages for construction services, as determined by the commissioner in this subsection, must be used for calculating an apprentice's wage, as provided in 39-6-108."

**Section 3.** Section 18-2-413, MCA, is amended to read:

**"18-2-413. Standard prevailing rate of wages for building construction services.** (1) The department shall conduct an annual survey to calculate the standard prevailing rate of wages for building construction services using the process described in this section.

(2) The standard prevailing wage rates adopted under subsection (1) must be set for the districts established pursuant to 18-2-411.

(3) The department shall survey:

(a) electrical contractors who are licensed under Title 37, chapter 68, who perform commercial work;

(b) plumbers who are licensed under Title 37, chapter 69, whose work is performed according to commercial building codes; and

(c) construction contractors registered under Title 39, chapter 9, whose work is performed according to commercial building codes.

(4) The surveys required under subsection (3) must include those wages, including fringe benefits plus *zone pay, per diem, and* travel allowances if applicable, that are paid in the applicable district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part.

(5) *(a)* The contractor survey must include information pertaining to the number of skilled workers employed in the contractor's peak month of employment and the wages and *fringe* benefits paid for each craft, classification, or type of work.

*(b) (i)* In setting the prevailing wages from the survey for each craft, classification, or type of work, the department shall use a weighted average wage for each craft, classification, or type of work, except in those cases in which the survey shows that at least 50% of the skilled workers are receiving the same wage.

*(ii)* If the survey shows that at least 50% of the skilled workers are receiving the same wage, ~~that wage~~ *then the higher of the collective bargaining agreement rate or the surveyed rate* is the prevailing wage for that craft, classification, or type of work.

*(c) (i) In setting the prevailing fringe benefits from the survey for each craft, classification, or type of work, the department shall use a weighted average fringe benefit for each craft, classification, or type of work, except in those cases in which the survey shows that at least 50% of the skilled workers are receiving fringe benefits pursuant to a collective bargaining agreement or pursuant to an employer's fringe benefit fund, plan, or program that meets the requirements of the Employment Retirement Income Security Act of 1974 or that is approved by the U.S. department of labor.*

*(ii) If the survey shows that at least 50% of the skilled workers are receiving fringe benefits pursuant to a collective bargaining agreement or pursuant to an employer's fringe benefit fund, plan, or program that meets the requirements of the Employment Retirement Income Security Act of 1974 or that is approved by the U.S. department of labor, the higher of fringe benefits received under collective bargaining agreements and employers' fringe benefit funds, plans, or programs is the prevailing fringe benefit for that craft, classification, or type of work.*

(6) The work performed must be work of a similar character to the work performed in the applicable district unless the survey in the applicable district does not generate sufficient data. If the survey produces insufficient data, the rate may be established by the use of other information or methods that the commissioner determines fairly establish the standard prevailing rate of wages.

(7) (a) The commissioner shall establish by rule the methodology for determining the standard prevailing rate of wages. The rules must include an alternate methodology to determine the standard prevailing rate of wages whenever insufficient data is generated by the survey of contractors in the applicable district. The rules must identify the amount of data that constitutes insufficient data.

(b) The commissioner shall use an alternate methodology provided by rule to determine the standard prevailing rate of wages whenever insufficient data exists.

(c) The alternative method of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character, which must be based on a survey that is conducted as closely as possible to the original district.

(8) Whenever work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits and the rate of travel allowance, must be those rates established by collective bargaining agreements in effect in the applicable district for each craft, classification, or type of skilled worker needed to complete the contract."

**Section 4.** Section 18-2-414, MCA, is amended to read:

**"18-2-414. Standard prevailing rate of wages for heavy construction services and for highway construction services — definition.** (1) The department shall establish ~~from time to time~~ the standard prevailing rate of wages for heavy construction services and for highway construction services *annually*.

(2) In establishing the standard prevailing rate of wages for heavy construction services and for highway construction services, the department may ~~either~~:

~~(a)~~*(a)* conduct a survey of construction contractors registered under Title 39, chapter 9, who perform heavy construction services or highway construction services*, electrical contractors licensed under Title 37, chapter 68, who perform commercial work, or plumbers licensed under Title 37, chapter 69, whose work is performed according to commercial building codes*; ~~or~~

~~(b)~~*(b)* adopt by reference through rulemaking the rates established by the U.S. department of labor under the federal Davis-Bacon Act, 29 CFR 1, et seq., for projects in Montana*; or*

*(c) use, as provided by rule, a combination of surveyed rates, as provided in subsection (2)(a), and rates adopted by reference, as provided in subsection (2)(b).*

(3) For the purposes of this section, the term "standard prevailing rate of wages for heavy construction services and for highway construction services" means wage rates, including fringe benefits plus zone pay*, per diem,* and travel allowances*, if applicable,* that are determined and established statewide for heavy construction projects and highway construction projects. The department may define by rule the terms heavy construction projects and highway construction projects. The definitions of heavy construction projects and highway construction projects must include but are not limited to projects the same as or similar to the construction, alteration, or repair of roads, streets, highways, alleys, runways, airport runways and ramps, dams, powerhouses, canals, channels, pipelines, parking areas, utility rights-of-way, staging yards located on or off the right-of-way, or new or reopened pits that produce aggregate, asphalt, concrete, or backfill when the pit does not normally sell to the general public."

**Section 5. Wage rates based on project classification.** (1) The contracting agency shall determine, based on the preponderance of labor hours to be worked, whether the public works construction services project is classified as a highway construction project, a heavy construction project, or a building construction project.

(2) Once the project has been classified, employees in each trade classification who are working on that project must be paid at the rate for that project classification.

**Section 6. Zone pay and per diem.** If there is not sufficient data reported to establish zone pay or per diem for a trade classification, the department may establish a zone pay or a per diem amount that reasonably approximates an applicable average zone pay or per diem rate that is payable for the trade classification.

**Section 7. Codification instruction.** [Sections 4 and 5] are intended to be codified as an integral part of Title 18, chapter 2, part 4, and the provisions of Title 18, chapter 2, part 4, apply to [sections 4 and 5].

Approved May 1, 2013

# CHAPTER NO. 374

[HB 478]

AN ACT REVISING LAWS REGARDING TRAFFICKING OF PERSONS FOR COMMERCIAL SEXUAL ACTIVITY; REVISING PROSTITUTION LAWS; REVISING CERTAIN PENALTIES; ESTABLISHING THE OFFENSES OF

SEXUAL SERVITUDE OF A CHILD AND PATRONIZING A CHILD; AMENDING SECTIONS 45-5-305, 45-5-306, 45-5-601, 45-5-602, 45-5-603, 46-18-111, 46-18-201, 46-18-203, 46-18-205, 46-18-207, 46-18-222, 46-18-231, 46-23-502, AND 46-23-1011, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 45-5-305, MCA, is amended to read:

**"45-5-305. Subjecting another to involuntary servitude — definitions.** (1) A person commits the offense of subjecting another to involuntary servitude if the person purposely or knowingly obtains or maintains the forced labor or services of another person by any of the following actions or by threatening any of the following actions:

(a) causing physical harm to any person;

(b) damaging or destroying the property of any person;

(c) physically restraining another person;

(d) abusing the law or legal process;

(e) knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document or any other actual or purported government identification document of another person;

(f) blackmail; or

(g) causing financial harm to any person or using financial control over any person.

(2) (a) Except as provided in subsection (2)(b), a person convicted of the offense of subjecting another to involuntary servitude shall be imprisoned in the state prison for a term of not more than 10 years, fined an amount not to exceed $50,000, or both.

(b) A person convicted of the offense of subjecting another to involuntary servitude, if the violation involves aggravated kidnapping, sexual intercourse without consent, or deliberate homicide, shall be punished by life imprisonment or by imprisonment in the state prison for a term of not more than 100 years and may be fined not more than $50,000.

(3) As used in this ~~section~~ *part*, *unless the context requires otherwise,* the following definitions apply:

(a) "Blackmail" means an unlawful demand of money, property, or services under threat to accuse another person of a crime or to expose any secret tending to subject a person to hatred, contempt, or ridicule.

*(b) "Commercial sexual activity" means any sex act or simulated sex act, including sexually explicit performances, for which anything of value is given, promised to, or received directly or indirectly by any person.*

~~(b)~~*(c)* "Financial harm" includes employment contracts that violate 28-2-903, taking, receiving, reserving, or charging a rate of interest greater than is allowed by 31-1-107, and defrauding creditors as defined in 45-6-315.

~~(c)~~*(d)* "Forced labor or services" means labor or services that are performed or provided by another person and are obtained or maintained through violation of subsection (1).

~~(d)~~*(e)* "Labor" means work of economic or financial value.

~~(e)~~*(f)* "Maintain" means to secure continued performance of labor or services, regardless of any initial agreement on the part of the victim to perform that type of service.

~~(f)~~*(g)* "Obtain" means to secure *the* performance of labor or services.

~~(g)~~*(h)* "Services" means ~~an ongoing relationship between a person and the offender in which the person performs activities under the supervision of or for the benefit of the offender~~ *acts committed at the direction of, request of, supervision of, or for the benefit of another*, including commercial sexual activity ~~and sexually explicit performances~~.

*(i) "Sexually explicit performances" means live, public, private, photographed, recorded, or videotaped acts or simulated acts intended to sexually arouse, satisfy the sexual desires of, or appeal to the prurient interests of any person.*"

**Section 2.** Section 45-5-306, MCA, is amended to read:

**"45-5-306. Trafficking of persons for involuntary servitude.** (1) A person commits the offense of trafficking of persons for involuntary servitude if the person purposely or knowingly:

(a) recruits, entices, harbors, transports, provides, or obtains by any means another person, intending or knowing that the person will be subjected to involuntary servitude as described in 45-5-305; or

(b) benefits*,* financially *or* by receiving anything of value*,* from participation in a venture that has engaged in the offense of subjecting another to involuntary servitude as described in 45-5-305.

(2) (a) Except as provided in subsection (2)(b), a person convicted of the offense of trafficking of persons for involuntary servitude shall be imprisoned in the state prison for a term of not more than 15 years, fined an amount not to exceed $100,000, or both.

(b) A person convicted of the offense of trafficking of persons for involuntary servitude, if the violation involves aggravated kidnapping, sexual intercourse without consent, or deliberate homicide, shall be punished by life imprisonment or by imprisonment in the state prison for a term of not more than 100 years and may be fined not more than $100,000."

**Section 3. Sexual servitude of child.** (1) A person commits the offense of sexual servitude of a child if the person purposely or knowingly:

(a) recruits, entices, solicits, isolates, harbors, transports, provides, obtains, or maintains through any means a child for the performance of commercial sexual activity; or

(b) benefits, financially or by receiving anything of value, from participation in a venture that has engaged in the offense of sexual servitude of a child.

(2) (a) A person convicted of the offense of sexual servitude of a child, whether or not the person is aware of the child's age:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (2)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the person is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the person is released after the mandatory minimum period of imprisonment, the person is subject to supervision by the department of

corrections for the remainder of the person's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010."

**Section 4. Patronizing a child.** (1) A person commits the offense of patronizing a child if the person purposely or knowingly engages in commercial sexual activity with a child while knowing or negligently disregarding that the child is a victim of the offense of sexual servitude of a child as provided in [section 3].

(2) (a) A person convicted of the offense of patronizing a child, whether or not the person is aware of the child's age:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (2)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the person is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the person is released after the mandatory minimum period of imprisonment, the person is subject to supervision by the department of corrections for the remainder of the person's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010."

**Section 5.** Section 45-5-601, MCA, is amended to read:

**"45-5-601. Prostitution.** (1) A person commits the offense of prostitution if the person engages in or agrees or offers to engage in sexual intercourse with another person for compensation, whether the compensation is received or to be received or paid or to be paid.

(2) (a) A prostitute convicted of prostitution shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) Except as provided in subsection (3), a ~~prostitute's client~~ *patron* who is convicted of prostitution shall for the first offense be fined an amount not to exceed $1,000 or be imprisoned for a term not to exceed 1 year, or both, and for a second or subsequent offense shall be fined an amount not to exceed $10,000 or be imprisoned for a term not to exceed 5 years, or both.

(3) (a) If the ~~prostitute~~ *person patronized* was ~~12 years of age or younger~~ *a child* and the ~~prostitute's client~~ *patron* was 18 years of age or older at the time of the offense, *whether or not the patron was aware of the child's age,* the *patron* offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (3)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010."

**Section 6.** Section 45-5-602, MCA, is amended to read:

**"45-5-602. Promoting prostitution.** (1) A person commits the offense of promoting prostitution if the person purposely or knowingly commits any of the following acts:

(a) owns, controls, manages, supervises, resides in, or otherwise keeps, alone or in association with others, a house of prostitution or a prostitution business;

(b) procures an individual for a house of prostitution or a place in a house of prostitution for an individual;

(c) encourages, induces, or otherwise purposely causes another to become or remain a prostitute;

(d) solicits clients for another person who is a prostitute;

(e) procures a prostitute for a patron;

(f) transports an individual into or within this state with the purpose to promote that individual's engaging in prostitution or procures or pays for transportation with that purpose;

(g) leases or otherwise permits a place controlled by the offender, alone or in association with others, to be regularly used for prostitution or for the procurement of prostitution or fails to make reasonable effort to abate that use by ejecting the tenant, notifying law enforcement authorities, or using other legally available means; or

(h) lives in whole or in part upon the earnings of an individual engaging in prostitution, unless the person is the prostitute's minor child or other legal dependent incapable of self-support.

(2) Except as provided in subsection (3), a person convicted of promoting prostitution shall be fined an amount not to exceed $50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(3) (a) If the ~~prostitute~~ *person engaging in prostitution* was ~~12 years of age or younger~~ *a child* and the ~~prostitute's client~~ *patron* was 18 years of age or older at the time of the offense, *whether or not the patron was aware of the child's age,* the *patron* offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (3)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010."

**Section 7.** Section 45-5-603, MCA, is amended to read:

**"45-5-603. Aggravated promotion of prostitution.** (1) A person commits the offense of aggravated promotion of prostitution if the person purposely or knowingly commits any of the following acts:

(a) compels another to engage in or promote prostitution;

(b) promotes prostitution of a child ~~under the age of 18 years~~, whether or not the person is aware of the child's age;

(c) promotes the prostitution of one's spouse, child, ward, or any person for whose care, protection, or support the person is responsible.

(2) (a) Except as provided in ~~subsections~~ *subsection* (2)(b) ~~and (2)(c)~~, a person convicted of aggravated promotion of prostitution shall be punished by:

(i) life imprisonment; or

(ii) imprisonment in a state prison for a term not to exceed 20 years or a fine in an amount not to exceed $50,000, or both.

~~(b) Except as provided in 46-18-219 and 46-18-222, a person convicted of aggravated promotion of prostitution of a child, who at the time of the offense is under 18 years of age, shall be punished by:~~

~~(i) life imprisonment; or~~

~~(ii) imprisonment in a state prison for a term of not less than 4 years or more than 100 years or a fine in an amount not to exceed $100,000, or both.~~

~~(c)~~*(b)* (i) ~~If~~ *Except as provided in 46-18-219 and 46-18-222, if* the ~~prostitute~~ *person engaging in prostitution* was ~~12 years of age or younger~~ *a child* and the ~~prostitute's client~~ *patron* was 18 years of age or older at the time of the offense, the *patron* offender:

(A) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection ~~(2)(c)(i)(A)~~ *(2)(b)(i)(A)* except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(B) may be fined an amount not to exceed $50,000; and

(C) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(ii) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010."

**Section 8.** Section 46-18-111, MCA, is amended to read:

**"46-18-111. Presentence investigation — when required.** (1) (a) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court shall consider the presentence investigation report prior to sentencing.

(b) If the defendant was convicted of an offense under *[section 3], [section 4],* 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-625, 45-5-627, 45-5-601(3), 45-5-602(3), or ~~45-5-603(2)(c)~~ *45-5-603(2)(b)* or if the defendant was convicted under 46-23-507 and the offender was convicted of failure to register as a sexual offender pursuant to Title 46, chapter 23, part 5, the investigation must include a psychosexual evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive environment,

considering the risk the defendant presents to the community and the defendant's needs, unless the defendant was sentenced under 46-18-219. The evaluation must be completed by a sex offender therapist who is a member of the Montana sex offender treatment association or has comparable credentials acceptable to the department of labor and industry. The psychosexual evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

(c) When, pursuant to 46-14-311, the court has ordered a presentence investigation and a report pursuant to this section, the mental evaluation required by 46-14-311 must be attached to the presentence investigation report and becomes part of the report. The report must be made available to persons and entities as provided in 46-18-113.

(2) The court shall order a presentence investigation report unless the court makes a finding that a report is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation and parole officer is presented to and considered by the district court. The district court may order a presentence investigation for a defendant convicted of a misdemeanor only if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense as defined in 46-23-502.

(3) The defendant shall pay to the department of corrections a $50 fee at the time that the report is completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time. The fee may be retained by the department and used to finance contracts entered into under 53-1-203(5)."

**Section 9.** Section 46-18-201, MCA, is amended to read:

**"46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(i) a fine as provided by law for the offense;

(ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in 46-8-113;

(iii) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(iv) commitment of:

(A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in *[section 3], [section 4],* 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), ~~45-5-603(2)(c)~~ *45-5-603(2)(b)*, and 45-5-625(4); or

(B) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(v) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(vi) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(vii) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

(viii) any combination of subsections (2) and (3)(a)(i) through (3)(a)(vii).

(b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank program.

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of assigned counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order

that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

(n) participation in a day reporting program provided for in 53-1-203;

(o) participation in the sobriety program provided for in Title 44, chapter 4, part 12, for a second or subsequent violation of 61-8-401 or 61-8-406;

(p) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

(q) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(p).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise."

**Section 10.** Section 46-18-203, MCA, is amended to read:

**"46-18-203. Revocation of suspended or deferred sentence.** (1) Upon the filing of a petition for revocation showing probable cause that the offender has violated any condition of a sentence, any condition of a deferred imposition of sentence, or any condition of supervision after release from imprisonment imposed pursuant to *[section 3], [section 4],* 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), ~~45-5-603(2)(c)~~ *45-5-603(2)(b)*, or 45-5-625(4), the judge may issue an order for a hearing on revocation. The order must require the offender to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the offender personally. The judge may also issue an arrest warrant directing any peace officer or a probation and parole officer to arrest the offender and bring the offender before the court.

(2) The petition for a revocation must be filed with the sentencing court either before the period of suspension or deferral has begun or during the period of suspension or deferral but not after the period has expired. Expiration of the

period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay, the offender must be brought before the judge, and the offender must be advised of:

(a) the allegations of the petition;

(b) the opportunity to appear and to present evidence in the offender's own behalf;

(c) the opportunity to question adverse witnesses; and

(d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified unless:

(a) the offender admits the allegations and waives the right to a hearing; or

(b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the offender for the purposes of this subsection (5)(b).

(6) (a) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of:

(i) the terms and conditions of the suspended or deferred sentence; or

(ii) a condition of supervision after release from imprisonment imposed pursuant to *[section 3], [section 4],* 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), ~~45-5-603(2)(c)~~ *45-5-603(2)(b)*, or 45-5-625(4).

(b) However, when a failure to pay restitution is the basis for the petition, the offender may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, the judge may:

(i) continue the suspended or deferred sentence without a change in conditions;

(ii) continue the suspended sentence with modified or additional terms and conditions;

(iii) revoke the suspension of sentence and require the offender to serve either the sentence imposed or any sentence that could have been imposed that does not include a longer imprisonment or commitment term than the original sentence; or

(iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

(b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time and either expressly allow all or part of the time as a credit against the sentence or reject all or part of the time as a credit. The judge shall state the reasons for the judge's determination in the order. Credit must be allowed for time served in a detention center or home arrest time already served.

(c) If a judge finds that an offender has not violated a term or condition of a suspended or deferred sentence, that judge is not prevented from setting, modifying, or adding conditions of probation as provided in 46-23-1011.

(8) If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the offender, if in custody, must be immediately released.

(9) The provisions of this section apply to any offender whose suspended or deferred sentence is subject to revocation regardless of the date of the offender's conviction and regardless of the terms and conditions of the offender's original sentence."

**Section 11.** Section 46-18-205, MCA, is amended to read:

**"46-18-205. Mandatory minimum sentences — restrictions on deferral or suspension.** (1) If the victim was less than 16 years of age, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under the following sections may not be deferred or suspended and the provisions of 46-18-222 do not apply to the first 30 days of the imprisonment:

(a) 45-5-503, sexual intercourse without consent;

(b) 45-5-504, indecent exposure;

(c) 45-5-505, deviate sexual conduct; or

(d) 45-5-507, incest.

(2) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:

(a) 45-5-103(4), mitigated deliberate homicide;

(b) 45-5-202, aggravated assault;

(c) 45-5-302(2), kidnapping;

(d) 45-5-303(2), aggravated kidnapping;

(e) 45-5-401(2), robbery;

(f) 45-5-502(3), sexual assault;

(g) 45-5-503(2) and (3), sexual intercourse without consent;

(h) 45-5-603, aggravated promotion of prostitution;

(i) 45-9-101(2), (3), and (5)(d), criminal distribution of dangerous drugs;

(j) 45-9-102(4), criminal possession of dangerous drugs; and

(k) 45-9-103(2), criminal possession with intent to distribute dangerous drugs.

(3) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102, deliberate homicide, may not be deferred or suspended.

(4) The provisions of this section do not apply to sentences imposed pursuant to *[section 3], [section 4],* 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), ~~45-5-603(2)(c)~~ *45-5-603(2)(b),* or 45-5-625(4)."

**Section 12.** Section 46-18-207, MCA, is amended to read:

**"46-18-207. Sexual offender treatment.** (1) Upon sentencing a person convicted of a sexual offense, as defined in 46-23-502, the court shall designate the offender as a level 1, 2, or 3 offender pursuant to 46-23-509.

(2) (a) Except as provided in subsection (2)(b), the court shall order an offender convicted of a sexual offense, as defined in 46-23-502, except an offense

under 45-5-301 through 45-5-303, and sentenced to imprisonment in a state prison to:

(i) enroll in and successfully complete the educational phase of the prison's sexual offender treatment program;

(ii) if the person has been or will be designated as a level 3 offender pursuant to 46-23-509, enroll in and successfully complete the cognitive and behavioral phase of the prison's sexual offender treatment program; and

(iii) if the person is sentenced pursuant to *[section 3], [section 4],* 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), ~~45-5-603(2)(c)~~ *45-5-603(2)(b)*, or 45-5-625(4) and is released on parole, remain in an outpatient sex offender treatment program for the remainder of the person's life.

(b) A person who has been sentenced to life imprisonment without possibility of release may not participate in treatment provided pursuant to this section.

(3) A person who has been ordered to enroll in and successfully complete a phase of a state prison's sexual offender treatment program is not eligible for parole unless that phase of the program has been successfully completed as certified by a sexual offender evaluator to the board of pardons and parole.

(4) (a) Except for an offender sentenced pursuant to *[section 3], [section 4],* 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), ~~45-5-603(2)(c)~~ *45-5-603(2)(b),* or 45-5-625(4), during an offender's term of commitment to the department of corrections or a state prison, the department may place the person in a residential sexual offender treatment program approved by the department under 53-1-203.

(b) If the person successfully completes a residential sexual offender treatment program approved by the department of corrections, the remainder of the term must be served on probation unless the department petitions the sentencing court to amend the original sentencing judgment.

(5) If, following a conviction for a sexual offense as defined in 46-23-502, any portion of a person's sentence is suspended, during the suspended portion of the sentence the person:

(a) shall abide by the standard conditions of probation established by the department of corrections;

(b) shall pay the costs of imprisonment, probation, and any sexual offender treatment if the person is financially able to pay those costs;

(c) may have no contact with the victim or the victim's immediate family unless approved by the victim or the victim's parent or guardian, the person's therapists, and the person's probation officer;

(d) shall comply with all requirements and conditions of sexual offender treatment as directed by the person's sex offender therapist;

(e) may not enter an establishment where alcoholic beverages are sold for consumption on the premises or where gambling takes place;

(f) may not consume alcoholic beverages;

(g) shall enter and remain in an aftercare program as directed by the person's probation officer;

(h) shall submit to random or routine drug and alcohol testing;

(i) may not possess pornographic material or access pornography through the internet; and

(j) at the discretion of the probation and parole officer, may be subject to electronic monitoring or continuous satellite monitoring.

(6) The sentencing of a sexual offender is subject to 46-18-202(2) and 46-18-219.

(7) The sentencing court may, upon petition by the department of corrections, modify a sentence of a sexual offender to impose any part of a sentence that was previously suspended."

**Section 13.** Section 46-18-222, MCA, is amended to read:

**"46-18-222. Exceptions to mandatory minimum sentences, restrictions on deferred imposition and suspended execution of sentence, and restrictions on parole eligibility.** Mandatory minimum sentences prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201(1)(b), 46-18-205, 46-18-221(3), 46-18-224, and 46-18-502(3), and restrictions on parole eligibility do not apply if:

(1) the offender was less than 18 years of age at the time of the commission of the offense for which the offender is to be sentenced;

(2) the offender's mental capacity, at the time of the commission of the offense for which the offender is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the offender, at the time of the commission of the offense for which the offender is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the offender was an accomplice, the conduct constituting the offense was principally the conduct of another, and the offender's participation was relatively minor;

(5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under *[section 3], [section 4],* 45-5-502(3), 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), ~~45-5-603(2)(c)~~ *45-5-603(2)(b)*, or 45-5-625(4) and the judge determines, based on the findings contained in a sexual offender evaluation report prepared by a qualified sexual offender evaluator pursuant to the provisions of 46-23-509, that treatment of the offender while incarcerated, while in a residential treatment facility, or while in a local community affords a better opportunity for rehabilitation of the offender and for the ultimate protection of the victim and society, in which case the judge shall include in its judgment a statement of the reasons for its determination."

**Section 14.** Section 46-18-231, MCA, is amended to read:

**"46-18-231. Fines in felony and misdemeanor cases.** (1) (a) Except as provided in subsection (1)(b), whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the sentencing judge may, in lieu of or in addition to a sentence of imprisonment, impose a fine only in accordance with subsection (3).

(b) For those crimes for which penalties are provided in the following sections, a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment:

(i) 45-5-103(4), mitigated deliberate homicide;

(ii) 45-5-202, aggravated assault;

(iii) 45-5-213, assault with a weapon;

(iv) 45-5-302(2), kidnapping;

(v) 45-5-303(2), aggravated kidnapping;

*(vi) [section 3] or [section 4], sexual servitude of a child or patronizing a child;*

~~(vi)~~*(vii)* 45-5-401(2), robbery;

~~(vii)~~*(viii)* 45-5-502(3), sexual assault when the victim is less than 16 years old and the offender is 3 or more years older than the victim or the offender inflicts bodily injury in the course of committing the sexual assault;

~~(viii)~~*(ix)* 45-5-503(2) through (4), sexual intercourse without consent;

~~(ix)~~*(x)* 45-5-507(5), incest when the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense;

~~(x)~~*(xi)* 45-5-601(3), 45-5-602(3), or ~~45-5-603(2)(c)~~ *45-5-603(2)(b)*, prostitution, promotion of prostitution, or aggravated promotion of prostitution when the ~~prostitute was 12 years of age or younger~~ *person patronized or engaging in prostitution was a child* and the ~~prostitute's client~~ *patron* was 18 years of age or older at the time of the offense;

~~(xi)~~*(xii)* 45-5-625(4), sexual abuse of children;

~~(xii)~~*(xiii)* 45-9-101(2), (3), and (5)(d), criminal possession with intent to distribute a narcotic drug, criminal possession with intent to distribute a dangerous drug included in Schedule I or Schedule II, or other criminal possession with intent to distribute a dangerous drug;

~~(xiii)~~*(xiv)* 45-9-102(4), criminal possession of an opiate;

~~(xiv)~~*(xv)* 45-9-103(2), criminal possession of an opiate with an intent to distribute; and

~~(xv)~~*(xvi)* 45-9-109, criminal possession with intent to distribute dangerous drugs on or near school property.

(2) Whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the sentencing judge may impose a fine only in accordance with subsection (3).

(3) The sentencing judge may not sentence an offender to pay a fine unless the offender is or will be able to pay the fine. In determining the amount and method of payment, the sentencing judge shall take into account the nature of the crime committed, the financial resources of the offender, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the sentencing judge not to exceed $50,000."

**Section 15.** Section 46-23-502, MCA, is amended to read:

**"46-23-502. Definitions.** As used in 46-18-255 and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Municipality" means an entity that has incorporated as a city or town.

(4) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

(5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(6) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

(7) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

(8) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct sexual offender and sexually violent predator evaluations.

(9) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), *[section 3], [section 4],* 45-5-502(3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503, 45-5-504(1) (if the victim is under 18 years of age and the offender is 18 years of age or older), 45-5-504(2)(c), 45-5-507 (if the victim is under 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-601(3), 45-5-602(3), 45-5-603(1)(b) or ~~(2)(e)~~ *(2)(b)*, or 45-5-625; or

(b) any violation of a law of another state, a tribal government, or the federal government that is reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(10) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

(11) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

(12) "Transient" means an offender who has no residence.

(13) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense),

45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state, a tribal government, or the federal government reasonably equivalent to a violation listed in subsection (13)(a)."

**Section 16.** Section 46-23-1011, MCA, is amended to read:

**"46-23-1011. Supervision on probation.** (1) The department shall supervise probationers during their probation period, including supervision after release from imprisonment imposed pursuant to *[section 3], [section 4],* 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), ~~45-5-603(2)(c)~~ *45-5-603(2)(b),* or 45-5-625(4), in accord with the conditions set by a sentencing judge. If the sentencing judge did not set conditions of probation at the time of sentencing, the court shall, at the request of the department, hold a hearing and set conditions of probation. The probationer must be present at the hearing. The probationer has the right to counsel as provided in chapter 8 of this title.

(2) A copy of the conditions of probation must be signed by the probationer. The department may require a probationer to waive extradition for the probationer's return to Montana.

(3) The probation and parole officer shall regularly advise and consult with the probationer to encourage the probationer to improve the probationer's condition and conduct and shall inform the probationer of the restoration of rights on successful completion of the sentence.

(4) (a) The probation and parole officer may recommend and a judge may modify or add any condition of probation or suspension of sentence at any time.

(b) The probation and parole officer shall provide the county attorney in the sentencing jurisdiction with a report that identifies the conditions of probation and the reason why the officer believes that the judge should modify or add the conditions.

(c) The county attorney may file a petition requesting that the court modify or add conditions as requested by the probation and parole officer.

(d) The court may grant the petition if the probationer does not object. If the probationer objects to the petition, the court shall hold a hearing pursuant to the provisions of 46-18-203.

(e) Except as they apply to supervision after release from imprisonment imposed pursuant to *[section 3], [section 4],* 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), ~~45-5-603(2)(c)~~ *45-5-603(2)(b),* or 45-5-625(4), the provisions of 46-18-203(7)(a)(ii) do not apply to this section.

(f) The probationer shall sign a copy of new or modified conditions of probation. The court may waive or modify a condition of restitution only as provided in 46-18-246.

(5) (a) Upon recommendation of the probation and parole officer, a judge may conditionally discharge a probationer from supervision before expiration of the probationer's sentence if:

(i) the judge determines that a conditional discharge from supervision:

(A) is in the best interests of the probationer and society; and

(B) will not present unreasonable risk of danger to the victim of the offense; and

(ii) the offender has paid all restitution and court-ordered financial obligations in full.

(b) Subsection (5)(a) does not prohibit a judge from revoking the order suspending execution or deferring imposition of sentence, as provided in

46-18-203, for a probationer who has been conditionally discharged from supervision.

(c) If the department certifies to the sentencing judge that the workload of a district probation and parole office has exceeded the optimum workload for the district over the preceding 60 days, the judge may not place an offender on probation under supervision by that district office unless the judge grants a conditional discharge to a probationer being supervised by that district office. The department may recommend probationers to the judge for conditional discharge. The judge may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office."

**Section 17. Codification instruction.** [Sections 3 and 4] are intended to be codified as an integral part of Title 45, chapter 5, part 3, and the provisions of Title 45, chapter 5, part 3, apply to [sections 3 and 4].

**Section 18. Effective date.** [This act] is effective July 1, 2013.

**Section 19. Applicability.** [This act] applies to offenses committed on or after [the effective date of this act].

Approved May 1, 2013

# CHAPTER NO. 375

[HB 524]

AN ACT REVISING THE REQUIREMENT THAT RETAIL LICENSES FOR SELLING BEER OR WINE FOR OFF-PREMISES CONSUMPTION BE OPERATED AS A BONA FIDE GROCERY STORE OR A DRUGSTORE LICENSED AS A PHARMACY; AND AMENDING SECTION 16-4-115, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 16-4-115, MCA, is amended to read:

**"16-4-115. Beer and wine licenses for off-premises consumption.** (1) A retail license to sell beer or table wine, or both, in the original packages for off-premises consumption may be issued only to a person, firm, or corporation that is approved by the department as a person, firm, or corporation qualified to sell beer or table wine, or both.~~, and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy~~ *If the premises proposed for licensing are operated in conjunction with another business, that business must be a grocery store or drugstore licensed as a pharmacy*. The number of licenses that the department may issue is not limited by the provisions of 16-4-105 but must be determined by the department in the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or deny an application for any license or suspend or revoke any license for cause.

(2) Upon receipt of a completed application for a license under this section, accompanied by the necessary license fee as provided in 16-4-501, the department shall request that the department of justice make a background investigation of all matters relating to the application.

(3) Based on the results of the investigation or in exercising its sound discretion as provided in subsection (1), the department shall determine whether:

(a) the applicant is qualified to receive a license;

(b) the applicant's premises are suitable for the carrying on of the business; and

(c) the requirements of this code and the rules promulgated by the department are met and complied with.

(4) License applications submitted under this section are not subject to the provisions of 16-4-203 and 16-4-207.

(5) If the premises proposed for licensing under this section are a new or remodeled structure, the department may issue a conditional license prior to completion of the premises upon reasonable evidence that the premises will be suitable for the carrying on of business ~~as a bona fide grocery store or a drugstore licensed as a pharmacy~~."

Approved April 30, 2013

# CHAPTER NO. 376

[HB 626]

AN ACT IMPLEMENTING PROVISIONS OF THE GENERAL APPROPRIATIONS ACT BY INCREASING THE PERCENTAGE OF MOTOR VEHICLE REVENUE DEPOSITED IN THE STATE GENERAL FUND TO BE ALLOCATED TO VETERANS' ACCOUNTS; AMENDING SECTION 15-1-122, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-1-122, MCA, is amended to read:

**"15-1-122. Fund transfers.** (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, a base amount of $59,209, and the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) For each fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5, 1.48% of the motor vehicle revenue deposited in the state general fund in each fiscal year. The amount of 9.48% of the allocation in each fiscal year must be used for the purpose of reimbursing the hired removal of abandoned vehicles. Any portion of the allocation not used for abandoned vehicle removal reimbursement must be used as provided in 75-10-532.

(b) to the noxious weed state special revenue account provided for in 80-7-816, 1.50% of the motor vehicle revenue deposited in the state general fund in each fiscal year;

(c) to the department of fish, wildlife, and parks:

(i) 0.46% of the motor vehicle revenue deposited in the state general fund, with the applicable percentage to be:

(A) used to:

(I) acquire and maintain pumpout equipment and other boat facilities, 4.8% in each fiscal year;

(II) administer and enforce the provisions of Title 23, chapter 2, part 5, 19.1% in each fiscal year;

(III) enforce the provisions of 23-2-804, 11.1% in each fiscal year; and

(IV) develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use, 16.7% in each fiscal year; and

(B) deposited in the state special revenue fund established in 23-1-105 in an amount equal to 48.3% in each fiscal year;

(ii) 0.10% of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 50% of the amount to be used for enforcing the purposes of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-618, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 and 50% of the amount designated for use in the development, maintenance, and operation of snowmobile facilities; and

(iii) 0.16% of the motor vehicle revenue deposited in the state general fund in each fiscal year to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) ~~0.64%~~ *0.81%* of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 24.55% to be deposited in the state veterans' cemetery account provided for in 10-2-603 and with 75.45% to be deposited in the veterans' services account provided for in 10-2-112(1);

(e) 0.30% of the motor vehicle revenue deposited in the state general fund in each fiscal year for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112; and

(f) to the search and rescue account provided for in 10-3-801, 0.04% of the motor vehicle revenue deposited in the state general fund in each fiscal year.

(3) The amount of $200,000 is transferred from the state general fund to the livestock loss reduction and mitigation restricted state special revenue account provided for in 81-1-112 in each fiscal year.

(4) For the purposes of this section, "motor vehicle revenue deposited in the state general fund" means revenue received from:

(a) fees for issuing a motor vehicle title paid pursuant to 61-3-203;

(b) fees, fees in lieu of taxes, and taxes for vehicles, vessels, and snowmobiles registered or reregistered pursuant to 61-3-321 and 61-3-562;

(c) GVW fees for vehicles registered for licensing pursuant to Title 61, chapter 3, part 3; and

(d) all money collected pursuant to 15-1-504(3).

(5) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes."

**Section 2. Effective date.** [This act] is effective July 1, 2013.

Approved May 1, 2013

# CHAPTER NO. 377

[SB 196]

AN ACT LIMITING THE USE OF UNMANNED AERIAL VEHICLES BY LAW ENFORCEMENT; AND PROHIBITING THE USE OF UNLAWFULLY OBTAINED INFORMATION AS EVIDENCE IN COURT.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Limitations on unmanned aerial vehicles.** (1) In any prosecution or proceeding within the state of Montana, information from an unmanned aerial vehicle is not admissible as evidence unless the information was obtained:

(a) pursuant to the authority of a search warrant; or

(b) in accordance with judicially recognized exceptions to the warrant requirement.

(2) Information obtained from the operation of an unmanned aerial vehicle may not be used in an affidavit of probable cause in an effort to obtain a search warrant unless the information was obtained under the circumstances described in subsection (1)(a) or (1)(b) or was obtained through the monitoring of public lands or international borders.

(3) For the purposes of this section, "unmanned aerial vehicle" means an aircraft that is operated without direct human intervention from on or within the aircraft. The term does not include satellites.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 46, chapter 5, part 1, and the provisions of Title 46, chapter 5, part 1, apply to [section 1].

Approved May 1, 2013

# CHAPTER NO. 378

[SB 198]

AN ACT PROVIDING FOR INCREASED PENALTIES FOR ASSAULT ON A MINOR UNDER 36 MONTHS OF AGE; AMENDING SECTIONS 45-5-212 AND 46-18-111, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 45-5-212, MCA, is amended to read:

**"45-5-212. Assault on minor.** (1) A person commits the offense of assault on a minor if the person commits an offense under 45-5-201, and at the time of the offense, the victim is under 14 years of age and the offender is 18 years of age or older.

(2) *(a) Except as provided in subsection (2)(b) or (2)(c), a* ~~A~~ person convicted of assault on a minor shall be imprisoned in a state prison for a term not to exceed 5 years or be fined not more than $50,000, or both.

*(b) If, at the time of the offense the victim is under 36 months of age, a person convicted of assault on a minor:*

*(i) for a first offense under this subsection (2)(b) shall be imprisoned in a state prison for a term not to exceed 10 years or be fined not more than $50,000, or both; or*

*(ii) for a second or subsequent offense under this subsection (2)(b) shall be imprisoned in a state prison for a term not to exceed 20 years or be fined not more than $50,000, or both.*

*(c) If, at the time of the offense the victim is under 36 months of age, a person convicted of assault on a minor that resulted in serious bodily injury to the victim:*

*(i) for a first offense under this subsection (2)(c) shall be imprisoned in a state prison for a term not to exceed 20 years or be fined not more than $50,000, or both; or*

*(ii) for a second or subsequent offense under this subsection (2)(c) shall be imprisoned in a state prison for a term not to exceed 40 years or be fined not more than $50,000, or both.*

*(3) An offender convicted of an offense under subsection (2)(b) or (2)(c) shall pay for and complete a counseling assessment with a focus on violence, controlling behavior, dangerousness, and chemical dependency and complete all recommendations for counseling, referrals, attendance at psychoeducational groups, or treatment, including any indicated chemical dependency treatment, made by the counseling provider. The counseling provider must be approved by the court and be a person licensed under Title 37, chapter 17, 22, or 23, or a professional person as defined in 53-21-102. The offender shall complete a minimum of 40 hours of counseling.*"

**Section 2.** Section 46-18-111, MCA, is amended to read:

**"46-18-111. Presentence investigation — when required.** (1) (a) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court shall consider the presentence investigation report prior to sentencing.

(b) If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-625, 45-5-627, 45-5-601(3), 45-5-602(3), or 45-5-603(2)(c) or if the defendant was convicted under 46-23-507 and the offender was convicted of failure to register as a sexual offender pursuant to Title 46, chapter 23, part 5, the investigation must include a psychosexual evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the defendant presents to the community and the defendant's needs, unless the defendant was sentenced under 46-18-219. The evaluation must be completed by a sex offender therapist who is a member of the Montana sex offender treatment association or has comparable credentials acceptable to the department of labor and industry. The psychosexual evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

*(c) If the defendant was convicted of an offense under 45-5-212(2)(b) or (2)(c), the investigation may include a mental health evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the defendant presents to the community and the defendant's needs. The evaluation must be completed by a qualified psychiatrist, licensed clinical psychologist, advanced practice registered nurse, or other professional with comparable credentials acceptable to the department of labor and industry. The mental health evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.*

~~(c)~~*(d)* When, pursuant to 46-14-311, the court has ordered a presentence investigation and a report pursuant to this section, the mental evaluation required by 46-14-311 must be attached to the presentence investigation report and becomes part of the report. The report must be made available to persons and entities as provided in 46-18-113.

(2) The court shall order a presentence investigation report unless the court makes a finding that a report is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation and parole officer is presented to and considered by the district court. The district court may order a presentence investigation for a defendant convicted of a misdemeanor only if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense as defined in 46-23-502.

(3) The defendant shall pay to the department of corrections a $50 fee at the time that the report is completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time. The fee may be retained by the department and used to finance contracts entered into under 53-1-203(5)."

**Section 3. Applicability.** [This act] applies to proceedings begun after [the effective date of this act].

Approved May 1, 2013

# CHAPTER NO. 379

[SB 324]

AN ACT GENERALLY REVISING SUBDIVISION LAWS RELATED TO LEASE OR RENT; PROVIDING FOR THE REGULATION OF BUILDINGS CREATED FOR LEASE OR RENT ON A SINGLE TRACT; PROVIDING EXEMPTIONS FROM REVIEW FOR CERTAIN BUILDINGS; REQUIRING CERTAIN BUILDINGS CREATED FOR LEASE OR RENT TO BE REVIEWED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY OR LOCAL REVIEWING AUTHORITY FOR SANITATION COMPLIANCE; AUTHORIZING A LOCAL GOVERNMENT TO REVIEW THE CREATION OF BUILDINGS FOR LEASE OR RENT IN CERTAIN CASES; PROVIDING MINIMUM REQUIREMENTS FOR LOCAL GOVERNMENT REGULATIONS; AUTHORIZING THE ADOPTION OF ADDITIONAL CRITERIA FOR THE LOCAL REVIEW OF CERTAIN BUILDINGS; PROVIDING DEFINITIONS; PROVIDING PENALTIES; REVISING LOCAL SUBDIVISION REGULATIONS; AMENDING SECTIONS 76-3-103, 76-3-504, 76-4-125, 76-6-203, AND 76-7-203, MCA; REPEALING SECTIONS 76-3-202, 76-3-204, AND 76-3-208, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, The Montana Subdivision and Platting Act provides for the local review of proposed subdivisions; and

WHEREAS, Title 76, chapter 3, part 2, provides miscellaneous exemptions from subdivision review for certain divisions of land and conveyances; and

WHEREAS, sections 76-3-202, 76-3-204, and 76-3-208, MCA, address the sale, lease, or rent or other conveyance of one or more parts of a building, structure, or other improvement; and

WHEREAS, section 76-3-204, MCA, provides that the sale, lease, rent, or other conveyance of one or more parts of a building, structure, or other improvement is not subject to subdivision review; and

WHEREAS, this exemption has been interpreted to exempt only one or more parts of a single building, structure, or improvement on a tract of record from subdivision review; and

WHEREAS, a strict interpretation of section 76-3-204, MCA, places an undue burden of undergoing full subdivision review on property owners who seek to lease or rent certain buildings; and

WHEREAS, it is the intent of the Legislature to provide an alternative process to subdivision review for the creation of buildings for lease or rent on tracts of land.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Definitions.** As used in [sections 1 through 8], the following definitions apply:

(1) "Building" means a structure or a unit of a structure with a roof supported by columns or walls for the permanent or temporary housing or enclosure of persons or property or for the operation of a business. Except as provided in 76-3-103(15) the term includes a recreational camping vehicle, mobile home, or cell tower. The term does not include a condominium or townhome.

(2) "Department" means the department of environmental quality provided for in 2-15-3501.

(3) "Governing body" means the legislative authority for a city, town, county, or consolidated city-county government.

(4) "Landowner" means an owner of a legal or equitable interest in real property. The term includes an heir, successor, or assignee of the ownership interest.

(5) "Local reviewing authority" means a local department or board of health that is approved to conduct reviews under Title 76, chapter 4.

(6) "Supermajority" means:

(a) an affirmative vote of at least two-thirds of the present and voting members of a city or town council;

(b) a unanimous affirmative vote of the present and voting county commissioners in counties with three county commissioners;

(c) an affirmative vote of at least four-fifths of the present and voting county commissioners in counties with five commissioners;

(d) an affirmative vote of at least two-thirds of the present and voting county commissioners in counties with more than five commissioners; or

(e) an affirmative vote of at least two-thirds of the present and voting members of the governing body of a consolidated city-county government.

(7) "Tract" means an individual parcel of land that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office.

**Section 2. Buildings for lease or rent — exemptions.** (1) A building created for lease or rent on a single tract is exempt from the provisions of [sections 1 through 8] if:

(a) the building is in conformance with applicable zoning regulations adopted pursuant to Title 76, chapter 2, parts 1 through 3, provided that the zoning contains the elements of [section 4]; or

(b) when applicable zoning regulations are not in effect:

(i) the building was in existence or under construction before [the effective date of this act];

(ii) the building is a facility as defined in 15-65-101 that is subject to the lodging facility use tax under Title 15, chapter 65, except for recreational camping vehicles or mobile home parks;

(iii) the building is created for lease or rent for farming or agricultural purposes;

(iv) the building is not served by water and wastewater and will not be leased or rented;

(v) the building is served by water and wastewater and the landowner records a notarized declaration with the clerk and recorder of the county in which the property is located stating that the proposed building will not be leased or rented. The declaration recorded pursuant to this subsection (1)(b)(v) runs with the land and is binding on the landowner and all subsequent landowners and successors in interest to the property. The declaration must include but is not limited to:

(A) the name and address of the landowner;

(B) a legal description of the tract upon which the proposed building will be located; and

(C) a specific description of the building on the tract of record.

(2) Any building that is exempt under subsection (1) from the provisions of [sections 1 through 8] and that is or will be served by water or wastewater must be in compliance with the provisions of [section 3].

(3) The exemption provided in subsection (1)(b)(i) is limited to the first three buildings created for lease or rent on a single tract.

**Section 3. Buildings for lease or rent — three or fewer buildings — application — review procedures.** (1) A landowner shall submit an application for the creation of the first three or fewer buildings for lease or rent on a single tract to the department or local reviewing authority for sanitation review if review is required by Title 76, chapter 4, or to the local board or department of health if review is required by Title 50.

(2) If the department or local reviewing authority approves the application, the landowner shall record the certificate of approval and any conditions for the approval of the application with the county clerk and recorder.

(3) If a building for lease or rent is created on a single tract on or after [the effective date of this act] and the tract is later subdivided or an exemption from subdivision review is used pursuant to Title 76, chapter 3, any building for lease or rent on the new tract is subject to the provisions of [sections 4 through 6].

**Section 4. Buildings for lease or rent — four or more buildings — regulations.** (1) A governing body shall adopt regulations for the administration and enforcement of the creation of four or more buildings for lease or rent on a single tract.

(2) The regulations adopted pursuant to this section must, at a minimum:

(a) list the materials that must be included in an application for the creation of four or more buildings for lease or rent;

(b) require a description of:

(i) property boundaries;

(ii) onsite and adjacent offsite streets, roads, and easements;

(iii) geographic features;

(iv) existing septic tanks and drainfields;

(v) existing wells; and

(vi) existing and proposed buildings;

(c) require adequate water supply and sewage and solid waste disposal facilities;

(d) require an assessment of potential significant impacts on the surrounding physical environment and human population in the area to be affected, including conditions, if any, that may be imposed on the proposal to avoid or minimize potential significant impacts identified;

(e) require adequate emergency medical, fire protection, and law enforcement services;

(f) require access to the site; and

(g) comply with applicable flood plain requirements.

(3) Prior to adopting regulations pursuant to this section, the governing body shall provide an opportunity for public hearing and comment on the proposed regulations. Notice of the public hearing must be published as provided in 7-1-2121 if the governing body is a county commission or as provided in 7-1-4127 if the governing body is a city commission or a town council and must be posted not less than 30 days before the public hearing in at least five public places, including but not limited to public buildings. Public comment must be addressed before the regulations are adopted.

**Section 5. Additional review criteria — four or more buildings for lease or rent.** (1) (a) Upon a majority vote, a governing body may increase the minimum number of buildings created for lease or rent that are subject to review by the governing body pursuant to [section 4]. The governing body may elect to increase the minimum number subject to review by the governing body for all buildings created for lease or rent or may limit the increase to specific types or uses of buildings created for lease or rent.

(b) For purposes of subsection (1)(a), the governing body shall adopt regulations pursuant to [section 4] identifying the number or types of buildings created for lease or rent that are subject to review by the governing body.

(2) Upon a supermajority vote, the governing body may adopt regulations pursuant to [section 4] for the purpose of reviewing four or more buildings for lease or rent that are in addition to the regulations provided in [section 4]. For purposes of this subsection, a governing body may adopt any regulations it considers necessary to protect public health, safety, or the general welfare.

**Section 6. Buildings for lease or rent — review procedure.** (1) Unless the buildings are exempt from review as provided in [section 2] or subject to review as provided in [section 3], an application for the creation of buildings for lease or rent on a single tract must be reviewed as provided in this section.

(2) An application pursuant to this section for the creation of buildings for lease or rent must be submitted for review to:

(a) the governing body or its agent or agency in which the buildings are proposed to be located; and

(b) the department or local reviewing authority if review by the department or local reviewing authority is required by Title 76, chapter 4 or to the local board or department of health if review is required by Title 50.

(3) (a) Upon receipt of an application and any applicable fees, the governing body or its agent or agency shall within 10 working days determine whether the application contains the required materials and sufficient information for review. The governing body or its agent or agency shall notify the applicant in writing as to whether the application is complete. If the application is

incomplete, the governing body shall identify any missing materials or insufficient information.

(b) After the governing body or its agent or agency has notified the applicant that the application is complete, the governing body shall approve, conditionally approve, or deny the application for the creation of buildings for lease or rent pursuant to this section within 60 working days. The applicant and the governing body may agree to extend the time for review in writing.

(c) Review and approval, conditional approval, or denial of an application for the creation of buildings for lease or rent pursuant to this section must be based upon the regulations in effect at the time an application is determined to be complete. If regulations change during the period that the application is determined to be complete, the determination of whether the application is complete must be based on the new regulations.

(4) The governing body may establish a reasonable fee to be paid by the landowner commensurate with the cost of reviewing applications submitted pursuant to this section.

(5) If the governing body denies, approves, or conditionally approves the proposed creation of buildings for lease or rent pursuant to this section, the governing body shall provide written notification to the landowner within the 60 working-day period provided in this section.

**Section 7. Actions against governing body and department.** (1) An applicant who has filed an application for the creation of buildings for lease or rent and who is aggrieved by a decision of the department or the local reviewing authority may request a hearing as provided in 76-4-126(1). For purposes of this subsection, the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to the proceeding.

(2) An applicant who has filed an application for the creation of buildings for lease or rent or a landowner with a property boundary contiguous to the tract on which the buildings are proposed to be located who is aggrieved by a decision of the governing body may, within 30 days of the date of the decision of the governing body, appeal to the district court in the county in which the property involved is located.

(3) For purposes of this section, "aggrieved" has the meaning provided in 76-3-625.

**Section 8. Violations — penalties.** (1) If any building is created in violation of [sections 1 through 8], the governing body may, in addition to assessing a fine or penalty not to exceed a maximum of $500, initiate an action to:

(a) prevent the unlawful creation of the building;

(b) restrain, correct, or abate a violation; or

(c) prevent the occupancy of the building.

(2) For the purposes of enforcing the provisions of [sections 1 through 8], the governing body shall attempt to obtain voluntary compliance from the landowner at least 30 days prior to initiating an action for a violation of [sections 1 through 8].

**Section 9.** Section 76-3-103, MCA, is amended to read:

**"76-3-103. Definitions.** As used in this chapter, unless the context or subject matter clearly requires otherwise, the following definitions apply:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Cluster development" means a subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped.

(3) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(4) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to ~~or possession of~~ a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land.

(5) "Examining land surveyor" means a registered land surveyor appointed by the governing body to review surveys and plats submitted for filing.

(6) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this chapter and in regulations adopted pursuant to this chapter.

(7) "Governing body" means a board of county commissioners or the governing authority of a city or town organized pursuant to law.

(8) "Immediate family" means a spouse, children by blood or adoption, and parents.

(9) "Minor subdivision" means a subdivision that creates five or fewer lots from a tract of record.

(10) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

(11) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

(12) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body.

(13) "Public utility" has the meaning provided in 69-3-101, except that for the purposes of this chapter, the term includes county or consolidated city and county water or sewer districts as provided for in Title 7, chapter 13, parts 22 and 23, and municipal sewer or water systems and municipal water supply systems established by the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44.

(14) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of land.

(15) "Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to ~~or possession of~~ the parcels may be sold~~, rented, leased,~~ or otherwise ~~conveyed~~ *transferred* and includes any resubdivision and ~~further includes~~ a condominium. ~~or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes~~ *The term also means an area, regardless of its size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed*.

(16) (a) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office.

(b) Each individual tract of record continues to be an individual parcel of land unless the owner of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:

(i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description that describes the resulting single parcel and in which the owner expressly declares the owner's intention that the tracts be merged; or

(ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have been expunged and depicts the boundaries of the larger aggregate parcel.

(c) An instrument of conveyance does not merge parcels of land under subsection (16)(b)(i) unless the instrument states, "This instrument is intended to merge individual parcels of land to form the aggregate parcel(s) described in this instrument" or a similar statement, in addition to the legal description of the aggregate parcels, clearly expressing the owner's intent to effect a merger of parcels."

**Section 10.** Section 76-3-504, MCA, is amended to read:

**"76-3-504. Subdivision regulations — contents.** (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);

(b) except as provided in 76-3-509, 76-3-609, or 76-3-616, require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;

(d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques or other mitigation measures authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.

(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(g) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;

(iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet the:

(A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that will create one or more parcels containing less than 20 acres; and

(B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and

(iv) the location and installation of public utilities;

(h) provide procedures for the administration of the park and open-space requirements of this chapter;

(i) provide for the review of subdivision applications by affected public utilities and those agencies of local, state, and federal government identified during the preapplication consultation conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

(j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

(k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:

(A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

(ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

(A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(B) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(m) require the subdivider to describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(n) establish whether the governing body, its authorized agent or agency, or both will hold public hearings;

(o) establish procedures describing how the governing body or its agent or agency will address information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

(p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.

(q) establish a preapplication process that:

(i) requires a subdivider to meet with the authorized agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;

(ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was

not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

(iv) requires that a preapplication meeting take place no more than 30 days from the date that the authorized agent or agency receives a written request for a preapplication meeting from the subdivider; and

(v) establishes a time limit after a preapplication meeting by which an application must be submitted as provided in 76-3-604;

(r) ~~requires~~ *require* that the written decision required by 76-3-620 must be provided to the applicant within 30 working days following a decision by the governing body to approve, conditionally approve, or deny a subdivision~~.~~*;*

*(s) establish criteria for reviewing an area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes.*

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster development.

(3) The governing body may establish deadlines for submittal of subdivision applications."

**Section 11.** Section 76-4-125, MCA, is amended to read:

**"76-4-125. Review of subdivision application — land divisions excluded from review.** (1) Except as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing authority. The review by the reviewing authority must be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must include preliminary plans and specifications for the proposed development, whatever information the developer feels necessary for its subsequent review, any public comments or summaries of public comments collected as provided in 76-3-604(7), and information required by the reviewing authority. Subdivision fees assessed by the reviewing authority must accompany the application. If the proposed development includes onsite sewage disposal facilities, the developer shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

(b) Within 5 working days after receipt of an application that is not subject to review by a local reviewing authority under 76-4-104, the department shall provide a written notice for informational purposes to the applicant if the application does not include a copy of the certification from the local health department required by 76-4-104(6)(j) or, if applicable, contain an approval from the local governing body under Title 76, chapter 3, together with any public comments or summaries of public comments collected as provided in 76-3-604(7)(a).

(c) If the reviewing authority denies an application and the applicant resubmits a corrected application within 30 days after the date of the denial letter, the reviewing authority shall complete review of the resubmitted application within 30 days after receipt of the resubmitted application. If the review of the resubmitted application is conducted by a local department or board of health that is certified under 76-4-104, the department shall make a

final decision on the application within 10 days after the local reviewing authority completes its review.

(d) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall make a final decision on the proposed subdivision within 55 days after the submission of a complete application and payment of fees to the reviewing authority unless an environmental impact statement is required, at which time this deadline may be increased to 120 days. The reviewing authority may not request additional information for the purpose of extending the time allowed for a review and final decision on the proposed subdivision. If the department approves the subdivision, the department shall issue a certificate of subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

(2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(a) the ~~exclusions~~ *exclusion* cited in 76-3-201 ~~and 76-3-204~~;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule;

(d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127, that adequate storm water drainage and adequate municipal facilities will be provided; and

(e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:

(i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system serving a discharge source that was in existence prior to April 29, 1993, and, if required when installed, the system was approved pursuant to local regulations or this chapter.

(3) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield."

**Section 12.** Section 76-6-203, MCA, is amended to read:

**"76-6-203. Types of permissible easements.** Easements or restrictions under this chapter may prohibit or limit any or all of the following:

(1) structures—construction or placing of buildings, camping trailers, housetrailers, mobile homes, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;

(2) landfill—dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;

(3) vegetation—removal or destruction of trees, shrubs, or other vegetation;

(4) loam, gravel, etc.—excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance;

(5) surface use—surface use except for such purposes permitting the land or water area to remain predominantly in its existing condition;

(6) acts detrimental to conservation—activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat and preservation;

(7) subdivision of land—subdivision of land as defined in 76-3-103~~,~~ *and* 76-3-104~~, and 76-3-202~~;

(8) other acts—other acts or uses detrimental to such retention of land or water areas in their existing conditions."

**Section 13.** Section 76-7-203, MCA, is amended to read:

**"76-7-203. Permissible easements.** (1) An environmental control easement under this chapter may prohibit or limit the following activities or uses:

(a) constructing or placing of buildings, camping trailers, housetrailers, mobile homes, roads, or other structures on or above the ground;

(b) dumping or placing of soil, debris, or other wastes or substances as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;

(c) removing or destroying trees, shrubs, or other vegetation or planting or allowing growth of specific types of vegetation, such as crops for human or animal consumption or undesirable vegetation;

(d) excavating, dredging, or removing of gravel, soil, rock, or other materials or substances;

(e) using the surface of the land in a particular manner, such as for agricultural, residential, commercial, or industrial uses;

(f) subdividing the land, as described in 76-3-103~~,~~ *and* 76-3-104~~, and 76-3-202~~;

(g) disturbing soil caps, soil surfaces, berms, drainage structures, or other structures or other activities that may cause erosion or migration of hazardous wastes or substances at or from the environmental control site;

(h) drilling or using water wells for potable or nonpotable purposes;

(i) other activities or uses detrimental to or interfering with the remediation or cleanup of the environmental control site or detrimental to the preservation of remedial structures, measures, or technologies employed at the environmental control site; and

(j) other activities or uses that may result in a risk or threat to the public health, safety, or welfare or the environment.

(2) An environmental control easement under this chapter may include or require the following:

(a) maintenance of environmental control site remedial structures or other remedial measures, such as soil surfaces, soil caps, berms, fences, or drainage improvements;

(b) rights in the holder of the easement or others for continuing access to the site as necessary to implement, operate, maintain, and monitor remedial work and technologies, including operation and maintenance, and to ensure

implementation and enforcement of the requirements, restrictions, and limitations specified in the easement instrument;

(c) prompt notification to the holder of the easement or others of transfers of all or any portion of an environmental control site or interest in the site or of any proposed changes in land use at the site;

(d) compliance with all requirements of any applicable governmental order;

(e) arrangements for indemnification or for reimbursement of any costs and expenses of the easement holder or others or other methods of allocating costs and expenses for remedial actions, operations and maintenance, or other activities on the environmental control site or with respect to the site;

(f) other obligations that any federal public entity or other public body having jurisdiction over the property determines are necessary to implement, ensure noninterference with, or ensure the protection of remedial work performed under a governmental order; or

(g) other obligations that are necessary or advisable to reduce or eliminate risks or threats to the public health, safety, or welfare or the environment at environmental control sites."

**Section 14. Repealer.** The following sections of the Montana Code Annotated are repealed:

76-3-202. Exemption for structures on complying subdivided lands.

76-3-204. Exemption for conveyances of one or more parts of a structure or improvement.

76-3-208. Subdivisions exempted from surveying and filing requirements but subject to review provisions.

**Section 15. Codification instruction.** [Sections 1 through 8] are intended to be codified as an integral part of Title 76, and the provisions of Title 76 apply to [sections 1 through 8].

**Section 16. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 17. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 18. Effective date.** [This act] is effective September 1, 2013.

**Section 19. Applicability.** [This act] applies to buildings created for lease or rent on a single tract on or after [the effective date of this act].

Approved May 1, 2013

# CHAPTER NO. 380

[HB 2]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 2015; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [This act] may be cited as "The General Appropriations Act of 2013".

**Section 2. First level expenditures.** The agency and program appropriation tables in the legislative fiscal analyst narrative accompanying this bill, showing first level expenditures and funding for the 2015 biennium, are adopted as legislative intent.

**Section 3. Legislative intent.** It is the intent of the legislature that the appropriations for personal services contained in this bill for fiscal year 2014 and fiscal year 2015, except for the reductions contained in decision packages that remove an additional vacancy savings amount, are supported by only the number of FTE that are funded. It is the intent of the legislature that this net level of FTE is the level that will be used to calculate personal services funding in the next biennium.

**Section 4. Severability.** If any section, subsection, sentence, clause, or phrase of [this act] is for any reason held unconstitutional, the decision does not affect the validity of the remaining portions of [this act].

**Section 5. Appropriation control.** An appropriation item designated "Biennial" may be spent in either year of the biennium. An appropriation item designated "Restricted" may be used during the biennium only for the purpose designated by its title and as presented to the legislature. An appropriation item designated "One Time Only" or "OTO" may not be included in the present law base for the 2017 biennium. The office of budget and program planning shall establish a separate appropriation on the statewide accounting, budgeting, and human resource system for any item designated "Biennial", "Restricted", "One Time Only", or "OTO". The office of budget and program planning shall establish at least one appropriation on the statewide accounting, budgeting, and human resource system for any appropriation that appears as a separate line item in [this act].

**Section 6. Program definition.** As used in [this act], "program" has the same meaning as defined in 17-7-102, is consistent with the management and accountability structure established on the statewide accounting, budgeting, and human resource system, and is identified as a major subdivision of an agency ordinally numbered with an Arabic numeral.

**Section 7. Totals not appropriations.** The totals shown in [this act] are for informational purposes only and are not appropriations.

**Section 8. Effective date.** [This act] is effective July 1, 2013.

**Section 9. Appropriations.** The following money is appropriated for the respective fiscal years:

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| | | | | A. GENERAL GOVERNMENT | | | | | | | |
| **LEGISLATIVE BRANCH (1104)** | | | | | | | | | | | |
| 1. Legislative Services (20) (Biennial) | | | | | | | | | | | |
| 6,549,178 | 842,029 | 0 | 0 | 0 | 7,391,207 | 7,058,675 | 322,210 | 0 | 0 | 0 | 7,380,885 |
| a. LSD Television MT Phase II (Restricted/OTO) | | | | | | | | | | | |
| 175,000 | 0 | 0 | 0 | 0 | 175,000 | 100,000 | 0 | 0 | 0 | 0 | 100,000 |
| b. LSD Information Technology Upgrade Replacements (Restricted/OTO) | | | | | | | | | | | |
| 112,500 | 0 | 0 | 0 | 0 | 112,500 | 112,500 | 0 | 0 | 0 | 0 | 112,500 |
| c. Participation in Capitol Complex Security Plan (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 80,000 | 0 | 0 | 0 | 0 | 80,000 | 80,000 | 0 | 0 | 0 | 0 | 80,000 |
| 2. Legislative Committees and Activities (21) (Biennial) | | | | | | | | | | | |
| 683,156 | 0 | 0 | 0 | 0 | 683,156 | 573,224 | 0 | 0 | 0 | 0 | 573,224 |
| 3. Fiscal Analysis and Review (27) (Biennial) | | | | | | | | | | | |
| 1,848,932 | 0 | 0 | 0 | 0 | 1,848,932 | 1,890,281 | 0 | 0 | 0 | 0 | 1,890,281 |
| 4. Audit and Examination (28) (Biennial) | | | | | | | | | | | |
| 2,350,469 | 1,679,189 | 0 | 0 | 0 | 4,029,658 | 2,337,728 | 1,682,572 | 0 | 0 | 0 | 4,020,300 |
| Total | | | | | | | | | | | |
| 11,799,235 | 2,521,218 | 0 | 0 | 0 | 14,320,453 | 12,152,408 | 2,004,782 | 0 | 0 | 0 | 14,157,190 |

Legislative Services includes a reduction in general fund of $166,311 in fiscal year 2014 and $167,463 in fiscal year 2015 and state special revenue of $42,898 in fiscal year 2014 and $43,083 in fiscal year 2015. The reduction is the equivalent of an additional 2% vacancy savings. The agency may allocate this reduction in funding among programs when developing 2015 biennium operating plans.

**CONSUMER COUNSEL (1112)**

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Administration Program (01) | | | | | | | | | | | |
| 0 | 1,384,324 | 0 | 0 | 0 | 1,384,324 | 0 | 1,398,316 | 0 | 0 | 0 | 1,398,316 |
| a. Unanticipated Caseload Contingency (Restricted/OTO) | | | | | | | | | | | |

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 0 | 250,000 | 0 | 0 | 0 | 250,000 | 0 | 250,000 | 0 | 0 | 0 | 250,000 |
| Total | | | | | | | | | | | |
| 0 | 1,634,324 | 0 | 0 | 0 | 1,634,324 | 0 | 1,648,316 | 0 | 0 | 0 | 1,648,316 |

**GOVERNOR'S OFFICE (3101)**

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Executive Office Program (01) | | | | | | | | | | | |
| 2,536,426 | 0 | 0 | 0 | 0 | 2,536,426 | 2,538,815 | 0 | 0 | 0 | 0 | 2,538,815 |
| 2. Executive Residence Operations (02) | | | | | | | | | | | |
| 129,473 | 0 | 0 | 0 | 0 | 129,473 | 130,674 | 0 | 0 | 0 | 0 | 130,674 |
| 3. Air Transportation Program (03) | | | | | | | | | | | |
| 244,376 | 0 | 0 | 0 | 0 | 244,376 | 245,649 | 0 | 0 | 0 | 0 | 245,649 |
| a. Airplane Maintenance Expenses (OTO) | | | | | | | | | | | |
| 90,000 | 0 | 0 | 0 | 0 | 90,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| 4. Office of Budget and Program Planning (04) | | | | | | | | | | | |
| 1,652,686 | 0 | 0 | 0 | 0 | 1,652,686 | 1,664,202 | 0 | 0 | 0 | 0 | 1,664,202 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 17,466 | 0 | 0 | 0 | 0 | 17,466 | 0 | 0 | 0 | 0 | 0 | 0 |
| 5. Office of Indian Affairs (05) | | | | | | | | | | | |
| 173,624 | 0 | 0 | 0 | 0 | 173,624 | 173,196 | 0 | 0 | 0 | 0 | 173,196 |
| 6. Centralized Services (06) | | | | | | | | | | | |
| 371,418 | 0 | 0 | 0 | 0 | 371,418 | 383,419 | 0 | 0 | 0 | 0 | 383,419 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 38,426 | 0 | 0 | 0 | 0 | 38,426 | 0 | 0 | 0 | 0 | 0 | 0 |
| 7. Lieutenant Governor (12) | | | | | | | | | | | |
| 336,530 | 0 | 0 | 0 | 0 | 336,530 | 340,782 | 0 | 0 | 0 | 0 | 340,782 |
| 8. Citizens' Advocate Office (16) | | | | | | | | | | | |
| 94,764 | 8,409 | 0 | 0 | 0 | 103,173 | 94,631 | 8,346 | 0 | 0 | 0 | 102,977 |

| | Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 9. Mental Disabilities Board of Visitors (20) | | | | | | | | | | | |
| 416,630 | 0 | 0 | 0 | 0 | 416,630 | 417,055 | 0 | 0 | 0 | 0 | 417,055 |
| Total | | | | | | | | | | | |
| 6,101,819 | 8,409 | 0 | 0 | 0 | 6,110,228 | 5,988,423 | 8,346 | 0 | 0 | 0 | 5,996,769 |

Executive Office Program includes a reduction in general fund of $89,342 in fiscal year 2014 and $89,575 in fiscal year 2015. The reduction is the equivalent of an additional 2% vacancy savings. The agency may allocate this reduction in funding among programs when developing 2015 biennium operating plans.

**SECRETARY OF STATE (3201)**

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Business and Government Services (01) | | | | | | | | | | | |
| ~~0~~ | ~~0~~ | ~~0~~ | ~~4,524,915~~ | ~~0~~ | ~~4,524,915~~ | 0 | 0 | 0 | ~~4,523,318~~ | ~~0~~ | ~~4,523,318~~ |
| ~~a. Legislative Audit (Restricted/Biennial)~~ | | | | | | | | | | | |
| ~~0~~ | ~~0~~ | ~~0~~ | ~~34,933~~ | ~~0~~ | ~~34,933~~ | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Help America Vote Act Interest (Biennial/OTO) | | | | | | | | | | | |
| 0 | 0 | 128,000 | 0 | 0 | 128,000 | 0 | 0 | 128,000 | 0 | 0 | 128,000 |
| ~~c. Statewide Voter Registration System (Restricted)~~ | | | | | | | | | | | |
| ~~0~~ | ~~0~~ | ~~0~~ | ~~690,629~~ | ~~0~~ | ~~690,629~~ | 0 | 0 | 0 | ~~694,029~~ | ~~0~~ | ~~694,029~~ |
| Total | | | | | | | | | | | |
| 0 | 0 | 128,000 | 5,250,477 | 0 | 5,378,477 | 0 | 0 | 128,000 | 5,217,347 | 0 | 5,345,347 |

~~Business and Government Services includes a reduction in proprietary funds of $63,583 in fiscal year 2014 and $63,553 in fiscal year 2015. The reduction is the equivalent of an additional 2% vacancy savings. The agency may allocate this reduction in funding among programs when developing 2015 biennium operating plans.~~

**COMMISSIONER OF POLITICAL PRACTICES (3202)**

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Administration (01) | | | | | | | | | | | |
| 474,308 | 0 | 0 | 0 | 0 | 474,308 | 484,949 | 0 | 0 | 0 | 0 | 484,949 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 7,685 | 0 | 0 | 0 | 0 | 7,685 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Agency Legal Counsel (OTO) | | | | | | | | | | | |
| 71,503 | 0 | 0 | 0 | 0 | 71,503 | 71,458 | 0 | 0 | 0 | 0 | 71,458 |
| c. Change in Agency Location (OTO) | | | | | | | | | | | |
| 34,630 | 0 | 0 | 0 | 0 | 34,630 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | | | | | | | | | | | |
| 588,126 | 0 | 0 | 0 | 0 | 588,126 | 556,407 | 0 | 0 | 0 | 0 | 556,407 |
| **OFFICE OF THE STATE AUDITOR (3401)** | | | | | | | | | | | |
| 1. Central Management (01) | | | | | | | | | | | |
| 0 | 1,562,694 | 0 | 0 | 0 | 1,562,694 | 0 | 1,567,396 | 0 | 0 | 0 | 1,567,396 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 0 | 8,384 | 0 | 0 | 0 | 8,384 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. IT System Upgrade (Restricted/OTO) | | | | | | | | | | | |
| 0 | 253,900 | 0 | 0 | 0 | 253,900 | 0 | 0 | 0 | 0 | 0 | 0 |
| c. Continuing Education Central Management (Restricted/OTO) | | | | | | | | | | | |
| 0 | 33,915 | 0 | 0 | 0 | 33,915 | 0 | 33,915 | 0 | 0 | 0 | 33,915 |
| 2. Insurance Program (03) | | | | | | | | | | | |
| 0 | 5,183,686 | 0 | 0 | 0 | 5,183,686 | 0 | 5,209,252 | 0 | 0 | 0 | 5,209,252 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 0 | 28,944 | 0 | 0 | 0 | 28,944 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Montana Comprehensive Health Association (Restricted) | | | | | | | | | | | |
| 0 | 946,455 | 0 | 0 | 0 | 946,455 | 0 | 943,696 | 0 | 0 | 0 | 943,696 |
| c. Insurance In-House Examinations (Restricted/OTO) | | | | | | | | | | | |
| 0 | 10,185 | 0 | 0 | 0 | 10,185 | 0 | 10,185 | 0 | 0 | 0 | 10,185 |
| d. Captive Insurance FTE (OTO) | | | | | | | | | | | |
| 0 | 64,736 | 0 | 0 | 0 | 64,736 | 0 | 60,091 | 0 | 0 | 0 | 60,091 |

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| e. Captive Regulatory and Supervision (Restricted/OTO) | | | | | | | | | | | |
| 0 | 85,000 | 0 | 0 | 0 | 85,000 | 0 | 95,000 | 0 | 0 | 0 | 95,000 |
| f. Biennial Financial Exams (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 0 | 186,604 | 0 | 0 | 0 | 186,604 | 0 | 186,604 | 0 | 0 | 0 | 186,604 |
| g. Continuing Education Market Conduct (Restricted/OTO) | | | | | | | | | | | |
| 0 | 18,800 | 0 | 0 | 0 | 18,800 | 0 | 11,900 | 0 | 0 | 0 | 11,900 |
| h. In-House Market Examinations (Restricted/OTO) | | | | | | | | | | | |
| 0 | 26,400 | 0 | 0 | 0 | 26,400 | 0 | 18,500 | 0 | 0 | 0 | 18,500 |
| i. Biennial Market Conduct Examinations (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 0 | 100,000 | 0 | 0 | 0 | 100,000 | 0 | 100,000 | 0 | 0 | 0 | 100,000 |
| j. Insure Montana Bridge (Restricted/OTO) | | | | | | | | | | | |
| 1,646,660 | 8,116,980 | 0 | 0 | 0 | 9,763,640 | 6,763,375 | 3,000,000 | 0 | 0 | 0 | 9,763,375 |
| 3. Securities (04) | | | | | | | | | | | |
| 0 | 1,066,923 | 0 | 0 | 0 | 1,066,923 | 0 | 1,070,203 | 0 | 0 | 0 | 1,070,203 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 0 | 5,988 | 0 | 0 | 0 | 5,988 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Biennial Contract Examinations (Restricted) | | | | | | | | | | | |
| 0 | 65,000 | 0 | 0 | 0 | 65,000 | 0 | 65,000 | 0 | 0 | 0 | 65,000 |
| Total | | | | | | | | | | | |
| 1,646,660 | 17,764,594 | 0 | 0 | 0 | 19,411,254 | 6,763,375 | 12,371,742 | 0 | 0 | 0 | 19,135,117 |

Central Management includes a reduction in state special revenue of $110,069 in fiscal year 2014 and $110,218 in fiscal year 2015. The reduction is the equivalent of an additional 2% vacancy savings. The agency may allocate this reduction in funding among programs when developing 2015 biennium operating plans.

**DEPARTMENT OF REVENUE (5801)**

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Director's Office (01) | | | | | | | | | | | |
| 4,624,346 | 105,554 | 0 | 75,861 | 0 | 4,805,761 | 4,638,337 | 105,384 | 0 | 77,114 | 0 | 4,820,835 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 173,663 | 0 | 1,000 | 0 | 0 | 174,663 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Overtime Pay for Timely Legislative Fiscal Notes (Restricted/OTO) | | | | | | | | | | | |
| 0 | 0 | 0 | 0 | 0 | 0 | 70,000 | 0 | 0 | 0 | 0 | 70,000 |
| 2. Information Management and Technology (02) | | | | | | | | | | | |
| 11,448,125 | 124,804 | 0 | 253,727 | 0 | 11,826,656 | 11,489,905 | 124,804 | 0 | 248,289 | 0 | 11,862,998 |
| a. Ongoing System Maintenance and Support Increase (Restricted) | | | | | | | | | | | |
| 500,000 | 0 | 0 | 0 | 0 | 500,000 | 500,000 | 0 | 0 | 0 | 0 | 500,000 |
| b. Enhance E-Services for Property and State Taxes (OTO) | | | | | | | | | | | |
| 304,790 | 0 | 0 | 0 | 0 | 304,790 | 0 | 0 | 0 | 0 | 0 | 0 |
| 3. Liquor Control Division (03) | | | | | | | | | | | |
| 0 | 0 | 0 | 2,467,380 | 0 | 2,467,380 | 0 | 0 | 0 | 2,437,330 | 0 | 2,437,330 |
| a. Termination Payout (Restricted/Biennial) | | | | | | | | | | | |
| 0 | 0 | 0 | 60,000 | 0 | 60,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Temporary and Overtime Pay (Restricted/Biennial) | | | | | | | | | | | |
| 0 | 0 | 0 | 130,000 | 0 | 130,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| 4. Citizen Services and Resource Management (05) | | | | | | | | | | | |
| 3,404,557 | 211,838 | 0 | 36,861 | 0 | 3,653,256 | 3,397,550 | 212,123 | 0 | 36,577 | 0 | 3,646,250 |
| a. Web-Based Application Portal for One-Stop Licensing (Restricted/OTO) | | | | | | | | | | | |
| 21,400 | 0 | 0 | 0 | 0 | 21,400 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Web-Based Application Portal for One-Stop Licensing (Restricted) | | | | | | | | | | | |
| 11,500 | 0 | 0 | 0 | 0 | 11,500 | 11,500 | 0 | 0 | 0 | 0 | 11,500 |
| 5. Business and Income Taxes Division (07) | | | | | | | | | | | |
| 8,868,207 | 368,450 | 247,447 | 0 | 0 | 9,484,104 | 8,847,066 | 369,166 | 247,312 | 0 | 0 | 9,463,544 |
| a. Tobacco Tax Compliance Program (Restricted) | | | | | | | | | | | |
| 0 | 179,876 | 0 | 0 | 0 | 179,876 | 0 | 179,609 | 0 | 0 | 0 | 179,609 |
| b. Unclaimed Property Compliance Program (Restricted) | | | | | | | | | | | |
| 0 | 108,618 | 0 | 0 | 0 | 108,618 | 0 | 108,468 | 0 | 0 | 0 | 108,468 |
| 6. Property Assessment Division (08) | | | | | | | | | | | |

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 19,672,756 | 53,171 | 0 | 0 | 0 | 19,725,927 | 19,656,973 | 53,171 | 0 | 0 | 0 | 19,710,144 |
| a. 6-Year Reappraisal Cycle Needs (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 754,870 | 0 | 0 | 0 | 0 | 754,870 | 987,660 | 0 | 0 | 0 | 0 | 987,660 |
| ~~b. Review of Active Exempt Property Records (Restricted/OTO)~~ | | | | | | | | | | | |
| ~~145,918~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~145,918~~ | ~~124,210~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~124,210~~ |
| Total | | | | | | | | | | | |
| 49,930,132 | 1,152,311 | 248,447 | 3,023,829 | 0 | 54,354,719 | 49,723,201 | 1,152,725 | 247,312 | 2,799,310 | 0 | 53,922,548 |

Director's Office includes a reduction in general fund of $720,405 in fiscal year 2014 and $720,965 in fiscal year 2015, state special revenue of $8,582 in fiscal year 2014 and $8,587 in fiscal year 2015, and proprietary funds of $38,523 in fiscal year 2014 and $38,549 in fiscal year 2015. The reduction is the equivalent of an additional 2% vacancy savings. The agency may allocate this reduction in funding among programs when developing 2015 biennium operating plans.

Liquor Control Division proprietary funds necessary to maintain adequate inventories, pay freight charges, and transfer profits and taxes to appropriate accounts are appropriated from the liquor enterprise fund (06005) to the department in the amounts not to exceed $124 million in fiscal year 2014 and $130 million in fiscal year 2015.

Business and Income Taxes Division includes a reduction in federal special revenue of $4,164 in fiscal year 2014 and $4,167 in fiscal year 2015. The reduction is the equivalent of an additional 2% vacancy savings. The agency may allocate this reduction in funding among programs when developing 2015 biennium operating plans.

**DEPARTMENT OF ADMINISTRATION (6101)**

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Director's Office (01) | | | | | | | | | | | |
| 70,824 | 0 | 16,464 | 0 | 0 | 87,288 | 70,796 | 0 | 16,434 | 0 | 0 | 87,230 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 57,448 | 0 | 0 | 0 | 0 | 57,448 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2. State Accounting Division (03) | | | | | | | | | | | |
| 1,298,230 | 0 | 1,066 | 16,815 | 0 | 1,316,111 | 1,296,348 | 0 | 1,065 | 16,714 | 0 | 1,314,127 |
| 3. Architecture and Engineering Program (04) | | | | | | | | | | | |
| 0 | 1,861,812 | 0 | 0 | 0 | 1,861,812 | 0 | 1,862,705 | 0 | 0 | 0 | 1,862,705 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 0 | 1,315 | 0 | 0 | 0 | 1,315 | 0 | 0 | 0 | 0 | 0 | 0 |
| 4. General Services Program (06) | | | | | | | | | | | |
| 784,099 | 62,144 | 0 | 0 | 0 | 846,243 | 782,970 | 61,981 | 0 | 0 | 0 | 844,951 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 0 | 37 | 0 | 0 | 0 | 37 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Facilities Management for Common Areas (OTO) | | | | | | | | | | | |
| 1,220,023 | 0 | 0 | 0 | 0 | 1,220,023 | 1,173,196 | 0 | 0 | 0 | 0 | 1,173,196 |
| 5. State Information Technology Services Division (07) | | | | | | | | | | | |
| 458,554 | 382,378 | 0 | 0 | 0 | 840,932 | 460,823 | 383,210 | 0 | 0 | 0 | 844,033 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 0 | 731 | 0 | 0 | 0 | 731 | 0 | 0 | 0 | 0 | 0 | 0 |
| c. FirstNet Planning Grant (Restricted/Biennial) | | | | | | | | | | | |
| 0 | 0 | 930,000 | 0 | 0 | 930,000 | 0 | 0 | 930,000 | 0 | 0 | 930,000 |
| 6. Banking and Financial Division (14) | | | | | | | | | | | |
| 0 | 3,667,358 | 0 | 0 | 0 | 3,667,358 | 0 | 3,668,375 | 0 | 0 | 0 | 3,668,375 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 0 | 2,401 | 0 | 0 | 0 | 2,401 | 0 | 0 | 0 | 0 | 0 | 0 |
| 7. Montana State Lottery (15) | | | | | | | | | | | |
| 0 | 0 | 0 | 4,869,591 | 0 | 4,869,591 | 0 | 0 | 0 | 4,869,471 | 0 | 4,869,471 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 0 | 0 | 0 | 110,145 | 0 | 110,145 | 0 | 0 | 0 | 0 | 0 | 0 |
| ~~8. Health Care and Benefits Division (21)~~ | | | | | | | | | | | |
| ~~0~~ | ~~0~~ | ~~0~~ | ~~7,432,079~~ | ~~0~~ | ~~7,432,079~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~7,435,132~~ | ~~0~~ | ~~7,435,132~~ |
| ~~a. Legislative Audit (Restricted/Biennial)~~ | | | | | | | | | | | |
| ~~0~~ | ~~0~~ | ~~0~~ | ~~8,471~~ | ~~0~~ | ~~8,471~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~0~~ |
| 9. State Human Resources Division (23) | | | | | | | | | | | |
| 1,837,397 | 0 | 0 | 0 | 0 | 1,837,397 | 1,835,169 | 0 | 0 | 0 | 0 | 1,835,169 |
| 10. State Tax Appeal Board (37) | | | | | | | | | | | |

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 566,285 | 0 | 0 | 0 | 0 | 566,285 | 566,319 | 0 | 0 | 0 | 0 | 566,319 |
| Total | | | | | | | | | | | |
| 6,292,860 | 5,978,176 | 947,530 | 12,437,101 | 0 | 25,655,667 | 6,185,621 | 5,976,271 | 947,499 | 12,321,317 | 0 | 25,430,708 |

State Accounting Division includes a reduction in general fund of $82,148 in fiscal year 2014 and $82,197 in fiscal year 2015, federal special revenue of $1 in fiscal year 2015, and proprietary funds of $38,289 in fiscal year 2014 and $38,310 in fiscal year 2015. Banking and Financial Division includes a reduction in state special revenue of $95,259 in fiscal year 2014 and $95,306 in fiscal year 2015. The reductions are the equivalent of an additional 2% vacancy savings. The agency may allocate these reductions in funding among programs when developing 2015 biennium operating plans.

If House Bill No. 38 is not passed and approved, State Information Technology Services Division is increased by $943,612 in fiscal year 2014 and $943,342 in fiscal year 2015 in state special revenue.

**DEPARTMENT OF COMMERCE (6501)**

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Business Resources Division (51) | | | | | | | | | | | |
| 1,930,520 | 2,182,098 | 3,925,555 | 0 | 0 | 8,038,173 | 1,933,880 | 2,182,853 | 4,142,678 | 0 | 0 | 8,259,411 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 3,448 | 1,150 | 3,066 | 0 | 0 | 7,664 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Indian County Economic Development (OTO) | | | | | | | | | | | |
| 800,000 | 0 | 0 | 0 | 0 | 800,000 | 800,000 | 0 | 0 | 0 | 0 | 800,000 |
| c. Primary Business Sector Training (Biennial/OTO) | | | | | | | | | | | |
| 600,000 | 800,000 | 0 | 0 | 0 | 1,400,000 | 600,000 | 800,000 | 0 | 0 | 0 | 1,400,000 |
| d. Montana SBIR/STTR Program (Restricted/Biennial) | | | | | | | | | | | |
| 375,000 | 0 | 0 | 0 | 0 | 375,000 | 375,000 | 0 | 0 | 0 | 0 | 375,000 |
| e. Biomedical Research Grant (Biennial/OTO) | | | | | | | | | | | |
| 1,000,000 | 0 | 0 | 0 | 0 | 1,000,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| f. MSU Bozeman — Montana Manufacturing Extension Center (Restricted/OTO) | | | | | | | | | | | |
| 50,000 | 0 | 0 | 0 | 0 | 50,000 | 50,000 | 0 | 0 | 0 | 0 | 50,000 |
| g. Native Language Preservation (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 1,000,000 | 0 | 0 | 0 | 0 | 1,000,000 | 1,000,000 | 0 | 0 | 0 | 0 | 1,000,000 |

| | Fiscal 2014 | | | | | | Fiscal 2015 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 2. Montana Promotion Division (52) | | | | | | | | | | | |
| 0 | 164,258 | 0 | 0 | 0 | 164,258 | 0 | 164,282 | 0 | 0 | 0 | 164,282 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 0 | 36,229 | 0 | 0 | 0 | 36,229 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Private Funds/Audit Adjustments (Restricted) | | | | | | | | | | | |
| 0 | 585,742 | 0 | 0 | 0 | 585,742 | 0 | 585,718 | 0 | 0 | 0 | 585,718 |
| 3. Community Development Division (60) | | | | | | | | | | | |
| 700,376 | 1,161,072 | 5,303,560 | 0 | 0 | 7,165,008 | 701,869 | 1,150,640 | 5,304,174 | 0 | 0 | 7,156,683 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 1,875 | 2,946 | 1,160 | 0 | 0 | 5,981 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Coal Board (Biennial) | | | | | | | | | | | |
| 0 | 2,148,386 | 0 | 0 | 0 | 2,148,386 | 0 | 1,770,425 | 0 | 0 | 0 | 1,770,425 |
| c. Hard Rock Mining Reserve (Restricted) | | | | | | | | | | | |
| 0 | 100,000 | 0 | 0 | 0 | 100,000 | 0 | 100,000 | 0 | 0 | 0 | 100,000 |
| 4. Housing Division (74) | | | | | | | | | | | |
| 0 | 150,000 | 7,790,698 | 0 | 0 | 7,940,698 | 0 | 150,000 | 7,798,846 | 0 | 0 | 7,948,846 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 0 | 0 | 3,639 | 0 | 0 | 3,639 | 0 | 0 | 0 | 0 | 0 | 0 |
| 5. Director's Office/Management Services Division (81) | | | | | | | | | | | |
| 0 | 0 | 550,000 | 0 | 0 | 550,000 | 0 | 0 | 550,000 | 0 | 0 | 550,000 |
| Total | | | | | | | | | | | |
| 6,461,219 | 7,331,881 | 17,577,678 | 0 | 0 | 31,370,778 | 5,460,749 | 6,903,918 | 17,795,698 | 0 | 0 | 30,160,365 |

Business Resources Division includes a reduction in general fund of $23,145 in fiscal year 2014 and $23,155 in fiscal year 2015, state special revenue of $14,536 in fiscal year 2014 and $14,503 in fiscal year 2015, and federal special revenue of $30,866 in fiscal year 2014 and $30,883 in fiscal year 2015. The reduction is the equivalent of an additional 2% vacancy savings. The agency may allocate this reduction in funding among programs when developing 2015 biennium operating plans.

If Senate Bill No. 342 is not passed and approved, Native American Language Preservation is void.

| | Fiscal 2014 | | | | | | Fiscal 2015 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| **DEPARTMENT OF LABOR AND INDUSTRY (6602)** | | | | | | | | | | | |
| 1. Workforce Services Division (01) | | | | | | | | | | | |
| 0 | 9,137,219 | 22,393,970 | 0 | 0 | 31,531,189 | 0 | 9,137,421 | 22,410,064 | 0 | 0 | 31,547,485 |
| a. Workforce Services Division Rent Adjustment (Restricted) | | | | | | | | | | | |
| 3,246 | 4,458 | 13,863 | 0 | 0 | 21,567 | 3,246 | 4,458 | 13,863 | 0 | 0 | 21,567 |
| ~~b. Worker Training and Economic Development (OTO)~~ | | | | | | | | | | | |
| ~~0~~ | ~~641,146~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~641,146~~ | ~~0~~ | ~~641,655~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~641,655~~ |
| 2. Unemployment Insurance Division (02) | | | | | | | | | | | |
| 0 | 3,847,656 | 9,689,157 | 0 | 0 | 13,536,813 | 0 | 3,847,656 | 9,837,415 | 0 | 0 | 13,685,071 |
| 3. Commissioner's Office/Centralized Services Division (03) | | | | | | | | | | | |
| 183,517 | 221,626 | 384,295 | 0 | 0 | 789,438 | 183,242 | 221,581 | 383,786 | 0 | 0 | 788,609 |
| 4. Employment Relations Division (04) | | | | | | | | | | | |
| 973,626 | 10,390,657 | 378,930 | 0 | 0 | 11,743,213 | 999,608 | 10,428,837 | 350,792 | 0 | 0 | 11,779,237 |
| a. Rent Adjustment (Restricted) | | | | | | | | | | | |
| 811 | 32,329 | 492 | 0 | 0 | 33,632 | 833 | 34,609 | 505 | 0 | 0 | 35,947 |
| b. Human Rights Bureau (OTO) | | | | | | | | | | | |
| 0 | 0 | 250,000 | 0 | 0 | 250,000 | 0 | 0 | 225,000 | 0 | 0 | 225,000 |
| 5. Business Standards Division (05) | | | | | | | | | | | |
| 0 | 15,468,858 | 0 | 0 | 0 | 15,468,858 | 0 | 15,413,790 | 0 | 0 | 0 | 15,413,790 |
| a. Weights and Measures Equipment (Restricted/Biennial) | | | | | | | | | | | |
| 0 | 100,000 | 0 | 0 | 0 | 100,000 | 0 | 100,000 | 0 | 0 | 0 | 100,000 |
| b. Business Standards Division — Motor Pool Lease (Restricted) | | | | | | | | | | | |
| 0 | 6,331 | 0 | 0 | 0 | 6,331 | 0 | 6,634 | 0 | 0 | 0 | 6,634 |
| 6. Office of Community Services (07) | | | | | | | | | | | |
| 124,171 | 27,266 | 3,422,703 | 0 | 0 | 3,574,140 | 124,195 | 27,272 | 3,423,325 | 0 | 0 | 3,574,792 |
| 7. Workers' Compensation Court (09) | | | | | | | | | | | |
| 0 | 649,765 | 0 | 0 | 0 | 649,765 | 0 | 650,621 | 0 | 0 | 0 | 650,621 |

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| Total | | | | | | | | | | | |
| 1,285,371 | 40,527,311 | 36,533,410 | 0 | 0 | 78,346,092 | 1,311,124 | 40,514,534 | 36,644,750 | 0 | 0 | 78,470,408 |

Employment Relations Division includes a reduction in state special revenue of $520,391 in fiscal year 2014 and $493,141 in fiscal year 2015 and federal special revenue of $388,035 in fiscal year 2014 and $416,258 in fiscal year 2015. The reduction is the equivalent of an additional 2% vacancy savings. The agency may allocate this reduction in funding among programs when developing 2015 biennium operating plans.

Weights and Measures Equipment is contingent upon the passage and approval of House Bill No. 591.

**DEPARTMENT OF MILITARY AFFAIRS (6701)**

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Centralized Services (01) | | | | | | | | | | | |
| 717,760 | 0 | 313,147 | 0 | 0 | 1,030,907 | 717,057 | 0 | 313,143 | 0 | 0 | 1,030,200 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 9,781 | 0 | 0 | 0 | 0 | 9,781 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2. ChalleNGe Program (02) | | | | | | | | | | | |
| 847,738 | 0 | 2,710,914 | 0 | 0 | 3,558,652 | 848,719 | 0 | 2,716,573 | 0 | 0 | 3,565,292 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 1,572 | 0 | 4,716 | 0 | 0 | 6,288 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Funding for ChalleNGe 24/7 Overtime (Restricted) | | | | | | | | | | | |
| 10,000 | 0 | 30,000 | 0 | 0 | 40,000 | 10,000 | 0 | 30,000 | 0 | 0 | 40,000 |
| ~~c. ChalleNGe Recruitment and Retention (Restricted)~~ | | | | | | | | | | | |
| ~~56,250~~ | ~~0~~ | ~~168,750~~ | ~~0~~ | ~~0~~ | ~~225,000~~ | ~~56,250~~ | ~~0~~ | ~~168,750~~ | ~~0~~ | ~~0~~ | ~~225,000~~ |
| 3. National Guard Scholarship Program (03) (Biennial) | | | | | | | | | | | |
| 209,409 | 0 | 0 | 0 | 0 | 209,409 | 209,409 | 0 | 0 | 0 | 0 | 209,409 |
| 4. STARBASE Program (04) | | | | | | | | | | | |
| 0 | 0 | 656,883 | 0 | 0 | 656,883 | 0 | 0 | 656,697 | 0 | 0 | 656,697 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 0 | 0 | 1,397 | 0 | 0 | 1,397 | 0 | 0 | 0 | 0 | 0 | 0 |
| 5. Army National Guard Program (12) | | | | | | | | | | | |

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 1,636,659 | 2,000 | 12,709,264 | 0 | 0 | 14,347,923 | 1,643,639 | 2,000 | 12,749,499 | 0 | 0 | 14,395,138 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 2,456 | 0 | 26,189 | 0 | 0 | 28,645 | 0 | 0 | 0 | 0 | 0 | 0 |
| 6. Air National Guard Program (13) | | | | | | | | | | | |
| 395,616 | 0 | 4,115,831 | 0 | 0 | 4,511,447 | 399,460 | 0 | 4,133,131 | 0 | 0 | 4,532,591 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 1,048 | 0 | 5,240 | 0 | 0 | 6,288 | 0 | 0 | 0 | 0 | 0 | 0 |
| 7. Disaster and Emergency Services (21) | | | | | | | | | | | |
| 1,067,500 | 233,539 | 16,821,604 | 0 | 0 | 18,122,643 | 1,067,454 | 236,536 | 14,825,674 | 0 | 0 | 16,129,664 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 3,318 | 0 | 9,956 | 0 | 0 | 13,274 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Federal Homeland Security Exercise/Evaluation (Restricted) | | | | | | | | | | | |
| 27,330 | 0 | 0 | 0 | 0 | 27,330 | 27,290 | 0 | 0 | 0 | 0 | 27,290 |
| c. Systems for State Emergency Coordination Center (Restricted) | | | | | | | | | | | |
| 15,000 | 0 | 0 | 0 | 0 | 15,000 | 15,000 | 0 | 0 | 0 | 0 | 15,000 |
| d. Disaster and Emergency Services Overtime (Restricted) | | | | | | | | | | | |
| 19,488 | 0 | 0 | 0 | 0 | 19,488 | 19,488 | 0 | 0 | 0 | 0 | 19,488 |
| 8. Veterans' Affairs Program (31) | | | | | | | | | | | |
| 881,470 | 864,951 | 0 | 0 | 0 | 1,746,421 | 885,664 | 763,010 | 0 | 0 | 0 | 1,648,674 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 4,192 | 0 | 0 | 0 | 0 | 4,192 | 0 | 0 | 0 | 0 | 0 | 0 |
| b, Veterans' Outreach Services (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 180,000 | 0 | 0 | 0 | 0 | 180,000 | 180,000 | 0 | 0 | 0 | 0 | 180,000 |
| Total | | | | | | | | | | | |
| 6,086,587 | 1,100,490 | 37,573,891 | 0 | 0 | 44,760,968 | 6,079,430 | 1,001,546 | 35,593,467 | 0 | 0 | 42,674,443 |

Disaster and Emergency Services includes a reduction in general fund of $59,763 in fiscal year 2014 and $59,809 in fiscal year 2015, state special revenue of $14,211 in fiscal year 2014 and $14,214 in fiscal year 2015, and federal special revenue of $160,814 in fiscal year 2014 and $157,978 in fiscal year 2015. The reduction

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| TOTAL SECTION A | | | | | | | | | | | |
| 90,192,009 | 78,018,714 | 93,008,956 | 20,711,407 | 0 | 281,931,086 | 94,220,738 | 71,582,180 | 91,356,726 | 20,337,974 | 0 | 277,497,618 |

is the equivalent of an additional 2% vacancy savings. The agency may allocate this reduction in funding among programs when developing 2015 biennium operating plans.

| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Fiscal 2014 | | | | | | Fiscal 2015 | | | |

B. HEALTH AND HUMAN SERVICES

**DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES (6901)**

**Economic Security Services Branch (6902)**

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Disability Employment and Transitions (01) | | | | | | | | | | | |
| 5,602,510 | 980,372 | 21,448,273 | 0 | 0 | 28,031,155 | 5,673,164 | 997,760 | 21,566,859 | 0 | 0 | 28,237,783 |
| 2. Human and Community Services Division (02) | | | | | | | | | | | |
| 32,598,934 | 2,856,038 | 109,467,273 | 0 | 0 | 144,922,245 | 33,358,206 | 2,856,327 | 109,931,571 | 0 | 0 | 146,146,104 |
| a. Offices of Public Assistance FTE (Restricted/OTO) | | | | | | | | | | | |
| 117,588 | 10,964 | 131,886 | 0 | 0 | 260,438 | 110,950 | 10,345 | 124,441 | 0 | 0 | 245,736 |
| b. TANF WoRC Contracts 3% Increase | | | | | | | | | | | |
| 170,771 | 0 | 0 | 0 | 0 | 170,771 | 175,849 | 0 | 0 | 0 | 0 | 175,849 |
| c. TANF CASA Programs (OTO) | | | | | | | | | | | |
| 0 | 0 | 150,000 | 0 | 0 | 150,000 | 0 | 0 | 150,000 | 0 | 0 | 150,000 |
| d. Best Beginnings STARS (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 0 | 0 | 1,200,000 | 0 | 0 | 1,200,000 | 0 | 0 | 1,200,000 | 0 | 0 | 1,200,000 |
| 3. Child and Family Services Division (03) | | | | | | | | | | | |
| 33,890,067 | 2,187,150 | 28,107,716 | 0 | 0 | 64,184,933 | 34,554,026 | 2,187,150 | 28,406,690 | 0 | 0 | 65,147,866 |
| a. Guardianship Caseload (Restricted/OTO) | | | | | | | | | | | |
| 88,591 | 0 | 56,258 | 0 | 0 | 144,849 | 128,999 | 0 | 79,453 | 0 | 0 | 208,452 |
| ~~b. Reporting~~ | | | | | | | | | | | |
| ~~1,000~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~1,000~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~0~~ |
| c. Foster Care Caseload (Restricted) | | | | | | | | | | | |
| 729,288 | 0 | 176,017 | 0 | 0 | 905,305 | 1,088,638 | 0 | 143,751 | 0 | 0 | 1,232,389 |
| d. Tribal Foster Care (Restricted/OTO) | | | | | | | | | | | |
| 200,000 | 0 | 0 | 0 | 0 | 200,000 | 200,000 | 0 | 0 | 0 | 0 | 200,000 |
| e. Foster Care Stipend (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 0 | 0 | 577,613 | 0 | 0 | 577,613 | 0 | 0 | 577,613 | 0 | 0 | 577,613 |

| | Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 4. Child Support Enforcement Division (05) | | | | | | | | | | | | |
| 2,846,378 | 818,346 | 7,858,935 | 0 | 0 | 11,523,659 | 2,853,471 | 825,577 | 7,886,738 | 0 | 0 | 11,565,786 |
| Total | | | | | | | | | | | | |
| 76,245,127 | 6,852,870 | 169,173,971 | 0 | 0 | 252,271,968 | 78,143,303 | 6,877,159 | 170,067,116 | 0 | 0 | 255,087,578 |

The Disability Employment and Transitions Division is appropriated $775,000 of state special revenue from the Montana Telecommunications Access Program (MTAP) during each year of the 2015 biennium to cover a contingent FCC mandate, which would require states to provide either video or internet protocol relay services for people with severe hearing, mobility or speech impairments.

The department of public health and human services must use $171,610 in fiscal year 2014 and $346,652 in fiscal year 2015 of funds in the Disability Employment and Transitions Division to raise provider rates by 2% in fiscal year 2014 and by an additional 2% in fiscal year 2015.

The department of public health and human services must use $489,482 in fiscal year 2014 and $988,754 in fiscal year 2015 of funds in the Human and Community Services Division to raise provider rates by 2% in fiscal year 2014 and by an additional 2% in fiscal year 2015.

If legislation authorizing a statutory appropriation for SNAP benefits is not passed and approved, the appropriation for the Human and Community Services Division is increased by $190,942,034 federal funds each year.

Funding for Offices of Public Assistance FTE may be expended only by the Human and Community Services Division.

Best Beginnings STARS funding may be used only by the Early Childhood Services Bureau to enhance the Best Beginnings STARS quality incentive programs.

Best Beginnings STARS, Prevent Jail Suicide, and Montana State Hospital Overtime Pay are funded from a federal children's health insurance program reauthorization grant. If grant funds are insufficient to fund all appropriations, the funding shall be allocated in the following order of priority:

(1) Montana State Hospital Overtime Pay;

(2) Prevent Jail Suicide; and

(3) Best Beginnings STARS.

The department of public health and human services must use $310,724 in fiscal year 2014 and $627,662 in fiscal year 2015 of funds in the Child and Family Services Division to raise provider rates by 2% in fiscal year 2014 and by an additional 2% in fiscal year 2015.

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |

~~The Child and Family Services Division shall report to the children, families, health, and human services interim committee by June 30, 2014, and to the 2015 session joint appropriations subcommittee on health and human services on the policies and procedures developed for the implementation of House Bill No. 131 and Senate Bill No. 65 and cases that resulted in better outcomes for children and families.~~

Funding for Foster Case Caseload may be expended only by the Child and Family Services Division for projected increases in the caseload.

Funding for Tribal Foster Care may be used only by the Child and Family Services Division for non-Title IV-E billable services provided to tribal children living on the reservation.

Funding for Foster Care Stipend may be used only by the Child and Family Services Division to pay stipends to families who provide regular foster care in a youth foster home and kinship families who provide regular foster care in a kinship foster home of an estimated 75 cents per day in addition to the daily foster care maintenance payment. The Child and Family Services Division may adjust the stipend amount to reflect the funding of $577,613 each year of the biennium with the actual number of children placed in regular family foster care and kinship foster care.

**Director's Office (6904)**

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Director's Office (04) | | | | | | | | | | | |
| 1,648,159 | 406,138 | 1,721,429 | 0 | 0 | 3,775,726 | 1,647,626 | 406,095 | 1,721,057 | 0 | 0 | 3,774,778 |
| Total | | | | | | | | | | | |
| 1,648,159 | 406,138 | 1,721,429 | 0 | 0 | 3,775,726 | 1,647,626 | 406,095 | 1,721,057 | 0 | 0 | 3,774,778 |

Contingent upon passage and approval of House Bill No. 76, Director's Office includes a reduction in general fund of $125,000 in fiscal year 2014 and fiscal year 2015. The agency may allocate this reduction in funding among divisions when developing the 2015 biennium operating plans.

**Operations Services Branch (6906)**

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Business and Financial Services Division (06) | | | | | | | | | | | |
| 3,189,232 | 605,652 | 4,621,831 | 0 | 0 | 8,416,715 | 3,163,484 | 597,982 | 4,569,684 | 0 | 0 | 8,331,150 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 154,666 | 12,892 | 195,740 | 0 | 0 | 363,298 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2. Quality Assurance Division (08) | | | | | | | | | | | |
| 2,551,731 | 552,404 | 5,969,123 | 0 | 0 | 9,073,258 | 2,554,836 | 553,881 | 5,971,595 | 0 | 0 | 9,080,312 |
| 3. Technology Services Division (09) | | | | | | | | | | | |

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 11,552,729 | 1,165,416 | 19,753,775 | 0 | 0 | 32,471,920 | 11,248,543 | 1,164,041 | 19,419,146 | 0 | 0 | 31,831,730 |
| a. CHIMES Medicaid/HMK and TEAMS (Restricted/OTO) | | | | | | | | | | | |
| 329,953 | 15,789 | 3,093,584 | 0 | 0 | 3,439,326 | 282,428 | 20,406 | 3,434,834 | 0 | 0 | 3,737,668 |
| b. MACWIS Planning Completion (Biennial/OTO) | | | | | | | | | | | |
| 0 | 113,750 | 61,250 | 0 | 0 | 175,000 | 0 | 113,750 | 61,250 | 0 | 0 | 175,000 |
| 4. Management and Fair Hearings Division (16) | | | | | | | | | | | |
| 401,954 | 25,286 | 593,823 | 0 | 0 | 1,021,063 | 401,744 | 25,261 | 593,616 | 0 | 0 | 1,020,621 |
| Total | | | | | | | | | | | |
| 18,180,265 | 2,491,189 | 34,289,126 | 0 | 0 | 54,960,580 | 17,651,035 | 2,475,321 | 34,050,125 | 0 | 0 | 54,176,481 |

The Business and Financial Services Division includes a reduction in funding of $4,718 general fund, $1,897 state special revenue, and $7,721 federal special revenue in fiscal year 2014 and $4,678 general fund, $1,881 state special revenue, and $7,656 federal special revenue in fiscal year 2015. The agency may allocate this reduction in funding among divisions when developing 2015 biennium operating plans.

Business and Financial Services Division includes a reduction in general fund of $236,085 in fiscal year 2014 and $235,874 in fiscal year 2015, state special revenue of $95,235 in fiscal year 2014 and $96,890 in fiscal year 2015, and federal special revenue of $325,716 in fiscal year 2014 and $324,711 in fiscal year 2015. The reduction is the equivalent of an additional 2% vacancy savings. The agency may allocate this reduction in funding among programs when developing 2015 biennium operating plans.

The Quality Assurance Division is appropriated funding for the 2015 biennium in an amount not to exceed $210,208 of state special revenue fund share and $396,734 of federal special revenue share from the recovery audit contract to pay recovery audit costs. Payments to the contractor are contingent upon the amount of funds recovered and may not exceed 12.5% of the amount recovered.

The department of public health and human services must use the biennial appropriation of $350,000 in fiscal year 2014 and fiscal year 2015 in the Technology Services Division to complete the planning process for the Montana adult and child welfare information system (MACWIS) including a complete plan for funding the development of the MACWIS system for presentation to the 2015 Legislature.

Funding for the CHIMES Medicaid/HMK and TEAMS systems may only be used by the Technology Services Division for the maintenance and operations contract and project management of the eligibility determination systems for CHIMES Medicaid/HMK, Chimes SNAP, CHIMES TANF, and TEAMS systems.

**Public Health and Safety (6907)**

1. Public Health and Safety Division (07)

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 3,833,072 | 16,607,808 | 42,615,129 | 0 | 0 | 63,056,009 | 3,836,184 | 16,607,638 | 42,431,294 | 0 | 0 | 62,875,116 |
| a. Poison Control Hotline (Restricted/OTO) | | | | | | | | | | | |
| 0 | 0 | 0 | 0 | 0 | 0 | 182,400 | 0 | 0 | 0 | 0 | 182,400 |
| b. Title X | | | | | | | | | | | |
| 0 | 0 | 2,305,688 | 0 | 0 | 2,305,688 | 0 | 0 | 2,306,322 | 0 | 0 | 2,306,322 |
| Total | | | | | | | | | | | |
| 3,833,072 | 16,607,808 | 44,920,817 | 0 | 0 | 65,361,697 | 4,018,584 | 16,607,638 | 44,737,616 | 0 | 0 | 65,363,838 |

Title X monies may be used only for purposes allowed by federal law.

**Medicaid and Health Services Branch (6911)**

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Developmental Services Division (10) | | | | | | | | | | | |
| 22,344,873 | 592,794 | 10,522,770 | 0 | 0 | 33,460,437 | 21,770,346 | 592,794 | 10,519,024 | 0 | 0 | 32,882,164 |
| a. Expand Children's Services (Restricted) | | | | | | | | | | | |
| 56,666 | 0 | 111,334 | 0 | 0 | 168,000 | 113,501 | 0 | 222,499 | 0 | 0 | 336,000 |
| b. Room and Board for Seriously Emotionally Disturbed Children (Restricted) | | | | | | | | | | | |
| 650,000 | 0 | 0 | 0 | 0 | 650,000 | 650,000 | 0 | 0 | 0 | 0 | 650,000 |
| c. Medicaid Services — Developmental Services | | | | | | | | | | | |
| 58,560,732 | 6,040,146 | 167,623,509 | 0 | 0 | 232,224,387 | 62,652,972 | 6,040,146 | 183,759,835 | 0 | 0 | 252,452,953 |
| 2. Health Resources Division (11) | | | | | | | | | | | |
| 6,767,389 | 22,489,104 | 76,064,934 | 0 | 0 | 105,321,427 | 8,050,414 | 23,553,800 | 83,494,788 | 0 | 0 | 115,099,002 |
| a. Hospital Utilization Fee (Restricted) | | | | | | | | | | | |
| 0 | 22,587,587 | 44,081,020 | 0 | 0 | 66,668,607 | 0 | 22,589,588 | 44,079,019 | 0 | 0 | 66,668,607 |
| b. Medicaid Services — Health Resources | | | | | | | | | | | |
| 121,927,937 | 22,013,821 | 318,614,532 | 0 | 0 | 462,556,290 | 129,155,462 | 23,001,840 | 337,215,478 | 0 | 0 | 489,372,780 |
| 3. Medicaid and Health Services Management (12) | | | | | | | | | | | |
| 2,137,832 | 91,668 | 16,953,871 | 0 | 0 | 19,183,371 | 2,824,223 | 93,007 | 15,382,287 | 0 | 0 | 18,299,517 |
| 4. Senior and Long-Term Care Division (22) | | | | | | | | | | | |

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 9,769,001 | 7,833,205 | 16,802,286 | 0 | 0 | 34,404,492 | 10,032,324 | 7,770,192 | 17,167,484 | 0 | 0 | 34,970,000 |
| a. County Nursing Home Intergovernmental Transfer (Restricted) | | | | | | | | | | | |
| 0 | 7,640,182 | 15,010,820 | 0 | 0 | 22,651,002 | 0 | 8,088,679 | 15,856,491 | 0 | 0 | 23,945,170 |
| b. Personal Services Meal Preparation (Restricted) | | | | | | | | | | | |
| 250,763 | 0 | 492,680 | 0 | 0 | 743,443 | 251,135 | 0 | 492,308 | 0 | 0 | 743,443 |
| c. Home and Community-Based Waiver (Restricted) | | | | | | | | | | | |
| 179,899 | 0 | 353,449 | 0 | 0 | 533,348 | 240,220 | 0 | 470,910 | 0 | 0 | 711,130 |
| d. Direct Care Worker Wage Increase (Restricted) | | | | | | | | | | | |
| 1,684,819 | 0 | 3,310,196 | 0 | 0 | 4,995,015 | 1,687,316 | 0 | 3,307,699 | 0 | 0 | 4,995,015 |
| e. Southwest Montana Veterans' Home (Restricted) | | | | | | | | | | | |
| 0 | 0 | 0 | 0 | 0 | 0 | 0 | 206,703 | 1,113,615 | 0 | 0 | 1,320,318 |
| ~~f. Nursing Home Rate Increase (Restricted)~~ | | | | | | | | | | | |
| ~~997,482~~ | ~~0~~ | ~~1,959,773~~ | ~~0~~ | ~~0~~ | ~~2,957,255~~ | ~~973,883~~ | ~~0~~ | ~~1,909,134~~ | ~~0~~ | ~~0~~ | ~~2,883,017~~ |
| g. Short-Term Housing Assistance (Restricted/OTO) | | | | | | | | | | | |
| 100,000 | 0 | 0 | 0 | 0 | 100,000 | 300,000 | 0 | 0 | 0 | 0 | 300,000 |
| h. Medicaid Services — Senior and Long-Term Care | | | | | | | | | | | |
| 55,383,307 | 22,181,013 | 160,656,509 | 0 | 0 | 238,220,829 | 57,986,360 | 22,181,013 | 168,264,311 | 0 | 0 | 248,431,684 |
| i. Traumatic Brain Injury (OTO) | | | | | | | | | | | |
| 50,000 | 0 | 0 | 0 | 0 | 50,000 | 50,000 | 0 | 0 | 0 | 0 | 50,000 |
| j. Partially Restore Community Waiver Services (Restricted) | | | | | | | | | | | |
| 0 | 253,655 | 498,361 | 0 | 0 | 752,016 | 0 | 260,848 | 511,349 | 0 | 0 | 772,197 |
| 5. Addictive and Mental Disorders Division (33) | | | | | | | | | | | |
| 53,545,543 | 6,483,906 | 9,539,405 | 0 | 0 | 69,568,854 | 54,342,348 | 6,480,615 | 9,627,607 | 0 | 0 | 70,450,570 |
| a. Mental Health Crisis Jail Diversion Services (Restricted) | | | | | | | | | | | |
| 0 | 201,591 | 0 | 0 | 0 | 201,591 | 0 | 201,591 | 0 | 0 | 0 | 201,591 |
| ~~b. One-Time Mental Health Crisis Jail Diversion Services (Restricted/OTO)~~ | | | | | | | | | | | |
| ~~0~~ | ~~352,448~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~352,448~~ | ~~0~~ | ~~352,448~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~352,448~~ |
| c. Prevent Jail Suicide (Restricted/Biennial/OTO) | | | | | | | | | | | |

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 0 | 0 | 125,000 | 0 | 0 | 125,000 | 0 | 0 | 125,000 | 0 | 0 | 125,000 |
| d. Medicaid Services — Addictive and Mental Disorders | | | | | | | | | | | |
| 10,658,340 | 8,717,204 | 40,310,010 | 0 | 0 | 59,685,554 | 11,341,262 | 8,956,844 | 42,032,024 | 0 | 0 | 62,330,130 |
| e. Montana State Hospital Overtime Pay (Biennial) | | | | | | | | | | | |
| 0 | 0 | 1,000,000 | 0 | 0 | 1,000,000 | 0 | 0 | 1,000,000 | 0 | 0 | 1,000,000 |
| Total | | | | | | | | | | | |
| 345,064,583 | 127,478,324 | 884,030,459 | 0 | 0 | 1,356,573,366 | 362,421,766 | 130,370,108 | 936,550,862 | 0 | 0 | 1,429,342,736 |

The department of public health and human services must use $107,826 in fiscal year 2014 and $217,807 in fiscal year 2015 of funds in Developmental Services Division to raise nonmedicaid provider rates by 2% in fiscal year 2014 and by an additional 2% in fiscal year 2015.

Targeted Case Management for Youth With Serious Emotional Disturbances may be used only to increase rates for children's mental health case management services to a level no less than the current fiscal year 2013 targeted case management rate for adults with severe disabling mental illness. This rate increase is in addition to and may not supplant or be supplanted by any other rate increase approved by the legislature for provider rates.

Expand Children's Services may be used only to screen additional children into the developmental disabilities comprehensive waiver to reduce the waiting list.

Medicaid Services –- Developmental Services includes $2,811,336 in fiscal year 2014 and $2,867,563 in fiscal year 2015 that may be used only to increase rates for children's mental health case management services to a level no less than the current fiscal year 2013 targeted case management rate for adults with severe disabling mental illness. This rate increase is in addition to and may not supplant or be supplanted by any other rate increase approved by the legislature for provider rates.

Medicaid Services –- Developmental Services includes $1,985,352 in fiscal year 2014 and $4,010,410 in fiscal year 2015 that may be used only to increase provider rates for developmental disabilities medicaid core services above the rate paid in fiscal year 2013. This rate increase is in addition to and may not supplant or be supplanted by any other rate increase approved by the legislature for provider rates.

Medicaid Services — Developmental Services, Medicaid Services — Health Resources, Medicaid Services — Senior and Long-Term Care, and Medicaid Services — Addictive and Mental Disorders may be used only to pay for medicaid services for eligible medicaid enrollees for expenses recorded as benefits and claims in the state accounting system and may not be transferred to other uses in the department.

The department of public health and human services must use the following amounts of money in the following appropriations to raise medicaid provider rates, except those medicaid services funded by the federal children's health insurance grant, by 2% in fiscal year 2014 and by 2% in fiscal year 2015:

(1) Medicaid Services — Developmental Services, $3,755,335 in fiscal year 2014 and $7,585,778 in fiscal year 2015;

| | Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |

(2) Medicaid Services — Health Resources, $4,650,249 in fiscal year 2014 and $9,389,047 in fiscal year 2015;

(3) Medicaid Services — Senior and Long-Term Care, $4,392,560 in fiscal year 2014 and $8,872,971 in fiscal year 2015; and

(4) Medicaid Services — Addictive and Mental Disorders, $1,097,758 in fiscal year 2014 and $2,217,499 in fiscal year 2015.

The department of public health and human services must use $317,812 in fiscal year 2014 and $641,984 in fiscal year 2015 of funds in Health Resources Division to raise provider rates for those services funded from the federal children's health insurance program grant and for providers who are not paid by a third-party administrator by 2% in fiscal year 2014 and by an additional 2% in fiscal year 2015.

The department of public health and human services must use $209,887 in fiscal year 2014 and $423,971 in fiscal year 2015 of funds in Senior and Long-Term Care Division to raise nonmedicaid provider rates by 2% in fiscal year 2014 and by an additional 2% in fiscal year 2015.

County Nursing Home Intergovernmental Transfer may be used only to make one-time payments to nursing homes based on the number of medicaid services provided. State special revenue in County Nursing Home Intergovernmental Transfer may be expended only after the office of budget and program planning has certified that the department has collected the amount that is necessary to make one-time payments to nursing homes based on the number of medicaid services provided and to fund the base budget in the nursing facility program and the community services program at the level of $564,785 from counties participating in the intergovernmental transfer program for nursing facilities.

Personal Services Meal Preparation may be used only to provide personal assistance services for meal preparation for persons receiving medicaid services administered by the Senior and Long-Term Care Division.

Home and Community-Based Waiver may be used only to increase the number of service slots for medicaid services administered by the Senior and Long-Term Care Division. This funding may be used only to expand services above the level of additional service slots funded in the Money Follows the Person grant for elderly and physically disabled medicaid-eligible persons.

Direct Care Provider Rate Increase may be used only to raise provider rates for medicaid services to allow for continuation of wage increases or lump-sum payments to workers who provide direct care and ancillary services.

Southwest Montana Veterans' Home is contingent on approval and receipt of federal funding to support construction of the southwest Montana veterans' home.

~~Nursing Home Rate Increase may be used only to raise nursing home rates for medicaid services above the level paid in fiscal year 2012 and may be used only to augment any other rate increase for nursing home medicaid services funded in this act.~~

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |

Short-Term Housing Assistance may be used only to provide financial assistance for housing for persons transitioning from medicaid-funded facility-based care to community services through the Money Follows the Person grant program. Short-Term Housing Assistance may be used only to assist a person until that person is eligible for other housing assistance programs.

Partially Restore Community Waiver Services may be used only to fund services that were reduced in fiscal year 2014.

The department of public health and human services must use $263,962 in fiscal year 2014 and $533,203 in fiscal year 2015 of funds in Addictive and Mental Disorders Division to raise nonmedicaid provider rates by 2% in fiscal year 2014 and by an additional 2% in fiscal year 2015.

Mental Health Crisis Jail Diversion Services and One-Time Mental Health Crisis Jail Diversion Services may be used only to fund grants to counties to develop mental health crisis jail diversion services in accordance with 53-21-1203.

Prevent Jail Suicide may be used only for a grant program with the goal of preventing jail suicides in detention centers.

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| TOTAL SECTION B | | | | | | | | | | | |
| 444,971,206 | 153,836,329 | 1,134,135,802 | 0 | 0 | 1,732,943,337 | 463,882,314 | 156,736,321 | 1,187,126,776 | 0 | 0 | 1,807,745,411 |

| | Fiscal 2014 | | | | | | Fiscal 2015 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| | | | | C. NATURAL RESOURCES AND TRANSPORTATION | | | | | | | |
| **DEPARTMENT OF FISH, WILDLIFE, AND PARKS (5201)** | | | | | | | | | | | |
| 1. Information Services Division (01) | | | | | | | | | | | |
| 0 | 4,358,326 | 10,692 | 0 | 0 | 4,369,018 | 0 | 4,360,173 | 10,692 | 0 | 0 | 4,370,865 |
| 2. Fisheries Division (03) | | | | | | | | | | | |
| 0 | 7,832,020 | 9,444,836 | 0 | 0 | 17,276,856 | 0 | 7,846,959 | 9,469,792 | 0 | 0 | 17,316,751 |
| a. Aquatic Invasive Species Funding (OTO) | | | | | | | | | | | |
| 309,125 | 0 | 0 | 0 | 0 | 309,125 | 309,125 | 0 | 0 | 0 | 0 | 309,125 |
| b. Fishing Land Access (OTO) | | | | | | | | | | | |
| 0 | 10,000 | 0 | 0 | 0 | 10,000 | 0 | 10,000 | 0 | 0 | 0 | 10,000 |
| c. Contracted Services for Operation and Maintenance at Fishing Access Sites (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 0 | 400,000 | 0 | 0 | 0 | 400,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| ~~d. Reporting (Restricted/Biennial/OTO)~~ | | | | | | | | | | | |
| ~~0~~ | ~~1,000~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~1,000~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~0~~ |
| 3. Law Enforcement Division (04) | | | | | | | | | | | |
| 0 | 9,393,902 | 382,838 | 0 | 0 | 9,776,740 | 0 | 9,410,971 | 383,666 | 0 | 0 | 9,794,637 |
| ~~a. Warden Salary Adjustments (Restricted)~~ | | | | | | | | | | | |
| ~~0~~ | ~~286,720~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~286,720~~ | ~~0~~ | ~~541,791~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~541,791~~ |
| 4. Wildlife Division (05) | | | | | | | | | | | |
| 0 | 10,059,399 | 8,089,482 | 0 | 0 | 18,148,881 | 0 | 10,160,813 | 8,016,047 | 0 | 0 | 18,176,860 |
| a. Game Damage (Restricted/OTO) | | | | | | | | | | | |
| 0 | 11,500 | 0 | 0 | 0 | 11,500 | 0 | 11,500 | 0 | 0 | 0 | 11,500 |
| b. Grizzly Bear Study (Restricted/OTO) | | | | | | | | | | | |
| 0 | 300,000 | 0 | 0 | 0 | 300,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| 5. Parks Division (06) | | | | | | | | | | | |
| 0 | 7,472,974 | 165,869 | 0 | 0 | 7,638,843 | 0 | 7,488,490 | 166,199 | 0 | 0 | 7,654,689 |
| a. Parks Operations and Maintenance (Restricted) | | | | | | | | | | | |

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 0 | 82,000 | 0 | 0 | 0 | 82,000 | 0 | 82,000 | 0 | 0 | 0 | 82,000 |
| b. Parks Reservation System (Restricted/OTO) | | | | | | | | | | | |
| 0 | 50,000 | 0 | 0 | 0 | 50,000 | 0 | 100,000 | 0 | 0 | 0 | 100,000 |
| c. Parks Equipment (OTO) | | | | | | | | | | | |
| 0 | 200,000 | 0 | 0 | 0 | 200,000 | 0 | 200,000 | 0 | 0 | 0 | 200,000 |
| d. Snowmobile Program (Restricted/Biennial) | | | | | | | | | | | |
| 0 | 210,000 | 0 | 0 | 0 | 210,000 | 0 | 210,000 | 0 | 0 | 0 | 210,000 |
| 6. Communication and Education Division (08) | | | | | | | | | | | |
| 0 | 2,651,372 | 730,453 | 0 | 0 | 3,381,825 | 0 | 2,655,950 | 731,148 | 0 | 0 | 3,387,098 |
| a. Shooting Ranges Funding (Restricted) | | | | | | | | | | | |
| 0 | 312,402 | 0 | 0 | 0 | 312,402 | 0 | 312,402 | 0 | 0 | 0 | 312,402 |
| 7. Management and Finance (09) | | | | | | | | | | | |
| 0 | 9,304,587 | 62,661 | 0 | 0 | 9,367,248 | 0 | 9,318,104 | 61,779 | 0 | 0 | 9,379,883 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 0 | 83,140 | 14,671 | 0 | 0 | 97,811 | 0 | 0 | 0 | 0 | 0 | 0 |
| 8. Fish and Wildlife Admin (12) | | | | | | | | | | | |
| 0 | 3,859,609 | 168,388 | 0 | 0 | 4,027,997 | 0 | 3,867,338 | 168,221 | 0 | 0 | 4,035,559 |
| Total | | | | | | | | | | | |
| 309,125 | 56,878,951 | 19,069,890 | 0 | 0 | 76,257,966 | 309,125 | 56,576,491 | 19,007,544 | 0 | 0 | 75,893,160 |

Contracted Services for Operations and Maintenance at Fishing Access Sites is restricted to contracted services for operations and maintenance, including but not limited to general upkeep, weed management, garbage pickup, and maintaining current sites prior to any purchases. If House Bill No. 401 is not passed and approved, then Contracted Services for Operation and Maintenance at Fishing Access Sites is void.

~~Reporting is restricted for the purpose of reporting to the environmental quality council and the joint appropriations subcommittee on natural resources and transportation. The Department of Fish, Wildlife, and Parks shall report to the environmental quality council by June 30, 2014, and to the 2015 session joint appropriations subcommittee on natural resources and transportation regarding the progress of maintenance of fishing access sites.~~

~~Warden Salary Adjustments is to be used for the department's warden salary increases for the 2015 biennium, based on a 5.82% increase calculated on salary data in the 2013 biennium. If House Bill No. 401 is not passed and approved, then Warden Salary Adjustments is void.~~

| | Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |

Wildlife Division includes a reduction in state special revenue of $519,403 in fiscal year 2014 and $522,032 in fiscal year 2015 and federal special revenue of $213,635 in fiscal year 2014 and $211,731 in fiscal year 2015. The reduction is the equivalent of an additional 2% vacancy savings. The agency may allocate this reduction in funding among programs when developing 2015 biennium operating plans.

If House Bill No. 404 is passed and approved with a fund switch of $1,259,209 for fiscal year 2014 and fiscal year 2015 from the wildlife habitat acquisition account to the hunting access account, the Wildlife Division is appropriated $1,259,209 in state special revenue from the hunting account for hunting access and is restricted for the use of land contract expenditures.

**DEPARTMENT OF ENVIRONMENTAL QUALITY (5301)**

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Central Management Program (10) | | | | | | | | | | | |
| 305,432 | 1,201,531 | 325,572 | 0 | 0 | 1,832,535 | 305,682 | 1,161,938 | 365,148 | 0 | 0 | 1,832,768 |
| 2. Planning, Prevention, and Assistance Division (20) | | | | | | | | | | | |
| 2,630,738 | 3,153,571 | 7,105,018 | 0 | 0 | 12,889,327 | 2,631,807 | 3,154,171 | 7,111,817 | 0 | 0 | 12,897,795 |
| a. Database Development (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 0 | 150,000 | 0 | 0 | 0 | 150,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| 3. Enforcement Division (30) | | | | | | | | | | | |
| 517,710 | 461,409 | 360,048 | 0 | 0 | 1,339,167 | 518,091 | 461,071 | 359,786 | 0 | 0 | 1,338,948 |
| 4. Remediation Division (40) | | | | | | | | | | | |
| 0 | 5,518,252 | 5,480,540 | 0 | 0 | 10,998,792 | 0 | 5,520,163 | 5,483,936 | 0 | 0 | 11,004,099 |
| a. Orphan Share Feasibility Study (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 0 | 425,000 | 0 | 0 | 0 | 425,000 | 0 | 425,000 | 0 | 0 | 0 | 425,000 |
| b. Beal and Basin Reclamation (Restricted/Biennial) | | | | | | | | | | | |
| 0 | 201,416 | 0 | 0 | 0 | 201,416 | 0 | 201,416 | 0 | 0 | 0 | 201,416 |
| c. Additional Leaking Underground Storage Tank Expenses (OTO) | | | | | | | | | | | |
| 0 | 400,000 | 0 | 0 | 0 | 400,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| 5. Permitting and Compliance Division (50) | | | | | | | | | | | |
| 1,768,951 | 16,781,018 | 6,634,628 | 0 | 0 | 25,184,597 | 1,770,115 | 16,800,790 | 6,627,243 | 0 | 0 | 25,198,148 |
| a. Hard Rock Reclamation (Restricted/Biennial) | | | | | | | | | | | |
| 0 | 2,812,946 | 0 | 0 | 0 | 2,812,946 | 0 | 2,812,946 | 0 | 0 | 0 | 2,812,946 |

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| b. Zortman/Landusky Additional Funding (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 0 | 250,000 | 0 | 0 | 0 | 250,000 | 0 | 250,000 | 0 | 0 | 0 | 250,000 |
| c. Opencut Mining Program Database (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 0 | 100,000 | 0 | 0 | 0 | 100,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| d. Industrial Energy and Minerals Bureau Systems Specialist (OTO) | | | | | | | | | | | |
| 0 | 81,753 | 0 | 0 | 0 | 81,753 | 0 | 77,298 | 0 | 0 | 0 | 77,298 |
| e. Opencut Science Specialist (OTO) | | | | | | | | | | | |
| 0 | 43,214 | 0 | 0 | 0 | 43,214 | 0 | 40,216 | 0 | 0 | 0 | 40,216 |
| 6. Petroleum Tank Release Compensation Board (90) | | | | | | | | | | | |
| 0 | 618,052 | 0 | 0 | 0 | 618,052 | 0 | 618,042 | 0 | 0 | 0 | 618,042 |
| Total | | | | | | | | | | | |
| 5,222,831 | 32,198,162 | 19,905,806 | 0 | 0 | 57,326,799 | 5,225,695 | 31,523,051 | 19,947,930 | 0 | 0 | 56,696,676 |

The Planning, Prevention, and Assistance Division is authorized to decrease federal special revenue and increase state special revenue in the drinking water and/or water pollution control revolving loan programs by a like amount within the administration account, when the amount of federal capitalization funds have been expended or when federal funds and bond proceeds will be used for other program purposes.

Permitting and Compliance Division includes a reduction in general fund of $33,957 in fiscal year 2014 and $33,712 in fiscal year 2015, state special revenue of $290,347 in fiscal year 2014 and $281,120 in fiscal year 2015, and federal special revenue of $232,124 in fiscal year 2014 and $242,060 in fiscal year 2015. The reduction is the equivalent of an additional 2% vacancy savings. The agency may allocate this reduction in funding among programs when developing 2015 biennium operating plans.

If federal funds are received to help meet the annual shortfall in operating and maintenance costs at the Zortman-Landusky mine sites, this orphan share spending authority will be reduced by the same amount.

The department is appropriated up to $1,000,000 of the funds recovered under the petroleum tank compensation board subrogation program in the 2015 biennium for the purpose of paying contract expenses related to the recovery of funds.

**DEPARTMENT OF TRANSPORTATION (5401)**

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. General Operations Program (01) (Biennial) | | | | | | | | | | | |
| 0 | 23,373,012 | 283,582 | 0 | 0 | 23,656,594 | 0 | 23,307,456 | 282,800 | 0 | 0 | 23,590,256 |

| | Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | | |
| | 0 | 171,169 | 0 | 0 | 0 | 171,169 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2. Construction Program (02) (Biennial) | | | | | | | | | | | | |
| | 0 | 79,700,873 | 390,684,643 | 0 | 0 | 470,385,516 | 0 | 79,820,096 | 390,654,517 | 0 | 0 | 470,474,613 |
| 3. Maintenance Program (03) (Biennial) | | | | | | | | | | | | |
| | 0 | 125,245,389 | 7,668,289 | 0 | 0 | 132,913,678 | 0 | 120,562,566 | 7,668,298 | 0 | 0 | 128,230,864 |
| 4. Motor Carrier Services Division (22) (Biennial) | | | | | | | | | | | | |
| | 0 | 8,452,234 | 3,046,851 | 0 | 0 | 11,499,085 | 0 | 8,186,555 | 3,048,922 | 0 | 0 | 11,235,477 |
| a. Scale Site Repair (Restricted/OTO) | | | | | | | | | | | | |
| | 0 | 14,158 | 0 | 0 | 0 | 14,158 | 0 | 14,158 | 0 | 0 | 0 | 14,158 |
| b. CVIEW & CCAMS Projects (Biennial/OTO) | | | | | | | | | | | | |
| | 0 | 51,117 | 51,116 | 0 | 0 | 102,233 | 0 | 0 | 0 | 0 | 0 | 0 |
| 5. Aeronautics Program (40) (Biennial) | | | | | | | | | | | | |
| | 0 | 1,668,553 | 64,217 | 0 | 0 | 1,732,770 | 0 | 1,670,483 | 64,217 | 0 | 0 | 1,734,700 |
| a. Lincoln Airport Runway Improvements (Restricted/OTO) | | | | | | | | | | | | |
| | 0 | 16,667 | 150,000 | 0 | 0 | 166,667 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Aeronautics State System Plan (Biennial) | | | | | | | | | | | | |
| | 0 | 15,000 | 135,000 | 0 | 0 | 150,000 | 0 | 15,000 | 135,000 | 0 | 0 | 150,000 |
| c. Aeronautics Grants, Loans & Pavement Preservation (Biennial) | | | | | | | | | | | | |
| | 0 | 143,851 | 0 | 0 | 0 | 143,851 | 0 | 143,851 | 0 | 0 | 0 | 143,851 |
| 6. Rail, Transit, and Planning Division (50) (Biennial) | | | | | | | | | | | | |
| | 0 | 6,730,763 | 25,450,591 | 0 | 0 | 32,181,354 | 0 | 6,735,085 | 24,815,425 | 0 | 0 | 31,550,510 |
| a. Pollution Prevention & Abatement (Restricted) | | | | | | | | | | | | |
| | 0 | 320,000 | 0 | 0 | 0 | 320,000 | 0 | 320,000 | 0 | 0 | 0 | 320,000 |
| b. Rail Service Competition Council | | | | | | | | | | | | |
| | 0 | 50,000 | 0 | 0 | 0 | 50,000 | 0 | 50,000 | 0 | 0 | 0 | 50,000 |
| Total | | | | | | | | | | | | |

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 0 | 245,952,786 | 427,534,289 | 0 | 0 | 673,487,075 | 0 | 240,825,250 | 426,669,179 | 0 | 0 | 667,494,429 |

General Operations Program includes a reduction in state special revenue of $2,019,394 in fiscal year 2014 and $2,021,567 in fiscal year 2015 and federal special revenue of $857,071 in fiscal year 2014 and $858,224 in fiscal year 2015. The reduction is the equivalent of an additional 2% vacancy savings. The agency may allocate this reduction in funding among programs when developing 2015 biennium operating plans.

The department may adjust appropriations in the general operations, construction, maintenance, and transportation planning programs between state special revenue and federal special revenue funds if the total state special revenue authority for these programs is not increased by more than 10% of the total appropriations established by the legislature for each program.

All appropriations in the department are biennial.

All remaining federal pass-through grant appropriations for highway traffic safety, including reversions for the 2013 biennium, are authorized to continue and are appropriated in fiscal year 2014 and fiscal year 2015.

**DEPARTMENT OF LIVESTOCK (5603)**

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Centralized Services Program (01) | | | | | | | | | | | |
| 80,077 | 1,590,413 | 0 | 0 | 0 | 1,670,490 | 80,354 | 1,581,152 | 0 | 0 | 0 | 1,661,506 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 0 | 34,933 | 0 | 0 | 0 | 34,933 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Animal Health System Customization (OTO) | | | | | | | | | | | |
| 5,000 | 0 | 0 | 0 | 0 | 5,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| ~~c. Predator Control of Grizzly Bear (Restricted/OTO)~~ | | | | | | | | | | | |
| ~~0~~ | ~~250,000~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~250,000~~ | ~~0~~ | ~~250,000~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~250,000~~ |
| 2. Diagnostic Laboratory Program (03) | | | | | | | | | | | |
| 289,824 | 1,659,176 | 0 | 0 | 0 | 1,949,000 | 289,284 | 1,665,256 | 0 | 0 | 0 | 1,954,540 |
| a. Milk Lab Incubator (OTO) | | | | | | | | | | | |
| 0 | 2,000 | 0 | 0 | 0 | 2,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Polymerase Chain Reaction Shaker/Micro (OTO) | | | | | | | | | | | |
| 0 | 3,500 | 0 | 0 | 0 | 3,500 | 0 | 0 | 0 | 0 | 0 | 0 |
| 3. Animal Health Division (04) | | | | | | | | | | | |

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 0 | 688,818 | 743,354 | 0 | 0 | 1,432,172 | 0 | 688,805 | 741,986 | 0 | 0 | 1,430,791 |
| a. Designated Surveillance Area Vet and Compliance Specialist (OTO) | | | | | | | | | | | |
| 133,447 | 0 | 0 | 0 | 0 | 133,447 | 133,245 | 0 | 0 | 0 | 0 | 133,245 |
| b Designated Surveillance Area Brucellosis Testing (OTO) | | | | | | | | | | | |
| 373,168 | 0 | 0 | 0 | 0 | 373,168 | 373,168 | 0 | 0 | 0 | 0 | 373,168 |
| 4. Milk and Egg Program (05) | | | | | | | | | | | |
| 0 | 401,265 | 28,490 | 0 | 0 | 429,755 | 0 | 405,251 | 28,490 | 0 | 0 | 433,741 |
| 5. Brands Enforcement Division (06) | | | | | | | | | | | |
| 2,943 | 3,216,020 | 0 | 0 | 0 | 3,218,963 | 2,943 | 3,227,143 | 0 | 0 | 0 | 3,230,086 |
| a. Brands Overtime (Restricted) | | | | | | | | | | | |
| 0 | 55,979 | 0 | 0 | 0 | 55,979 | 0 | 55,979 | 0 | 0 | 0 | 55,979 |
| 6. Meat and Poultry Inspection Program (10) | | | | | | | | | | | |
| 593,002 | 5,718 | 594,513 | 0 | 0 | 1,193,233 | 594,784 | 5,717 | 596,295 | 0 | 0 | 1,196,796 |
| a. Meat Inspector Training (OTO) | | | | | | | | | | | |
| 4,161 | 0 | 4,161 | 0 | 0 | 8,322 | 4,161 | 0 | 4,161 | 0 | 0 | 8,322 |
| b. Meat Inspector Field Supplies (OTO) | | | | | | | | | | | |
| 6,725 | 0 | 6,725 | 0 | 0 | 13,450 | 0 | 0 | 0 | 0 | 0 | 0 |
| c. Meat Inspector (OTO) | | | | | | | | | | | |
| 19,636 | 0 | 19,636 | 0 | 0 | 39,272 | 19,636 | 0 | 19,636 | 0 | 0 | 39,272 |
| Total | | | | | | | | | | | |
| 1,507,983 | 7,907,822 | 1,396,879 | 0 | 0 | 10,812,684 | 1,497,575 | 7,879,303 | 1,390,568 | 0 | 0 | 10,767,446 |

Centralized Services Program includes a reduction in state special revenue of $116,334 in fiscal year 2014 and $116,408 in fiscal year 2015. Meat and Poultry Inspection Program includes a reduction in general fund of $18,130 in fiscal year 2014 and $18,141 in fiscal year 2015 and federal special revenue of $16,619 in fiscal year 2014 and $16,630 in fiscal year 2015. The reduction is the equivalent of an additional 2% vacancy savings. The agency may allocate this reduction in funding among programs when developing 2015 biennium operating plans.

**DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (5706)**

1. Centralized Services (21)

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 3,375,121 | 1,685,156 | 268,252 | 0 | 0 | 5,328,529 | 3,418,502 | 1,618,584 | 262,042 | 0 | 0 | 5,299,128 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 122,264 | 0 | 0 | 0 | 0 | 122,264 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2. Oil and Gas Conservation Division (22) | | | | | | | | | | | |
| 0 | 1,774,033 | 111,470 | 0 | 0 | 1,885,503 | 0 | 1,775,693 | 111,470 | 0 | 0 | 1,887,163 |
| ~~a. Education (Restricted/Biennial)~~ | | | | | | | | | | | |
| ~~0~~ | ~~700,000~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~700,000~~ | ~~0~~ | ~~700,000~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~700,000~~ |
| b. Procedure Manual and Field Inspections System (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 0 | 120,000 | 0 | 0 | 0 | 120,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| c. Board of Oil and Gas Conservation Regulatory Program Adjustments (OTO) | | | | | | | | | | | |
| 0 | 40,360 | 0 | 0 | 0 | 40,360 | 0 | 40,452 | 0 | 0 | 0 | 40,452 |
| d. Board of Oil and Gas Conservation Underground Injection Control Program Adjustments (OTO) | | | | | | | | | | | |
| 0 | 28,130 | 0 | 0 | 0 | 28,130 | 0 | 28,130 | 0 | 0 | 0 | 28,130 |
| e. Board of Oil and Gas Conservation Enhanced Oil Recovery Study (OTO) | | | | | | | | | | | |
| 0 | 178,976 | 0 | 0 | 0 | 178,976 | 0 | 169,717 | 0 | 0 | 0 | 169,717 |
| f. Compliance and Field Inspections (OTO) | | | | | | | | | | | |
| 0 | 196,178 | 0 | 0 | 0 | 196,178 | 0 | 196,178 | 0 | 0 | 0 | 196,178 |
| ~~g. Board of Oil and Gas Inspectors Personal Services (Restricted)~~ | | | | | | | | | | | |
| ~~0~~ | ~~100,000~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~100,000~~ | ~~0~~ | ~~100,000~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~100,000~~ |
| 3. Conservation and Resource Development Division (23) | | | | | | | | | | | |
| 1,002,489 | 8,709,493 | 274,966 | 0 | 0 | 9,986,948 | 1,004,541 | 8,709,590 | 274,966 | 0 | 0 | 9,989,097 |
| a. CARDD Operating Adjustment (Restricted/OTO) | | | | | | | | | | | |
| 0 | 171,700 | 23,300 | 0 | 0 | 195,000 | 0 | 171,700 | 23,300 | 0 | 0 | 195,000 |
| b. Regional Water Administration Funds (Restricted/OTO) | | | | | | | | | | | |
| 0 | 47,500 | 0 | 0 | 0 | 47,500 | 0 | 47,500 | 0 | 0 | 0 | 47,500 |
| c. Yellowstone River Conservation District Council (Restricted/OTO) | | | | | | | | | | | |
| 0 | 75,000 | 0 | 0 | 0 | 75,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| d. Sheridan County Conservation District (Restricted/OTO) | | | | | | | | | | | |

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 0 | 23,000 | 0 | 0 | 0 | 23,000 | 0 | 23,000 | 0 | 0 | 0 | 23,000 |
| e. Conservation District Support (Restricted/OTO) | | | | | | | | | | | |
| 0 | 287,000 | 0 | 0 | 0 | 287,000 | 0 | 287,000 | 0 | 0 | 0 | 287,000 |
| f. MT Salinity Drilling Equipment (Restricted/OTO) | | | | | | | | | | | |
| 0 | 112,000 | 0 | 0 | 0 | 112,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| g. MT Salinity Technical Assistance (Restricted/OTO) | | | | | | | | | | | |
| 0 | 40,000 | 0 | 0 | 0 | 40,000 | 0 | 40,000 | 0 | 0 | 0 | 40,000 |
| h. MSU Montana Water Center (Restricted/OTO) | | | | | | | | | | | |
| 0 | 400,000 | 0 | 0 | 0 | 400,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| i. Drinking Water Loan Forgiveness (Restricted/OTO) | | | | | | | | | | | |
| 0 | 200,000 | 0 | 0 | 0 | 200,000 | 0 | 200,000 | 0 | 0 | 0 | 200,000 |
| ~~j. Montana Rural Water Systems (OTO)~~ | | | | | | | | | | | |
| ~~0~~ | ~~235,000~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~235,000~~ | ~~0~~ | ~~235,000~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~235,000~~ |
| k. Montana Grass Conservation Commission (OTO) | | | | | | | | | | | |
| 3,500 | 0 | 0 | 0 | 0 | 3,500 | 3,500 | 0 | 0 | 0 | 0 | 3,500 |
| 4. Water Resources Division (24) | | | | | | | | | | | |
| 8,558,218 | 5,789,762 | 228,418 | 0 | 0 | 14,576,398 | 8,571,523 | 3,784,741 | 228,479 | 0 | 0 | 12,584,743 |
| a. Stream Gaging (Restricted/OTO) | | | | | | | | | | | |
| 28,726 | 0 | 0 | 0 | 0 | 28,726 | 29,700 | 0 | 0 | 0 | 0 | 29,700 |
| b. Flood Plain Mapping (OTO) | | | | | | | | | | | |
| 0 | 100,000 | 0 | 0 | 0 | 100,000 | 0 | 100,000 | 0 | 0 | 0 | 100,000 |
| 5. Forestry and Trust Lands (35) | | | | | | | | | | | |
| 10,409,771 | 14,983,754 | 1,089,908 | 0 | 0 | 26,483,433 | 10,420,235 | 15,002,655 | 1,091,162 | 0 | 0 | 26,514,052 |
| a. Narrow Band Radios (Restricted/OTO) | | | | | | | | | | | |
| 86,353 | 42,533 | 0 | 0 | 0 | 128,886 | 86,353 | 42,533 | 0 | 0 | 0 | 128,886 |
| b. Trust Land Management Division Land Transaction Funds (OTO) | | | | | | | | | | | |
| 0 | 204,069 | 0 | 0 | 0 | 204,069 | 0 | 204,069 | 0 | 0 | 0 | 204,069 |
| c. Trust Land Management Division MSU Morrill Trust Projects (Biennial/OTO) | | | | | | | | | | | |

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 80,000 | 0 | 0 | 0 | 0 | 80,000 | 80,000 | 0 | 0 | 0 | 0 | 80,000 |
| Total | | | | | | | | | | | |
| 23,666,442 | 36,243,644 | 1,996,314 | 0 | 0 | 61,906,400 | 23,614,354 | 33,476,542 | 1,991,419 | 0 | 0 | 59,082,315 |

During the 2015 biennium, up to $1 million of funds currently in or to be deposited in the Broadwater replacement and renewal account is appropriated to the department for repairing or replacing equipment at the Broadwater hydropower facility.

During the 2015 biennium, up to $100,000 of interest earned on the Broadwater water users account is appropriated to the department for the purpose of repair, improvement, or rehabilitation of the Broadwater-Missouri diversion project.

During the 2015 biennium, up to $2,200,000 of funds currently in or to be deposited in the state project hydropower earnings account is appropriated for the purpose of repairing, improving, or rehabilitating department state water projects.

The department is appropriated up to $600,000 for the 2015 biennium from the natural resources operations account established in 15-38-301 for the purchase of prior liens on property held as loan security as provided in 85-1-615.

The department is appropriated up to $200,000 for the 2015 biennium from the coal bed methane protection account established in 76-15-904 for potential landowner or water right holder claims for emergency loss of water related to coal bed methane development.

The department is authorized to decrease federal special revenue in the pollution control and/or drinking water revolving fund loan programs and increase state special revenue by a like amount within administration accounts when the amount of federal EPA CAP grant funds allocated for administration of the grant have been expended or federal funds and bond proceeds will be used for other program purposes as authorized in law providing for the distribution of funds.

If House Bill No. 556 is not passed and approved, Yellowstone River Conservation District Council, Sheridan County Conservation District, Conservation District Support, MT Salinity Drilling Equipment, MT Salinity Technical Assistance, and MSU Montana Water Center funding is void.

Forestry and Trust Lands includes a reduction in general fund of $296,118 in fiscal year 2014 and $296,363 in fiscal year 2015, state special revenue of $345,471 in fiscal year 2014 and $345,757 in fiscal year 2015, and federal special revenue of $63,454 in fiscal year 2014 and $63,506 in fiscal year 2015. The reduction is the equivalent of an additional 2% vacancy savings. The agency may allocate this reduction in funding among programs when developing 2015 biennium operating plans.

**DEPARTMENT OF AGRICULTURE (6201)**

| 1. Central Management Division (15) | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 97,504 | 753,317 | 105,866 | 128,169 | 0 | 1,084,856 | 97,483 | 753,207 | 106,082 | 128,979 | 0 | 1,085,751 |

| | Fiscal 2014 | | | | | | Fiscal 2015 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 43,316 | 0 | 0 | 0 | 0 | 43,316 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2. Agricultural Sciences Division (30) | | | | | | | | | | | |
| 296,527 | 6,817,432 | 1,945,642 | 0 | 0 | 9,059,601 | 296,527 | 6,819,035 | 1,947,121 | 0 | 0 | 9,062,683 |
| 3. Agricultural Development Division (50) | | | | | | | | | | | |
| 532,011 | 1,449,063 | 25,000 | 446,104 | 0 | 2,452,178 | 533,058 | 1,450,161 | 25,000 | 445,667 | 0 | 2,453,886 |
| a. Food and Agricultural Development Program (Restricted/OTO) | | | | | | | | | | | |
| 0 | 105,000 | 0 | 0 | 0 | 105,000 | 0 | 105,000 | 0 | 0 | 0 | 105,000 |
| b. Wheat and Barley Committee (Restricted) | | | | | | | | | | | |
| 0 | 4,495,773 | 0 | 0 | 0 | 4,495,773 | 0 | 4,589,592 | 0 | 0 | 0 | 4,589,592 |
| Total | | | | | | | | | | | |
| 969,358 | 13,620,585 | 2,076,508 | 574,273 | 0 | 17,240,724 | 927,068 | 13,716,995 | 2,078,203 | 574,646 | 0 | 17,296,912 |

Central Management Division includes a reduction in general fund of $7,366 in fiscal year 2014 and $7,398 in fiscal year 2015, state special revenue of $80,398 in fiscal year 2014 and $80,509 in fiscal year 2015, federal special revenue of $46,249 in fiscal year 2014 and $46,032 in fiscal year 2015, and proprietary funds of $10,051 in fiscal year 2014 and $10,252 in fiscal year 2015. The reduction is the equivalent of an additional 2% vacancy savings. The agency may allocate this reduction in funding among programs when developing 2015 biennium operating plans.

If House Bill No. 420 is passed and approved, then Food and Agricultural Development Program is void.

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| TOTAL SECTION C | | | | | | | | | | | |
| 31,675,739 | 392,801,950 | 471,979,686 | 574,273 | 0 | 897,031,648 | 31,573,817 | 383,997,632 | 471,084,843 | 574,646 | 0 | 887,230,938 |

| | Fiscal 2014 | | | | | | Fiscal 2015 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| D. JUDICIAL BRANCH, LAW ENFORCEMENT, AND JUSTICE | | | | | | | | | | | |
| **JUDICIARY (2110)** | | | | | | | | | | | |
| 1. Supreme Court Operations (01) | | | | | | | | | | | |
| 9,699,483 | 241,555 | 120,882 | 0 | 0 | 10,061,920 | 9,802,413 | 241,556 | 120,841 | 0 | 0 | 10,164,810 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 45,412 | 0 | 0 | 0 | 0 | 45,412 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Courtroom Technology (Biennial/OTO) | | | | | | | | | | | |
| 222,450 | 0 | 0 | 0 | 0 | 222,450 | 0 | 0 | 0 | 0 | 0 | 0 |
| c. Increase Information Technology Staff (OTO) | | | | | | | | | | | |
| 171,517 | 0 | 0 | 0 | 0 | 171,517 | 162,712 | 0 | 0 | 0 | 0 | 162,712 |
| d. Court Help (Biennial/OTO) | | | | | | | | | | | |
| 325,000 | 0 | 0 | 0 | 0 | 325,000 | 324,842 | 0 | 0 | 0 | 0 | 324,842 |
| e. Judicial Standards (Restricted/Biennial) | | | | | | | | | | | |
| 25,000 | 0 | 0 | 0 | 0 | 25,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2. Law Library (03) | | | | | | | | | | | |
| 870,647 | 0 | 0 | 0 | 0 | 870,647 | 874,238 | 0 | 0 | 0 | 0 | 874,238 |
| 3. District Court Operations (04) | | | | | | | | | | | |
| 25,552,692 | 149,018 | 0 | 0 | 0 | 25,701,710 | 25,558,098 | 149,018 | 0 | 0 | 0 | 25,707,116 |
| 4. Water Courts Supervision (05) | | | | | | | | | | | |
| 0 | 2,110,902 | 0 | 0 | 0 | 2,110,902 | 0 | 2,108,515 | 0 | 0 | 0 | 2,108,515 |
| 5. Clerk of Court (06) | | | | | | | | | | | |
| 469,943 | 0 | 0 | 0 | 0 | 469,943 | 470,668 | 0 | 0 | 0 | 0 | 470,668 |
| Total | | | | | | | | | | | |
| 37,382,144 | 2,501,475 | 120,882 | 0 | 0 | 40,004,501 | 37,192,971 | 2,499,089 | 120,841 | 0 | 0 | 39,812,901 |
| **CRIME CONTROL DIVISION (4107)** | | | | | | | | | | | |
| 1. Justice System Support Service (01) | | | | | | | | | | | |

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 1,411,695 | 13,852 | 552,229 | 0 | 0 | 1,977,776 | 1,410,767 | 13,844 | 551,596 | 0 | 0 | 1,976,207 |
| a. Pass-Through Grants (Biennial) | | | | | | | | | | | |
| 0 | 138,321 | 5,498,350 | 0 | 0 | 5,636,671 | 0 | 138,321 | 5,498,350 | 0 | 0 | 5,636,671 |
| b. Juvenile Detention (Biennial) | | | | | | | | | | | |
| 931,923 | 0 | 0 | 0 | 0 | 931,923 | 931,923 | 0 | 0 | 0 | 0 | 931,923 |
| Total | | | | | | | | | | | |
| 2,343,618 | 152,173 | 6,050,579 | 0 | 0 | 8,546,370 | 2,342,690 | 152,165 | 6,049,946 | 0 | 0 | 8,544,801 |

All pass-through grant authority is biennial.

All remaining pass-through grant appropriations, up to $100,000 in general fund money, $180,000 in state special revenue, and $7 million in federal funds, including reversions, for the 2013 biennium are authorized to continue and are appropriated in fiscal year 2014 and fiscal year 2015.

**DEPARTMENT OF JUSTICE (4110)**

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Legal Services Division (01) | | | | | | | | | | | |
| 6,043,502 | 189,998 | 412,411 | 0 | 0 | 6,645,911 | 6,033,578 | 189,998 | 412,405 | 0 | 0 | 6,635,981 |
| a. Child and Family Ombudsman (Biennial) | | | | | | | | | | | |
| 125,000 | 0 | 0 | 0 | 0 | 125,000 | 125,000 | 0 | 0 | 0 | 0 | 125,000 |
| b. Major Litigation — Montana v. Wyoming Water Litigation (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 1,000,000 | 0 | 0 | 0 | 0 | 1,000,000 | 1,000,000 | 0 | 0 | 0 | 0 | 1,000,000 |
| 2. Office of Consumer Protection (02) | | | | | | | | | | | |
| 0 | 867,076 | 0 | 0 | 0 | 867,076 | 0 | 870,964 | 0 | 0 | 0 | 870,964 |
| 3. Gambling Control Division (07) | | | | | | | | | | | |
| 0 | 2,799,826 | 0 | 1,143,591 | 0 | 3,943,417 | 0 | 2,806,505 | 0 | 1,146,319 | 0 | 3,952,824 |
| 4. Motor Vehicle Division (12) | | | | | | | | | | | |
| 7,978,597 | 10,133,100 | 0 | 586,467 | 0 | 18,698,164 | 7,997,520 | 10,564,503 | 0 | 591,259 | 0 | 19,153,282 |
| 5. Montana Highway Patrol (13) | | | | | | | | | | | |
| 0 | 34,282,166 | 0 | 0 | 0 | 34,282,166 | 0 | 34,352,953 | 0 | 0 | 0 | 34,352,953 |

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| a. Bakken Highway Patrol Officer Outfitting (OTO) | | | | | | | | | | | |
| 0 | 276,700 | 0 | 0 | 0 | 276,700 | 0 | 0 | 0 | 0 | 0 | 0 |
| 6. Division of Criminal Investigation (18) | | | | | | | | | | | |
| 6,589,330 | 3,879,868 | 687,352 | 0 | 0 | 11,156,550 | 6,614,328 | 3,877,218 | 687,352 | 0 | 0 | 11,178,898 |
| a. Child Abuse Prevention (Restricted/OTO) | | | | | | | | | | | |
| 100,000 | 0 | 0 | 0 | 0 | 100,000 | 100,000 | 0 | 0 | 0 | 0 | 100,000 |
| b. POST Contracted Legal Costs (Restricted) | | | | | | | | | | | |
| 50,000 | 0 | 0 | 0 | 0 | 50,000 | 50,000 | 0 | 0 | 0 | 0 | 50,000 |
| c. Senate Bill 43 Investigator for Investigations at the Montana Developmental Center (Restricted) | | | | | | | | | | | |
| 97,064 | 0 | 0 | 0 | 0 | 97,064 | 97,064 | 0 | 0 | 0 | 0 | 97,064 |
| 7. Central Services Division (28) | | | | | | | | | | | |
| 460,077 | 897,127 | 0 | 26,061 | 0 | 1,383,265 | 460,969 | 899,790 | 0 | 24,849 | 0 | 1,385,608 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 25,309 | 48,049 | 0 | 0 | 0 | 73,358 | 0 | 0 | 0 | 0 | 0 | 0 |
| 8. Information Technology Services Division (29) | | | | | | | | | | | |
| 3,708,491 | 141,476 | 2,652 | 14,856 | 0 | 3,867,475 | 3,707,900 | 141,456 | 2,651 | 14,855 | 0 | 3,866,862 |
| 9. Forensic Science Division (32) | | | | | | | | | | | |
| 3,690,901 | 342,099 | 0 | 0 | 0 | 4,033,000 | 3,688,252 | 342,368 | 0 | 0 | 0 | 4,030,620 |
| a. Forensic Science Division Equipment (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 50,000 | 0 | 0 | 0 | 0 | 50,000 | 50,000 | 0 | 0 | 0 | 0 | 50,000 |
| Total | | | | | | | | | | | |
| 29,918,271 | 53,857,485 | 1,102,415 | 1,770,975 | 0 | 86,649,146 | 29,924,611 | 54,045,755 | 1,102,408 | 1,777,282 | 0 | 86,850,056 |

If House Bill No. 76 is not passed and approved, Child and Family Ombudsman is void.

Motor Vehicle Division includes a reduction in general fund of $397,535 in fiscal year 2014 and $399,973 in fiscal year 2015, state special revenue of $171,421 in fiscal year 2014 and $174,974 in fiscal year 2015, and proprietary funds of $4,792 in fiscal year 2014. The reduction is the equivalent of an additional 2% vacancy savings. The agency may allocate this reduction in funding among programs when developing 2015 biennium operating plans.

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |

Division of Criminal Investigation includes $387,811 in state special revenue in fiscal year 2014 and $377,162 in state special revenue in fiscal year 2015 that is contingent upon passage and approval of House Bill No. 218 in a form that allows a direct appropriation of the oil and gas impact account for the purpose of funding costs of criminal investigators in the Bakken energy development impacted area of the state. If House Bill No. 218 is not passed and approved in a form that allows a direct appropriation of the oil and gas impact account for this purpose, state special revenue in Division of Criminal Investigation is reduced by $387,811 in fiscal year 2014 and by $377,162 in fiscal year 2015.

**PUBLIC SERVICE COMMISSION (4201)**

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Public Service Regulation Program (01) | | | | | | | | | | | |
| 0 | 3,557,165 | 65,607 | 0 | 0 | 3,622,772 | 0 | 3,595,361 | 65,607 | 0 | 0 | 3,660,968 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 0 | 20,960 | 0 | 0 | 0 | 20,960 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Pay Retirement Benefits (Restricted/Biennial) | | | | | | | | | | | |
| 0 | 92,800 | 0 | 0 | 0 | 92,800 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | | | | | | | | | | | |
| 0 | 3,670,925 | 65,607 | 0 | 0 | 3,736,532 | 0 | 3,595,361 | 65,607 | 0 | 0 | 3,660,968 |

Public Service Regulation Program includes a reduction in state special revenue of $49,888 in fiscal year 2014 and $49,950 in fiscal year 2015. The reduction is the equivalent of an additional 2% vacancy savings.

**OFFICE OF STATE PUBLIC DEFENDER (6108)**

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Office of State Public Defender (01) | | | | | | | | | | | |
| 23,400,417 | 190,751 | 0 | 0 | 0 | 23,591,168 | 23,515,752 | 186,942 | 0 | 0 | 0 | 23,702,694 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 54,145 | 0 | 0 | 0 | 0 | 54,145 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Attorney Career Ladder (Restricted) | | | | | | | | | | | |
| 1,209,927 | 0 | 0 | 0 | 0 | 1,209,927 | 1,209,848 | 0 | 0 | 0 | 0 | 1,209,848 |
| c. Capital Case Defense (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 250,000 | 0 | 0 | 0 | 0 | 250,000 | 250,000 | 0 | 0 | 0 | 0 | 250,000 |
| 2. Office of Appellate Defender (02) | | | | | | | | | | | |

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 1,216,705 | 90,793 | 0 | 0 | 0 | 1,307,498 | 1,219,033 | 86,984 | 0 | 0 | 0 | 1,306,017 |
| a. Attorney Career Ladder (Restricted) | | | | | | | | | | | |
| 72,453 | 0 | 0 | 0 | 0 | 72,453 | 72,448 | 0 | 0 | 0 | 0 | 72,448 |
| Total | | | | | | | | | | | |
| 26,203,647 | 281,544 | 0 | 0 | 0 | 26,485,191 | 26,267,081 | 273,926 | 0 | 0 | 0 | 26,541,007 |

Office of State Public Defender includes a reduction in general fund of $271,617 in fiscal year 2014 and $271,550 in fiscal year 2015. The reduction is the equivalent of an additional 2% vacancy savings. The agency may allocate this reduction in funding among programs when developing 2015 biennium operating plans.

**DEPARTMENT OF CORRECTIONS (6401)**

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Administration and Support Services (01) | | | | | | | | | | | |
| 18,330,908 | 692,539 | 0 | 66,167 | 0 | 19,089,614 | 18,345,453 | 691,166 | 0 | 63,011 | 0 | 19,099,630 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 108,291 | 0 | 0 | 0 | 0 | 108,291 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Outside Medical Inflationary Increase (Restricted/Biennial) | | | | | | | | | | | |
| 1,027,622 | 0 | 0 | 0 | 0 | 1,027,622 | 1,027,622 | 0 | 0 | 0 | 0 | 1,027,622 |
| c. Montana State Prison Door Control System (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 48,632 | 0 | 0 | 0 | 0 | 48,632 | 0 | 0 | 0 | 0 | 0 | 0 |
| d. Montana State Prison Water Telemetry System (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 50,000 | 0 | 0 | 0 | 0 | 50,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| e. Vocational Training (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 159,618 | 0 | 0 | 0 | 0 | 159,618 | 0 | 0 | 0 | 0 | 0 | 0 |
| f. Inmate Adult Educational Assessment Software (Restricted/OTO) | | | | | | | | | | | |
| 20,000 | 0 | 0 | 0 | 0 | 20,000 | 20,000 | 0 | 0 | 0 | 0 | 20,000 |
| g. Montana State Prison Employee Training Lab (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 15,750 | 0 | 0 | 0 | 0 | 15,750 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2. Adult Community Corrections (02) | | | | | | | | | | | |
| 61,056,337 | 1,475,211 | 0 | 0 | 0 | 62,531,548 | 61,210,977 | 1,475,211 | 0 | 0 | 0 | 62,686,188 |

| | Fiscal 2014 | | | | | | Fiscal 2015 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| a. Per Diem for Adult Prerelease Centers (Restricted) | | | | | | | | | | | |
| 439,357 | 0 | 0 | 0 | 0 | 439,357 | 878,714 | 0 | 0 | 0 | 0 | 878,714 |
| b. Per Diem for Adult Treatment (Restricted) | | | | | | | | | | | |
| 245,811 | 0 | 0 | 0 | 0 | 245,811 | 602,323 | 0 | 0 | 0 | 0 | 602,323 |
| c. Reentry Coordination (Restricted) | | | | | | | | | | | |
| 0 | 25,000 | 0 | 0 | 0 | 25,000 | 0 | 25,000 | 0 | 0 | 0 | 25,000 |
| 3. Secure Custody Facilities (03) | | | | | | | | | | | |
| 78,908,107 | 104,816 | 0 | 0 | 0 | 79,012,923 | 79,973,365 | 104,816 | 0 | 0 | 0 | 80,078,181 |
| a. Montana Women's Prison Supplies (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 25,000 | 0 | 0 | 0 | 0 | 25,000 | 35,000 | 0 | 0 | 0 | 0 | 35,000 |
| b. Montana State Prison Supplies and Equipment (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 110,000 | 0 | 0 | 0 | 0 | 110,000 | 30,000 | 0 | 0 | 0 | 0 | 30,000 |
| c. Montana State Prison Van Replacement (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 110,000 | 0 | 0 | 0 | 0 | 110,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| 4. Montana Correctional Enterprises (04) | | | | | | | | | | | |
| 824,496 | 2,515,468 | 0 | 0 | 0 | 3,339,964 | 826,693 | 2,515,498 | 0 | 0 | 0 | 3,342,191 |
| 5. Youth Services (05) | | | | | | | | | | | |
| 17,787,983 | 1,081,784 | 16,005 | 0 | 0 | 18,885,772 | 17,817,228 | 1,081,784 | 16,005 | 0 | 0 | 18,915,017 |
| a. Riverside Safety and Security Equipment (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 100,000 | 0 | 0 | 0 | 0 | 100,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | | | | | | | | | | | |
| 179,367,912 | 5,894,818 | 16,005 | 66,167 | 0 | 185,344,902 | 180,767,375 | 5,893,475 | 16,005 | 63,011 | 0 | 186,739,866 |

Administration and Support Services includes appropriations of $8,050,772 in general fund in each year for outside medical costs that are biennial.

Administration and Support Services includes a reduction in general fund of $685,990 in fiscal year 2014 and $684,700 in fiscal year 2015. The reduction is the equivalent of an additional 2% vacancy savings. The agency may allocate this reduction in funding among programs when developing 2015 biennium operating plans.

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |

Adult Community Corrections includes reductions in general fund of $228,798 in each year to remove funding for 12 male prerelease beds. Reductions at prerelease centers in Great Falls and Missoula may not be made to implement the reductions.

All appropriations for Adult Community Corrections and Secure Custody Facilities are biennial.

Secure Custody Facilities includes $239,148 in general fund money in fiscal year 2014 and $484,428 in general fund money in fiscal year 2015 that may be used only for provider rate increases for contracted beds operated by private for-profit providers. In addition, Secure Custody Facilities includes $560,056 in general fund money in fiscal year 2014 and $560,056 in general fund money in fiscal year 2015 that may be used only for reimbursement to private for-profit providers for prevailing wages as obligated under contract.

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| TOTAL SECTION D | | | | | | | | | | | |
| 275,215,592 | 66,358,420 | 7,355,488 | 1,837,142 | 0 | 350,766,642 | 276,494,728 | 66,459,771 | 7,354,807 | 1,840,293 | 0 | 352,149,599 |

| | Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| | | | | E. EDUCATION | | | | | | | |
| **OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION (3501)** | | | | | | | | | | | |
| 1. OPI Administration (06) | | | | | | | | | | | |
| 10,033,158 | 257,048 | 16,145,599 | 0 | 0 | 26,435,805 | 10,048,526 | 257,109 | 16,150,388 | 0 | 0 | 26,456,023 |
| a. Disaster/Data Maintenance (Restricted/OTO) | | | | | | | | | | | |
| 45,324 | 0 | 0 | 0 | 0 | 45,324 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Chapter 55 Amendment (Restricted/OTO) | | | | | | | | | | | |
| 92,513 | 0 | 0 | 0 | 0 | 92,513 | 88,793 | 0 | 0 | 0 | 0 | 88,793 |
| c. Montana Digital Academy (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 715,000 | 0 | 0 | 0 | 0 | 715,000 | 750,000 | 0 | 0 | 0 | 0 | 750,000 |
| d. National Board Certified Teachers (Restricted/OTO) | | | | | | | | | | | |
| 27,000 | 0 | 0 | 0 | 0 | 27,000 | 57,000 | 0 | 0 | 0 | 0 | 57,000 |
| e. Audiological Services (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 68,186 | 0 | 0 | 0 | 0 | 68,186 | 68,186 | 0 | 0 | 0 | 0 | 68,186 |
| f. Striving Readers Administration (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 0 | 0 | 393,458 | 0 | 0 | 393,458 | 0 | 0 | 393,458 | 0 | 0 | 393,458 |
| g. OPI Staffing Information Systems (OTO) | | | | | | | | | | | |
| 155,422 | 0 | 0 | 0 | 0 | 155,422 | 148,717 | 0 | 0 | 0 | 0 | 148,717 |
| h. School-Based Mental Health (OTO) | | | | | | | | | | | |
| 109,725 | 0 | 0 | 0 | 0 | 109,725 | 105,959 | 0 | 0 | 0 | 0 | 105,959 |
| 2. Distribution to Public Schools (09) | | | | | | | | | | | |
| 0 | 0 | 150,164,220 | 0 | 0 | 150,164,220 | 0 | 0 | 151,724,220 | 0 | 0 | 151,724,220 |
| a. BASE Aid | | | | | | | | | | | |
| 565,029,971 | 0 | 0 | 0 | 0 | 565,029,971 | 580,680,837 | 0 | 0 | 0 | 0 | 580,680,837 |
| b. At-Risk Payment | | | | | | | | | | | |
| 5,044,500 | 0 | 0 | 0 | 0 | 5,044,500 | 5,149,426 | 0 | 0 | 0 | 0 | 5,149,426 |
| c. Special Education | | | | | | | | | | | |

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 42,017,992 | 0 | 0 | 0 | 0 | 42,017,992 | 42,891,966 | 0 | 0 | 0 | 0 | 42,891,966 |
| d. Transportation | | | | | | | | | | | |
| 12,316,253 | 0 | 0 | 0 | 0 | 12,316,253 | 12,416,253 | 0 | 0 | 0 | 0 | 12,416,253 |
| e. In-State Treatment | | | | | | | | | | | |
| 787,800 | 0 | 0 | 0 | 0 | 787,800 | 787,800 | 0 | 0 | 0 | 0 | 787,800 |
| f. Career and Technical Education | | | | | | | | | | | |
| 1,500,000 | 0 | 0 | 0 | 0 | 1,500,000 | 1,500,000 | 0 | 0 | 0 | 0 | 1,500,000 |
| g. Adult Basic Education | | | | | | | | | | | |
| 525,000 | 0 | 0 | 0 | 0 | 525,000 | 525,000 | 0 | 0 | 0 | 0 | 525,000 |
| h. Gifted and Talented | | | | | | | | | | | |
| 250,000 | 0 | 0 | 0 | 0 | 250,000 | 250,000 | 0 | 0 | 0 | 0 | 250,000 |
| i. School Foods | | | | | | | | | | | |
| 663,861 | 0 | 0 | 0 | 0 | 663,861 | 663,861 | 0 | 0 | 0 | 0 | 663,861 |
| j. Reimbursement Block Grants | | | | | | | | | | | |
| 58,569,130 | 0 | 0 | 0 | 0 | 58,569,130 | 66,334,425 | 0 | 0 | 0 | 0 | 66,334,425 |
| k. State Tuition Payments | | | | | | | | | | | |
| 785,658 | 0 | 0 | 0 | 0 | 785,658 | 824,941 | 0 | 0 | 0 | 0 | 824,941 |
| l. Advancing Agricultural Education | | | | | | | | | | | |
| 128,960 | 0 | 0 | 0 | 0 | 128,960 | 128,960 | 0 | 0 | 0 | 0 | 128,960 |
| m. Chapter 55 Professional Development and Stipends (Restricted/OTO) | | | | | | | | | | | |
| 250,000 | 0 | 0 | 0 | 0 | 250,000 | 250,000 | 0 | 0 | 0 | 0 | 250,000 |
| n. School Technology (Restricted/OTO) | | | | | | | | | | | |
| 1,000,000 | 0 | 0 | 0 | 0 | 1,000,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| o. School Facility Debt Service (Restricted/Biennial) | | | | | | | | | | | |
| 0 | 8,586,000 | 0 | 0 | 0 | 8,586,000 | 0 | 8,586,000 | 0 | 0 | 0 | 8,586,000 |
| p. Traffic Safety Distribution (Restricted/Biennial) | | | | | | | | | | | |
| 0 | 750,000 | 0 | 0 | 0 | 750,000 | 0 | 750,000 | 0 | 0 | 0 | 750,000 |
| q. Novice Traffic Education Reimbursement | | | | | | | | | | | |

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 0 | 1,017,254 | 0 | 0 | 0 | 1,017,254 | 0 | 831,210 | 0 | 0 | 0 | 831,210 |
| r. Striving Readers Competency and Literacy (Restricted\OTO) | | | | | | | | | | | |
| 0 | 0 | 7,475,743 | 0 | 0 | 7,475,743 | 0 | 0 | 7,475,743 | 0 | 0 | 7,475,743 |
| s. State School Oil and Natural Gas Impact Account (Restricted/Biennial) | | | | | | | | | | | |
| 0 | 1,000,000 | 0 | 0 | 0 | 1,000,000 | 0 | 700,000 | 0 | 0 | 0 | 700,000 |
| Total | | | | | | | | | | | |
| 700,115,453 | 11,610,302 | 174,179,020 | 0 | 0 | 885,904,775 | 723,670,650 | 11,124,319 | 175,743,809 | 0 | 0 | 910,538,778 |

OPI Administration includes a reduction in general fund of $86,615 in fiscal year 2014 and $86,736 in fiscal year 2015, state special revenue of $4,331 in fiscal year 2014 and $4,337 in fiscal year 2015, and federal special revenue of $125,592 in fiscal year 2014 and $125,768 in fiscal year 2015. The reduction is the equivalent of an additional 2% vacancy savings. The agency may allocate this reduction in funding among programs when developing 2015 biennium operating plans.

The office of public instruction may distribute funds from the appropriation for In-State Treatment to public school districts for the purpose of providing educational costs of children with significant behavioral or physical needs.

All revenue up to $1.8 million in the traffic education account for distribution to schools under the provisions of 20-7-506 and 61-5-121 is appropriated as provided in Title 20, chapter 7, part 5.

All appropriations for federal special revenue programs in state level activities and in local education activities and all general fund appropriations in local education activities are biennial.

Novice Traffic Education Reimbursement is void if House Bill No. 178 is not passed and approved.

**BOARD OF PUBLIC EDUCATION (5101)**

| 1. K–12 Education (01) | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 192,710 | 167,999 | 0 | 0 | 0 | 360,709 | 192,932 | 168,186 | 0 | 0 | 0 | 361,118 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 16,418 | 0 | 0 | 0 | 0 | 16,418 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | | | | | | | | | | | |
| 209,128 | 167,999 | 0 | 0 | 0 | 377,127 | 192,932 | 168,186 | 0 | 0 | 0 | 361,118 |

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| **SCHOOL FOR THE DEAF AND BLIND (5113)** | | | | | | | | | | | |
| 1. Administration Program (01) | | | | | | | | | | | |
| 425,199 | 2,800 | 0 | 0 | 0 | 427,999 | 423,849 | 2,940 | 0 | 0 | 0 | 426,789 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 20,261 | 0 | 0 | 0 | 0 | 20,261 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2. General Services Program (02) | | | | | | | | | | | |
| 474,666 | 0 | 0 | 0 | 0 | 474,666 | 475,564 | 0 | 0 | 0 | 0 | 475,564 |
| 3. Student Services (03) | | | | | | | | | | | |
| 1,498,102 | 0 | 23,000 | 0 | 0 | 1,521,102 | 1,499,950 | 0 | 23,000 | 0 | 0 | 1,522,950 |
| 4. Education (04) | | | | | | | | | | | |
| 3,862,627 | 260,280 | 48,760 | 0 | 0 | 4,171,667 | 3,855,651 | 260,280 | 48,760 | 0 | 0 | 4,164,691 |
| a. Professional Development (Restricted/OTO) | | | | | | | | | | | |
| 25,000 | 0 | 0 | 0 | 0 | 25,000 | 25,000 | 0 | 0 | 0 | 0 | 25,000 |
| b. Extracurricular Compensation (Restricted) | | | | | | | | | | | |
| 26,938 | 0 | 0 | 0 | 0 | 26,938 | 26,938 | 0 | 0 | 0 | 0 | 26,938 |
| c. Upgrade Equipment — Lending Library (Biennial/OTO) | | | | | | | | | | | |
| 25,000 | 0 | 0 | 0 | 0 | 25,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | | | | | | | | | | | |
| 6,357,793 | 263,080 | 71,760 | 0 | 0 | 6,692,633 | 6,306,952 | 263,220 | 71,760 | 0 | 0 | 6,641,932 |
| **MONTANA ARTS COUNCIL (5114)** | | | | | | | | | | | |
| 1. Promotion of the Arts (01) | | | | | | | | | | | |
| 465,226 | 220,123 | 0 | 0 | 0 | 685,349 | 476,907 | 215,923 | 0 | 0 | 0 | 692,830 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 20,960 | 0 | 0 | 0 | 0 | 20,960 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Federal Funds (Biennial) | | | | | | | | | | | |
| 0 | 0 | 697,430 | 0 | 0 | 697,430 | 0 | 0 | 684,122 | 0 | 0 | 684,122 |

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| c. Arts in Education Grants (Biennial/OTO) | | | | | | | | | | | |
| 55,000 | 0 | 0 | 0 | 0 | 55,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| d. Arts in Education — Box Elder Fine Arts Glass Blowing (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 35,000 | 0 | 0 | 0 | 0 | 35,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | | | | | | | | | | | |
| 576,186 | 220,123 | 697,430 | 0 | 0 | 1,493,739 | 476,907 | 215,923 | 684,122 | 0 | 0 | 1,376,952 |

Arts in Education — Box Elder Fine Arts Glass Blowing includes general fund of $35,000 as a restricted, biennial, one-time-only appropriation to the Montana arts council for the 2015 biennium to issue a grant to the Box Elder schools fine arts glass blowing program. At least $30,000 of the grant must be allocated for propane and glass costs and up to $5,000 may be allocated to reimburse participating schools for travel expenses. The grant must be used to supplement local funding for the program.

**MONTANA STATE LIBRARY COMMISSION (5115)**

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Statewide Library Resources (01) | | | | | | | | | | | |
| 2,796,134 | 1,800,386 | 364,870 | 0 | 0 | 4,961,390 | 2,790,572 | 1,799,683 | 364,873 | 0 | 0 | 4,955,128 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 20,960 | 0 | 0 | 0 | 0 | 20,960 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Water Information System (Restricted/OTO) | | | | | | | | | | | |
| 72,472 | 0 | 0 | 0 | 0 | 72,472 | 72,362 | 0 | 0 | 0 | 0 | 72,362 |
| c. Talking Book Library Transition (Restricted/OTO) | | | | | | | | | | | |
| 25,000 | 0 | 0 | 0 | 0 | 25,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| d. Distribution to Local Libraries (Restricted/OTO) | | | | | | | | | | | |
| 292,936 | 0 | 0 | 0 | 0 | 292,936 | 292,936 | 0 | 0 | 0 | 0 | 292,936 |
| e. Library Services and Technology Act Grants (Biennial) | | | | | | | | | | | |
| 0 | 0 | 1,300,000 | 0 | 0 | 1,300,000 | 0 | 0 | 200,000 | 0 | 0 | 200,000 |
| Total | | | | | | | | | | | |
| 3,207,502 | 1,800,386 | 1,664,870 | 0 | 0 | 6,672,758 | 3,155,870 | 1,799,683 | 564,873 | 0 | 0 | 5,520,426 |

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |

If House Bill No. 38 is not passed and approved, Statewide Library Resources is decreased by $954,062 in fiscal year 2014 and $953,359 in fiscal year 2015 in state special revenue.

**MONTANA HISTORICAL SOCIETY (5117)**

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Administration Program (01) | | | | | | | | | | | |
| 964,702 | 96,839 | 86,920 | 242,458 | 0 | 1,390,919 | 951,765 | 96,411 | 86,932 | 239,382 | 0 | 1,374,490 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 38,426 | 0 | 0 | 0 | 0 | 38,426 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2. Research Center (02) | | | | | | | | | | | |
| 1,057,146 | 112,732 | 0 | 34,102 | 0 | 1,203,980 | 1,056,849 | 112,781 | 0 | 34,102 | 0 | 1,203,732 |
| a. Research Program Shelving (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 300,000 | 0 | 0 | 0 | 0 | 300,000 | 102,000 | 0 | 0 | 0 | 0 | 102,000 |
| 3. Museum Program (03) | | | | | | | | | | | |
| 523,177 | 397,573 | 0 | 2,707 | 0 | 923,457 | 520,259 | 397,795 | 0 | 2,707 | 0 | 920,761 |
| a. Original Governor's Mansion Repair (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 75,000 | 0 | 0 | 0 | 0 | 75,000 | 27,000 | 0 | 0 | 0 | 0 | 27,000 |
| 4. Publications (04) | | | | | | | | | | | |
| 140,267 | 0 | 0 | 284,827 | 0 | 425,094 | 140,958 | 0 | 0 | 285,587 | 0 | 426,545 |
| 5. Education Program (05) | | | | | | | | | | | |
| 284,435 | 103,670 | 0 | 21,690 | 0 | 409,795 | 284,321 | 103,590 | 0 | 21,690 | 0 | 409,601 |
| 6. Historic Preservation Program (06) | | | | | | | | | | | |
| 35,203 | 0 | 633,267 | 10,077 | 0 | 678,547 | 35,158 | 0 | 632,787 | 10,130 | 0 | 678,075 |
| Total | | | | | | | | | | | |
| 3,418,356 | 710,814 | 720,187 | 595,861 | 0 | 5,445,218 | 3,118,310 | 710,577 | 719,719 | 593,598 | 0 | 5,142,204 |

Administration Program includes a reduction in general fund of $47,152 in fiscal year 2014 and $44,010 in fiscal year 2015, state special revenue of $2,089 in fiscal year 2014 and $2,253 in fiscal year 2015, federal special revenue of $9,950 in fiscal year 2014 and $9,938 in fiscal year 2015, and proprietary funds of $6,545 in fiscal year 2014 and $9,552 in fiscal year 2015. The reduction is equivalent of an additional 2% vacancy savings. The agency may allocate this reduction in funding among programs when developing 2015 biennium operating plans.

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| **MONTANA UNIVERSITY SYSTEM, INCLUDING OFFICE OF THE COMMISSIONER OF HIGHER EDUCATION AND EDUCATIONAL UNITS AND AGENCIES (5100)** | | | | | | | | | | | |
| 1. OCHE — Administration Program (01) | | | | | | | | | | | |
| 2,538,144 | 0 | 338,470 | 75,093 | 0 | 2,951,707 | 2,556,529 | 0 | 334,065 | 74,290 | 0 | 2,964,884 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 41,919 | 0 | 0 | 0 | 0 | 41,919 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2. OCHE — Student Assistance Program (02) | | | | | | | | | | | |
| 9,860,514 | 149,530 | 0 | 0 | 0 | 10,010,044 | 10,529,816 | 149,530 | 0 | 0 | 0 | 10,679,346 |
| a. GSL/Student Assistance Fund Allocation (OTO) | | | | | | | | | | | |
| 2,587,890 | 0 | 0 | 0 | 0 | 2,587,890 | 2,587,890 | 0 | 0 | 0 | 0 | 2,587,890 |
| b. Quality Educator Loan Forgiveness (Restricted/OTO) | | | | | | | | | | | |
| 243,110 | 0 | 0 | 0 | 0 | 243,110 | 243,110 | 0 | 0 | 0 | 0 | 243,110 |
| c. Veterans' Success (Restricted/Biennial/OTO) | | | | | | | | | | | |
| 500,000 | 0 | 0 | 0 | 0 | 500,000 | 500,000 | 0 | 0 | 0 | 0 | 500,000 |
| 3. OCHE — Improving Teacher Quality (03) | | | | | | | | | | | |
| 0 | 0 | 392,117 | 0 | 0 | 392,117 | 0 | 0 | 342,580 | 0 | 0 | 342,580 |
| 4. OCHE — Community College Assistance (04) (Biennial) | | | | | | | | | | | |
| 12,439,325 | 0 | 0 | 0 | 0 | 12,439,325 | 12,440,785 | 0 | 0 | 0 | 0 | 12,440,785 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 73,852 | 0 | 0 | 0 | 0 | 73,852 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Workforce Development Programs (OTO) | | | | | | | | | | | |
| 500,000 | 0 | 0 | 0 | 0 | 500,000 | 500,000 | 0 | 0 | 0 | 0 | 500,000 |
| 5. OCHE — Educational Outreach and Diversity (06) | | | | | | | | | | | |
| 90,971 | 0 | 4,449,177 | 0 | 0 | 4,540,148 | 90,782 | 0 | 4,451,804 | 0 | 0 | 4,542,586 |
| 6. OCHE — Workforce Development Program (08) | | | | | | | | | | | |
| 90,067 | 0 | 6,186,975 | 0 | 0 | 6,277,042 | 90,067 | 0 | 6,185,867 | 0 | 0 | 6,275,934 |
| 7. OCHE — Appropriation Distribution Transfers (09) | | | | | | | | | | | |
| 145,004,305 | 19,496,720 | 0 | 0 | 0 | 164,501,025 | 146,828,116 | 20,003,477 | 0 | 0 | 0 | 166,831,593 |

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 530,974 | 0 | 0 | 0 | 0 | 530,974 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Workforce Development and 2-Year Education (OTO) | | | | | | | | | | | |
| 500,000 | 0 | 0 | 0 | 0 | 500,000 | 500,000 | 0 | 0 | 0 | 0 | 500,000 |
| c. Veterinary Medicine (Biennial/OTO) | | | | | | | | | | | |
| 500,000 | 0 | 0 | 0 | 0 | 500,000 | 500,000 | 0 | 0 | 0 | 0 | 500,000 |
| d. Energy and Natural Resources Doctoral Program (Biennial/OTO) | | | | | | | | | | | |
| 300,000 | 0 | 0 | 0 | 0 | 300,000 | 300,000 | 0 | 0 | 0 | 0 | 300,000 |
| e. Bio-Energy Research Center (Biennial/OTO) | | | | | | | | | | | |
| 200,000 | 0 | 0 | 0 | 0 | 200,000 | 200,000 | 0 | 0 | 0 | 0 | 200,000 |
| f. Agricultural Experiment Station | | | | | | | | | | | |
| 12,941,928 | 0 | 0 | 0 | 0 | 12,941,928 | 12,977,684 | 0 | 0 | 0 | 0 | 12,977,684 |
| ~~g. Agricultural Experiment Station — Montana Seed Lab (OTO)~~ | | | | | | | | | | | |
| ~~125,000~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~125,000~~ | ~~125,000~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~125,000~~ |
| h. Extension Service | | | | | | | | | | | |
| 5,399,931 | 0 | 0 | 0 | 0 | 5,399,931 | 5,406,536 | 0 | 0 | 0 | 0 | 5,406,536 |
| ~~i. Extension Service — Schutter Diagnostic Laboratory (OTO)~~ | | | | | | | | | | | |
| ~~200,000~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~200,000~~ | ~~200,000~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~0~~ | ~~200,000~~ |
| j. Extension Service — Local Government Center (OTO) | | | | | | | | | | | |
| 100,000 | 0 | 0 | 0 | 0 | 100,000 | 100,000 | 0 | 0 | 0 | 0 | 100,000 |
| k. Forest & Conservation Experiment Station | | | | | | | | | | | |
| 977,138 | 0 | 0 | 0 | 0 | 977,138 | 976,330 | 0 | 0 | 0 | 0 | 976,330 |
| l. Bureau of Mines and Geology | | | | | | | | | | | |
| 3,514,146 | 841,886 | 0 | 0 | 0 | 4,356,032 | 3,511,549 | 841,886 | 0 | 0 | 0 | 4,353,435 |
| m. Coal and Mine Data Records (Restricted/OTO) | | | | | | | | | | | |
| 0 | 300,000 | 0 | 0 | 0 | 300,000 | 0 | 300,000 | 0 | 0 | 0 | 300,000 |
| n. Fire Services Training School | | | | | | | | | | | |
| 673,555 | 0 | 0 | 0 | 0 | 673,555 | 674,760 | 0 | 0 | 0 | 0 | 674,760 |

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 8. Tribal College Assistance Program (11) (Biennial) | | | | | | | | | | | |
| 842,085 | 0 | 0 | 0 | 0 | 842,085 | 842,085 | 0 | 0 | 0 | 0 | 842,085 |
| a. Increase Tribal College Assistance (OTO) | | | | | | | | | | | |
| 184,442 | 0 | 0 | 0 | 0 | 184,442 | 184,442 | 0 | 0 | 0 | 0 | 184,442 |
| 9. OCHE — Guaranteed Student Loan (12) | | | | | | | | | | | |
| 0 | 0 | 45,840,514 | 0 | 0 | 45,840,514 | 0 | 0 | 45,840,513 | 0 | 0 | 45,840,513 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 0 | 0 | 15,720 | 0 | 0 | 15,720 | 0 | 0 | 0 | 0 | 0 | 0 |
| 10. OCHE — Board of Regents (13) | | | | | | | | | | | |
| 69,087 | 0 | 0 | 0 | 0 | 69,087 | 69,169 | 0 | 0 | 0 | 0 | 69,169 |
| Total | | | | | | | | | | | |
| 201,028,383 | 20,788,136 | 57,222,973 | 75,093 | 0 | 279,114,585 | 202,934,650 | 21,294,893 | 57,154,829 | 74,290 | 0 | 281,458,662 |

Items designated as OCHE—Administration (01), OCHE Student Assistance (02), Improving Teacher Quality (03), Educational Outreach and Diversity (06), Workforce Development (08), Appropriation Distribution Transfers (09) [excluding Agriculture Experiment Station, Extension Service, Forest and Conservation Experiment Station, Bureau of Mines and Geology, and Fire Services Training School] Guaranteed Student Loan (12), and the Board of Regents (13) are a single biennial lump-sum appropriation.

General fund money, state and federal special revenue and proprietary fund revenue appropriated to the board of regents are included in all Montana university system programs. All other public funds received by units of the Montana university system (other than plant funds appropriated in House Bill No. 5, relating to long-range building) are appropriated to the board of regents and may be expended under the provisions of 17-7-138(2). The board of regents shall allocate the appropriations to individual university system units, as defined in 17-7-102(13), according to board policy.

The Montana university system, except the office of the commissioner of higher education and the community colleges, shall provide the office of budget and program planning and the legislative fiscal division banner access to the entire university system's banner information system, except for information pertaining to individual students or individual employees that is protected by Article II, sections 9 and 10, of the Montana constitution, 20-25-515, or the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g.

The Montana university system shall provide the electronic data required for entering human resource data for the current unrestricted operating funds into the Montana Budgeting and Reporting System (MBARS). The salary and benefit data provided must reflect approved board of regents operating budgets.

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |

OCHE — Administration program includes a reduction in general fund of $44,320 in fiscal year 2014 and $44,307 in fiscal year 2015, federal special revenue of $80,406 in fiscal year 2014 and $80,399 in fiscal year 2015, and proprietary funds of $1,176 in fiscal year 2014 and $1,176 in fiscal year 2015. The reduction is the equivalent of an additional 2% vacancy savings. The agency may allocate this reduction in funding among programs when developing 2015 biennium operating plans.

Veterans' Success in OCHE — Student Assistance Program may be used only to provide space and services to meet veterans' needs for access to and completion of postsecondary education.

The variable cost of education for each full-time equivalent student at the community colleges is $2,314 each year of the 2015 biennium. The general fund appropriation for OCHE—Community College Assistance (04) provides 50.8% of the fixed costs of education plus 50.8% of the variable cost of education for each full-time equivalent student in each year of the 2015 biennium. The remaining percentage of the budget must be paid from funds other than those appropriated for OCHE—Community College Assistance.

The general fund appropriation for OCHE — Community College Assistance is calculated to fund education in the community colleges for an estimated 2,288 resident FTE students each year of the 2015 biennium. If total resident FTE student enrollment in the community colleges is greater than the estimated number for the biennium, the community colleges shall serve the additional students without a state general fund contribution. If actual resident FTE student enrollment is less than the estimated numbers for the biennium, the community colleges shall revert general fund money to the state in accordance with 17-7-142.

Total audit costs are estimated to be $145,378 for the community colleges for the biennium. The general fund appropriation for each community college provides 50.8% of the total audit costs in the 2015 biennium. The remaining 49.2% of these costs must be paid from funds other than those appropriated for OCHE — Community College Assistance — Legislative Audit. Audit costs charged to the community colleges for the biennium may not exceed $55,000 for Dawson, $44,520 for Miles and $45,858 for Flathead Valley community college.

Revenue anticipated to be received by the Montana university system units and colleges includes interest earnings and other revenues of $956,891 for each year of the 2015 biennium. These amounts are appropriated for current unrestricted operating expenses as a biennial lump-sum appropriation and are in addition to the funds shown in OCHE—Appropriation Distribution Transfers.

Anticipated interest earnings and other revenue of $8,500 each year of the 2015 biennium is appropriated to the agricultural experiment station for current unrestricted operating expenses. This amount is in addition to that shown in OCHE — Appropriation Distribution Transfers.

Anticipated interest earnings of $1,500 each year of the 2015 biennium is appropriated to the extension service for current unrestricted operating expenses. This amount is in addition to that shown in OCHE — Appropriation Distribution Transfers.

Anticipated interest revenue of $800 in each year of the 2015 biennium is appropriated to the forestry and conservation experiment station for current unrestricted operating expenses. This amount is in addition to that shown in OCHE — Appropriation Distribution Transfers.

| Fiscal 2014 | | | | | | Fiscal 2015 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |

Anticipated sales revenue of $40,000 each year in the 2015 biennium is appropriated to the bureau of mines and geology for current unrestricted operating expenses. This amount is in addition to that shown in OCHE — Appropriation Distribution Transfers.

Anticipated interest revenue of $200 each year of the 2015 biennium is appropriated to the fire services training school for current unrestricted operating expenses. This amount is in addition to that shown in OCHE — Appropriation Distribution Transfers.

Total audit costs are estimated to be $530,974 for the university system educational units and public service/research agencies, other than the office of the commissioner of higher education. Audit costs charged to the educational units and public service/research agencies for the 2015 biennium may not exceed $265,487 for the University of Montana and $265,487 for Montana State University.

OCHE — Appropriation Distribution Transfers includes $1,442,114 in fiscal year 2014 and $1,384,114 in fiscal year 2015 that must be transferred to the energy conservation program account and used to retire the general obligation bonds sold to fund energy improvements or repay loans received for energy improvements through the state energy conservation program. The costs of this transfer in each year of the 2015 biennium are as follows: University of Montana-Missoula, $468,859 each year; University of Montana- Western, $147,867 each year; University of Montana-Montana Tech, $32,099 each year; Helena College, $64,104 each year; Montana State University-Bozeman $383,410 in fiscal year 2014 and $325,410 in fiscal year 2015; Montana State University- Billings $170,542 each year; Montana State University-Northern, $85,336 each year; and Great Falls College, $86,500 each year of the biennium.

The Montana university system shall pay $88,506 for the 2015 biennium in current funds in support of the Montana natural resource information system (NRIS) located at the Montana state library. Quarterly payments must be made upon receipt of the bills from the state library, up to the total amount appropriated.

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| TOTAL SECTION E | | | | | | | | | | | |
| 914,912,801 | 35,560,840 | 234,556,240 | 670,954 | 0 | 1,185,700,835 | 939,856,271 | 35,576,801 | 234,939,112 | 667,888 | 0 | 1,211,040,072 |
| TOTAL STATE FUNDING | | | | | | | | | | | |
| 1,756,967,347 | 726,576,253 | 1,941,036,172 | 23,793,776 | 0 | 4,448,373,548 | 1,806,027,868 | 714,352,705 | 1,991,862,264 | 23,420,801 | 0 | 4,535,663,638 |

**Section 10. Rates.** Internal service fund type fees and charges established by the legislature for the 2015 biennium in compliance with 17-7-123(1)(f)(ii) are as follows:

| | Fiscal 2014 | Fiscal 2015 |
|---|---|---|
| **DEPARTMENT OF REVENUE – 5801** | | |
| 1. Citizen Services and Resource Management Division | | |
| Delinquent Account Collection Fee (percent of amount collected) | 5% | 5% |
| **DEPARTMENT OF ADMINISTRATION — 6101** | | |
| 1. Director's Office | | |
| a. Management Services | | |
| Total Allocation of Costs, excluding portion of unit for HR | $1,269,878 | $1,269,232 |
| Portion of Unit for Human Resources Charges Per FTE of User Programs | $606 | $603 |
| 2. State Accounting Division | | |
| a. SABHRS Finance and Budget Bureau | | |
| SABHRS Services Fee (total allocation of costs) | $3,689,397 | $3,346,369 |
| b. Warrant Writer | | |
| Mailer | $0.67693 | $0.67112 |
| Nonmailer | $0.24493 | $0.24912 |
| Emergency | $9.88544 | $9.88963 |
| Duplicates | $7.08394 | $7.08812 |
| Externals | | |
| Externals - Payroll | $0.18730 | $0.19149 |
| Externals - Other | $0.12394 | $0.12260 |
| Direct Deposit | | |
| Direct Deposit - Mailer | $0.70654 | $0.69520 |
| Direct Deposit - No Advice Printed | $0.12394 | $0.12260 |
| Unemployment Insurance | | |
| Mailer - Print Only | $0.12099 | $0.12652 |
| Direct Deposit - No Advice Printed | $0.03618 | $0.03614 |
| 3. General Services Division | | |
| a. Facilities Management Bureau | | |
| Office Rent (per sq. ft.) | $8.434 | $8.217 |
| Warehouse Rent (per sq. ft.) | $4.625 | $4.637 |
| Grounds Maintenance (per sq. ft) | $0.491 | $0.493 |
| Project Management - In-house | 15% | 15% |
| Project Management - contracted | 5% | 5% |

$2,393,219 of revenue collected related to Facilities Management rates is to be deposited into a State Special Revenue Fund. These types of projects are appropriated in HB 5 for major maintenance projects on the Capitol Complex.

| | | |
|---|---|---|
| b. Print and Mail Services | | |
| Internal Printing | | |
| Impression Cost | | |
| 1-20 | $0.0800 | $0.0800 |
| 21-100 | $0.0360 | $0.0360 |

| | | |
|---|---|---|
| 101-1000 | $0.0200 | $0.0200 |
| 1001-5000 | $0.0080 | $0.0080 |
| 5000+ | $0.0040 | $0.0040 |
| Color Copy | | |
| 8 ½ x 11 | $0.25 | $0.25 |
| 11 x 17 | $0.50 | $0.50 |
| Ink | | |
| Black per Sheet | $0.0002 | $0.0002 |
| Color | $15.00 | $15.00 |
| Special Mix | $25.00 | $25.00 |
| Large Format Color per ft. | $12.70 | $12.70 |
| Collating Machine | $0.0080 | $0.0080 |
| Collating Hand | $0.60 | $0.60 |
| Stapling Hand | $0.018 | $0.018 |
| Stapling In-line | $0.012 | $0.012 |
| Saddle Stitch | $0.036 | $0.036 |
| Folding (base + per sheet) | $12.00 + $0.006 | $12.00 + 0.006 |
| Folding Rt Angle (base + per sheet) | $12.00 + $0.006 | $12.00 + 0.006 |
| Folding In-line | $0.036 | $0.036 |
| Punching Standard 3-hole | $0.0012 | $0.0012 |
| Punching Nonstandard (base + per sheet) | $3.60 + $0.0012 | $3.60 + 0.0012 |
| Cutting | $0.66 | $0.66 |
| Padding | $0.0024 | $0.0024 |
| Scoring, perf, num (setup + duplicating rate) | $6.00 + Dup Rate | $6.00 + Dup Rate |
| Perfect Binding (setup + per sheet) | $18.00 + $0.66 | $18.00 + $0.66 |
| Spiral Binding | $0.69 | $0.69 |
| Laminating | | |
| 8 ½ x 11 | $0.57 | $0.57 |
| 11 x 17 | $0.85 | $0.85 |
| Tape Binding | $0.60 | $0.60 |
| Tabs | $0.60 | $0.60 |
| Transparencies | $0.60 | $0.60 |
| Shrink Wrapping | $0.30 | $0.30 |
| Hand Work Production | $0.60 | $0.60 |
| Overtime | $24.00 | $24.00 |
| Desktop | $50.00 | $50.00 |
| Scan | $9.52 | $9.52 |
| Proof | $0.25 | $0.25 |
| Programming | $50.00 | $50.00 |
| File Transfer | $25.00 | $25.00 |
| Variable Data | $0.020 | $0.020 |
| Mainframe Printing | $0.069 | $0.069 |
| CD Duplicating | $1.75 | $1.75 |
| DVD Duplicating | $3.50 | $3.50 |

| | | |
|---|---|---|
| CTP Plates | | |
| 8 ½ x 11 | $9.20 | $9.20 |
| 11 x 17 | $10.35 | $10.35 |
| External Printing | | |
| Percent of Invoice markup | 6.73% | 6.73% |
| Photocopy Pool | | |
| Percent of Invoice markup | 15.9% | 15.9% |
| Inventory | | |
| Percent of Invoice markup | 15.0% | 15.0% |
| Mail Preparation | | |
| Tabbing | $0.021 | $0.021 |
| Labeling | $0.021 | $0.021 |
| Ink Jet | $0.034 | $0.034 |
| Inserting | $0.030 | $0.030 |
| Waymark | $0.069 | $0.069 |
| Permit Mailings | $0.069 | $0.069 |
| Mail Operations | | |
| Machinable | $0.043 | $0.043 |
| Nonmachinable | $0.100 | $0.100 |
| Seal Only | $0.020 | $0.020 |
| Postcards | $0.060 | $0.060 |
| Certified Mail | $0.614 | $0.614 |
| Registered Mail | $0.614 | $0.614 |
| International Mail | $0.500 | $0.500 |
| Flats | $0.140 | $0.140 |
| Priority | $0.614 | $0.614 |
| Express Mail | $0.614 | $0.614 |
| USPS Parcels | $0.500 | $0.500 |
| Insured Mail | $0.614 | $0.614 |
| Media Mail | $0.307 | $0.307 |
| Standard Mail | $0.200 | $0.200 |
| Postage Due | $0.061 | $0.061 |
| Fee Due | $0.061 | $0.061 |
| Tapes | $0.245 | $0.245 |
| Express Services | $0.500 | $0.500 |
| Interagency Mail | $314,750 yearly | $314,750 yearly |
| Postal Contract (Capitol) | $38,976 yearly | $38,976 yearly |
| c. Central Stores Program | | |
| Markup as a Percentage of Retail Cost of Goods Sold | 2% | 2% |

4. Information Technology Services Division

Rates Maintained/Based Upon Financial Transparency Model (FTM)

Operations of the Division 30-Day Working Capital Reserve

5. Health Care and Benefits Division

Because state employee benefit plans require a large number of individual contributions for a variety of benefit options, because the portion of the contributions paid by the state is statutorily established in 2-18-703, and because the employee and

retiree-paid portion of those contributions must be adjusted from time to time to meet the requirements of 2-18-812(1) to maintain state employee group benefit plans on an actuarially sound basis, the legislature defines "rates and fees" for state employee programs to mean the state contribution toward employee group benefits provided for in 2-18-703 and the employee contribution toward group benefits necessary to meet the requirements of 2-18-812(1).

| | | |
|---|---|---|
| a. Workers' Compensation Management Program | | |
| Administrative Fee (per payroll warrant per pay period) | $0.82 | $0.82 |
| b. Flexible Spending Account Program | $2.26 | $2.26 |
| 6. State Human Resources Division | | |
| a. Intergovernmental Training | | |
| Open Enrollment Courses | | |
| Two-Day Course (per participant) | $190.00 | $190.00 |
| One-Day Course (per participant) | $123.00 | $123.00 |
| Half-Day Course (per participant) | $95.00 | $95.00 |
| Eight-Day Management Series (per participant) | $570.00 | $570.00 |
| Six-Day Management Series (per participant) | $440.00 | $440.00 |
| Four-Day Administrative Series (per participant) | $333.00 | $333.00 |
| Contract Courses | | |
| Full-Day Training (flat fee) | $830.00 | $830.00 |
| Half-Day Training (flat fee) | $570.00 | $570.00 |
| b. Human Resources Information System Fee | | |
| Per payroll warrant advice per pay period | $8.13 | $8.15 |
| 7. Risk Management & Tort Defense | | |
| Auto Liability, Comprehensive, and Collision (total allocation to agencies) | $1,248,500 | $1,248,500 |
| Aviation (total allocation to agencies) | $169,961 | $169,981 |
| General Liability (total allocation to agencies) | $8,100,000 | $8,100,000 |
| Property/Miscellaneous (total allocations to agencies) | $5,040,000 | $5,040,000 |

**DEPARTMENT OF COMMERCE – 6501**

| | | |
|---|---|---|
| 1. Board of Investments | | |
| For the purposes of [this act], the legislature defines "rates" as the total collections necessary to operate the board of investments as follows: | | |
| a. Administration Charge (total) | $5,109,144 | $5,234,796 |
| 2. Director's Office/Management Services | | |
| a. Management Services Indirect Charge Rate | | |
| State | 14.65% | 14.65% |
| Federal | 14.65% | 14.65% |

**DEPARTMENT OF LABOR AND INDUSTRY – 6602**

| | | |
|---|---|---|
| 1. Centralized Services Division | | |
| a. Office of Information Technology | $192 a month per FTE | |
| b. Cost Allocation Plan | 8% | 8% |
| c. Office of Legal Services | $95 | $95 |

**DEPARTMENT OF FISH, WILDLIFE, & PARKS — 5201**

| | | |
|---|---|---|
| 1. Vehicle and Aircraft Rates | | |
| Per Mile Rates | | |
| a. Sedans | $0.46 | $0.46 |

| | | |
|---|---|---|
| b. Vans | $0.53 | $0.53 |
| c. Utilities | $0.58 | $0.58 |
| d. Pickup 1/2 ton | $0.53 | $0.53 |
| e. Pickup 3/4 ton | $0.61 | $0.61 |
| Per Hour Rates | | |
| f. Two-Place Single Engine | $150.00 | $150.00 |
| g. Partnavia | $500.00 | $500.00 |
| h. Turbine Helicopters | $500.00 | $500.00 |
| 2. Duplicating Center | | |
| Per Copy | | |
| a. 1-20 | $0.070 | $0.075 |
| b. 21-100 | $0.055 | $0.060 |
| c. 101 - 1,000 | $0.050 | $0.056 |
| d. 1,001- 5,000 | $0.045 | $0.050 |
| e. color copies | $0.250 | $0.250 |
| Bindery | | |
| a. Collating (per sheet) | $0.010 | $0.010 |
| b. Hand Stapling (per set) | $0.020 | $0.020 |
| c. Saddle Stitch (per set) | $0.035 | $0.035 |
| d. Folding (per set) | $0.010 | $0.010 |
| e. Punching (per set) | $0.005 | $0.005 |
| f. Cutting (per minute) | $0.600 | $0.600 |
| 3. Warehouse Overhead Rate | 25% | 25% |
| **DEPARTMENT OF ENVIRONMENTAL QUALITY — 5301** | | |
| Indirect Rate | | |
| a. Personal Services | 24% | 24% |
| b. Operating Expenditures | 4% | 4% |
| **DEPARTMENT OF TRANSPORTATION — 5401** | | |
| 1. State Motor Pool | | |
| Tier one | | |
| a. Class 02 (small utilities) | | |
| Per Hour Assigned | $0.990 | $1.090 |
| Per Mile Operated | $0.203 | $0.204 |
| b. Class 03 (hybrid SUV) | | |
| Per Hour Assigned | $1.872 | $1.890 |
| Per Mile Operated | $0.186 | $0.186 |
| c. Class 04 (large utilities) | | |
| Per Hour Assigned | $1.655 | $1.700 |
| Per Mile Operated | $0.280 | $0.281 |
| d. Class 05 (hybrid sedans) | | |
| Per Hour Assigned | $1.522 | $1.547 |
| Per Mile Operated | $0.112 | $0.113 |
| e. Class 06 (midsize compacts) | | |
| Per Hour Assigned | $0.999 | $1.025 |
| Per Mile Operated | $0.159 | $0.159 |

| | | |
|---|---|---|
| f. Class 07 (small pickups) | | |
| Per Hour Assigned | $0.686 | $0.703 |
| Per Mile Operated | $0.231 | $0.232 |
| g. Class 11 (large pickups) | | |
| Per Hour Assigned | $0.963 | $0.947 |
| Per Mile Operated | $0.262 | $0.261 |
| h. Class 12 (vans – all types) | | |
| Per Hour Assigned | $1.203 | $1.272 |
| Per Mile Operated | $0.226 | $0.227 |
| Tier two (contingent $4.00/gallon) | | |
| a. Class 02 (small utilities) | | |
| Per Hour Assigned | $0.990 | $1.090 |
| Per Mile Operated | $0.229 | $0.230 |
| b. Class 03 (hybrid SUV) | | |
| Per Hour Assigned | $1.872 | $1.890 |
| Per Mile Operated | $0.208 | $0.209 |
| c. Class 04 (large utilities) | | |
| Per Hour Assigned | $1.655 | $1.700 |
| Per Mile Operated | $0.317 | $0.318 |
| d. Class 05 (hybrid sedans) | | |
| Per Hour Assigned | $1.522 | $1.547 |
| Per Mile Operated | $0.126 | $0.127 |
| e. Class 06 (midsize compacts) | | |
| Per Hour Assigned | $0.999 | $1.025 |
| Per Mile Operated | $0.178 | $0.179 |
| f. Class 07 (small pickups) | | |
| Per Hour Assigned | $0.686 | $0.703 |
| Per Mile Operated | $0.259 | $0.260 |
| g. Class 11 (large pickups) | | |
| Per Hour Assigned | $0.963 | $0.947 |
| Per Mile Operated | $0.295 | $0.294 |
| h. Class 12 (vans – all types) | | |
| Per Hour Assigned | $1.203 | $1.272 |
| Per Mile Operated | $0.254 | $0.255 |
| Tier three (contingent $4.50/gallon) | | |
| a. Class 02 (small utilities) | | |
| Per Hour Assigned | $0.990 | $1.090 |
| Per Mile Operated | $0.255 | $0.256 |
| b. Class 03 (hybrid SUV) | | |
| Per Hour Assigned | $1.872 | $1.890 |
| Per Mile Operated | $0.231 | $0.232 |
| c. Class 04 (large utilities) | | |
| Per Hour Assigned | $1.655 | $1.700 |
| Per Mile Operated | $0.353 | $0.354 |

| | | |
|---|---|---|
| d. Class 05 (hybrid sedans) | | |
| Per Hour Assigned | $1.522 | $1.547 |
| Per Mile Operated | $0.141 | $0.141 |
| e. Class 06 (midsize compacts) | | |
| Per Hour Assigned | $0.999 | $1.025 |
| Per Mile Operated | $0.198 | $0.199 |
| f. Class 07 (small pickups) | | |
| Per Hour Assigned | $0.686 | $0.703 |
| Per Mile Operated | $0.287 | $0.288 |
| g. Class 11 (large pickups) | | |
| Per Hour Assigned | $0.963 | $0.947 |
| Per Mile Operated | $0.328 | $0.326 |
| h. Class 12 (vans – all types) | | |
| Per Hour Assigned | $1.203 | $1.272 |
| Per Mile Operated | $0.283 | $0.284 |
| 2. Equipment Program | | |
| All of Program Operations | 60-day working capital reserve | |
| **DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION — 5706** | | |
| 1. Air Operations Program | | |
| a. Bell UH-1H | $1,225 | $1,225 |
| b. Bell Jet Ranger | $515 | $515 |
| c. Cessna 180 Series | $175 | $175 |
| **DEPARTMENT OF JUSTICE – 4110** | | |
| 1. Agency Legal Services | | |
| a. Attorney (per hour) | $95.50 | $95.50 |
| b. Investigator (per hour) | $55.50 | $55.50 |
| **DEPARTMENT OF CORRECTIONS - 6401** | | |
| 1. Vocational Education Program | | |
| a. Labor Charge for Motor Vehicle Maintenance (per hour) | $27.45 | $28.45 |
| b. Supply Fee as a Percentage of Actual Costs of Parts | 5% | 5% |
| c. Parts | Actual Cost | Actual Cost |
| 2. Food Factory | | |
| a. Cook/Chill Rate — Hot/Cold Base Tray Price (no delivery) | $2.14 | $2.32 |
| b. Cook/Chill Rate – Hot Base Tray Price | $1.08 | $1.18 |
| c Delivery Charge Per Mile | $0.50 | $0.50 |
| d. Delivery Charge Per Hour | $35.00 | $35.00 |
| e. Spoilage Percentage All Customers | 5% | 5% |
| f. Detention Center Trays | $2.72 | $2.92 |
| g. Accessory Package | $0.16 | $0.16 |
| h. Bulk Food | Actual Cost | Actual Cost |
| i. Overhead Charge | | |
| Montana State Hospital | 11% | 11% |
| Montana State Prison | 76% | 76% |
| Treasure State Correctional Training Center | 13% | 13% |

| | | |
|---|---|---|
| 3. License Plates | | |
| a. License Plates – Cost per set | $6.20 | $6.20 |
| **OFFICE OF PUBLIC INSTRUCTION - 3501** | | |
| 1. OPI Indirect Cost Pool | | |
| a. Unrestricted Rate | 17.5% | 17.5% |
| b. Restricted Rate | 17% | 17% |

Approved May 3, 2013

Note: The striking of language in section 9 was done by Governor's line item veto dated May 3, 2013.

# CHAPTER NO. 381

[HB 5]

AN ACT APPROPRIATING MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2015; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; PROVIDING FOR A TRANSFER OF FUNDS FROM THE STATE GENERAL FUND TO THE LONG-RANGE BUILDING PROGRAM ACCOUNT; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Definitions.** For the purposes of [sections 1 through 10], unless otherwise stated, the following definitions apply:

(1) "Authority only" means approval provided by the legislature to expend money that does not require an appropriation, including grants, donations, auxiliary funds, proprietary funds, and university funds.

(2) "Capital project" means the acquisition of land or improvements or the planning, capital construction, environmental cleanup, renovation, furnishing, or major repair projects authorized in [sections 1 through 10].

(3) "LRBP" means the long-range building program account in the capital projects fund type.

(4) "Other funding sources" means money other than LRBP money, state special revenue fund, or federal special revenue money that accrues to an agency under the provisions of law.

(5) "SBECP funds" means funds from the state building energy conservation program account in the capital projects fund type.

**Section 2. Capital projects appropriations and authorizations.** (1) The following money is appropriated to the department of administration for the indicated capital projects from the indicated sources. Funds not requiring legislative appropriation are included for the purpose of authorization. The department of administration is authorized to transfer the appropriations, authority, or both among the necessary fund types for these projects:

| Agency/Project | LRBP Fund | State Special Revenue | Federal Special Revenue | Other Funding Sources | Authority Only | Total |
|---|---|---|---|---|---|---|
| DEPARTMENT OF ADMINISTRATION | | | | | | |
| Repair Corrections Department Parking Structure | 450,000 | | | | | 450,000 |
| Install Safety Handrails in Capitol | 200,000 | 200,000 | | | | 400,000 |

State special revenue funds consist of general services division internal service funds. If a donation is received by the department of administration from the Montana capitol restoration

foundation to install safety handrails in the capitol, then the amount of the donation is authorized and the appropriation of LRBP funds is reduced by a like amount.

| | | | | |
|---|---|---|---|---|
| Upgrade Scott Hart HVAC system, Phase 2 | | 1,500,000 | | 1,500,000 |

State special revenue funds consist of general services division internal service funds.

| | | | | |
|---|---|---|---|---|
| MONTANA SCHOOL FOR THE DEAF AND BLIND | | | | |
| Building Repairs and Improvements, MSDB, Great Falls | 195,000 | | | 195,000 |
| DEPARTMENT OF JUSTICE | | | | |
| Upgrade Water Supply System - Montana Law Enforcement Academy | 400,000 | | | 400,000 |
| Construct Butte Justice Center, Butte | 1,600,000 | | 1,600,000 | 3,200,000 |
| DEPARTMENT OF FISH, WILDLIFE, AND PARKS | | | | |
| Hatchery Maintenance | | 575,000 | | 575,000 |
| Administrative Facilities Repair and Maintenance | | 1,325,000 | | 1,325,000 |
| DEPARTMENT OF MILITARY AFFAIRS | | | | |
| Vault Modifications, Statewide | | 780,000 | | 780,000 |
| Upgrade Sewer/Water Service, AFRC, Kalispell | 250,000 | 750,000 | | 1,000,000 |
| Replace Readiness Center, Malta | 400,000 | 15,000,000 | | 15,400,000 |
| Improvements at the Montana Military Museum | 150,000 | | | 150,000 |
| DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES | | | | |
| Repair Sewage Collection System, Warm Springs | 1,520,000 | | | 1,520,000 |
| DEPARTMENT OF TRANSPORTATION | | | | |
| Equipment/Office Buildings, Statewide | | 5,200,000 | | 5,200,000 |
| DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION | | | | |
| Major Repairs & Small Projects, Statewide | 300,000 | | | 300,000 |
| Repair Unit Residences, Statewide | | 100,000 | | 100,000 |
| MONTANA UNIVERSITY SYSTEM | | | | |
| Replace Roof or other renovations, Great Falls College-MSU | 1,000,000 | | | 1,000,000 |
| Construct Automotive Technology Center, MSU-Northern | 4,900,000 | | 3,000,000 | 7,900,000 |
| Main Hall Renovation, Phase 3, UM-Western | 4,000,000 | | 500,000 | 4,500,000 |
| Construct Natural Resources Research Center Addition, Montana Tech | 5,000,000 | | 5,000,000 | 10,000,000 |
| Construct Jabs Hall, MSU-Bozeman | | | 20,000,000 | 20,000,000 |
| Construct Athlete Academic Center, UM-Missoula | | | 2,500,000 | 2,500,000 |
| Construct Gilkey Executive Education Center, UM-Missoula | | | 9,300,000 | 9,300,000 |
| Construct Mansfield Library Student Success, UM-Missoula | | | 3,200,000 | 3,200,000 |
| Construct Science and Instructional Tech Building Addition, MSU-Billings | 10,000,000 | | 5,000,000 | 15,000,000 |
| Construct Missoula College UM, UM-Missoula | 29,000,000 | | 3,000,000 | 32,000,000 |

(2) The $400,000 of LRBP funds contained in subsection (1) for the replacement of the Malta readiness center must be utilized for the acquisition of land for the facility. The appropriation of $15,000,000 of federal special revenue funds for this project is contingent upon the department of military affairs completing the acquisition of land by June 30, 2015. If land is not acquired by this date, the $400,000 reverts to the general fund.

**Section 3. Capital improvements.** (1) The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for the purpose of making capital improvements to statewide facilities. Funds not requiring legislative appropriation are included for the purpose of authorization:

| Agency/Project | LRBP Fund | State Special Revenue | Federal Special Revenue | Other Funding Sources | Authority Only | Total |
|---|---|---|---|---|---|---|
| Parks Program | | 3,084,000 | 1,200,000 | | | 4,284,000 |
| Grant to the City of Missoula for the Design and Construction of Lighted and Paved RUX Path (Restricted) | | 100,000 | | | | 100,000 |

State special revenue consists of department of transportation highway nonrestricted revenue fund, number 02349. Funds for this project are restricted to the use of the RUX project and are payable for reimbursements. The department shall report on the progress of this project to the 2015 long-range planning subcommittee. Any funds not required for the completion of this project must be reverted to the highway nonrestricted revenue fund upon completion of the project.

| | | | | | | |
|---|---|---|---|---|---|---|
| Future Fisheries | | 790,000 | | | | 790,000 |
| FAS Site Protection | | 1,050,000 | 800,000 | | | 1,850,000 |
| Upland Game Bird Program | | 746,000 | | | | 746,000 |
| Grant Programs/Federal Projects | | 218,000 | 5,000,000 | | | 5,218,000 |
| Wildlife Habitat Maintenance | | 970,000 | | | | 970,000 |
| Dam Maintenance | | 50,000 | | | | 50,000 |
| Community Fishing Ponds | | 50,000 | | | | 50,000 |
| Forest Management Project | | 32,000 | | | | 32,000 |

(2) Authority is being granted to the Montana university system in the amount of $3,000,000 and to the department of administration in the amount of $2,000,000 for the purpose of making capital improvements to campus facilities. Authority-only funds may include federal special revenue, donations, grants, and higher education funds. All costs for the operations and maintenance of any new improvements constructed under this authorization must be paid by the Montana university system from nonstate sources:

| Agency/Project | LRBP Fund | State Special Revenue | Federal Special Revenue | Other Funding Sources | Authority Only | Total |
|---|---|---|---|---|---|---|
| General Spending Authority, MUS All Campuses | | | | | 5,000,000 | 5,000,000 |

(3) The following money is appropriated to the department of military affairs in the indicated amount for the purpose of making capital improvements to statewide facilities. All costs for the operation and maintenance of any new improvements constructed with these funds must be paid by the department of military affairs from nonstate sources:

| Agency/Project | LRBP Fund | State Special Revenue | Federal Special Revenue | Other Funding Sources | Authority Only | Total |
|---|---|---|---|---|---|---|
| Federal Spending Authority | | | 2,500,000 | | | 2,500,000 |

(4) The following money is appropriated to the department of transportation in the indicated amount for the purpose of making capital improvements as indicated:

| Agency/Project | LRBP Fund | State Special Revenue | Federal Special Revenue | Other Funding Sources | Authority Only | Total |
|---|---|---|---|---|---|---|
| Statewide Maintenance, Repair and Small Projects | | 2,100,000 | | | | 2,100,000 |

(5) The following money is appropriated for the indicated capital projects to the department of environmental quality and the department of administration from state building energy conservation funds and other indicated sources. Funds not requiring legislative appropriation are included for the purpose of authorization. The department of administration is authorized to transfer the appropriations, authority, or both among the necessary fund types for these projects:

| Agency/Project | LRBP Fund | State Special Revenue | Federal Special Revenue | Other Funding Sources | Authority Only | Total |
|---|---|---|---|---|---|---|
| DEPARTMENT OF ADMINISTRATION | | | | | | |
| Repair and Upgrade Capitol HVAC Systems | | 1,400,000 | | | | 1,400,000 |
| State special revenue funds consist of SBECP funds in the amount of $500,000 and of general services division internal service funds in the amount of $900,000. | | | | | | |
| DEPARTMENT OF ENVIRONMENTAL QUALITY | | | | | | |
| Energy Improvements, Statewide | | 1,900,000 | | | | 1,900,000 |
| State special revenue funds consist of SBECP funds. | | | | | | |
| DEPARTMENT OF CORRECTIONS | | | | | | |
| Repair and Upgrade Building Systems, Pine Hills Youth Correctional Facility | 511,000 | 500,000 | | | | 1,011,000 |
| State special revenue funds consist of SBECP funds. | | | | | | |
| Renovate Laundry Facilities, Montana State Prison, Deer Lodge | | 600,000 | | | 600,000 | 1,200,000 |
| State special revenue funds consist of SBECP funds. | | | | | | |
| Authority-only funds consist of proprietary funds. | | | | | | |

**Section 4. Land acquisition appropriations.** (1) The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for purposes of land acquisition, land leasing, easement purchase, or development agreements. ~~When considering the acquisition of habitat in accordance with 87-1-241, the department of fish, wildlife, and parks may consider only term agreements.~~

| Agency/Project | LRBP Fund | State Special Revenue | Federal Special Revenue | Other Funding Sources | Authority Only | Total |
|---|---|---|---|---|---|---|
| Habitat Montana | | 9,930,000 | | | | 9,930,000 |
| Fishing Access Site Acquisition | | 230,000 | 100,000 | | | 330,000 |
| Bighorn Sheep Habitat | | 210,000 | | | | 210,000 |

(2) The following funds in the indicated amounts are appropriated to the Montana university system for the purpose of land acquisition. The state may not enter into an agreement for the acquisition of land until the authority-only funds have been obtained.

| | | | | | | |
|---|---|---|---|---|---|---|
| Land Acquisition, Great Falls College-MSU | 750,000 | | | | 750,000 | 1,500,000 |

**Section 5. Planning and design.** The department of administration may proceed with the planning and design of capital projects prior to the receipt of other funding sources. The department may use interentity loans in accordance with 17-2-107 to pay planning and design costs incurred before the receipt of funding from another funding source.

**Section 6. Capital projects — contingent funds.** If a capital project is financed in whole or in part with appropriations contingent upon the receipt of funding from another funding source, the department of administration may not let the project for bid until the agency has submitted a financial plan for approval by the director of the department of administration. A financial plan may not be approved by the director if:

(1) the level of funding provided under the financial plan deviates substantially from the funding level provided in [section 2] for that project; or

(2) the scope of the project is substantially altered or revised from the preliminary plans presented for that project in the 2015 biennium long-range building program presented to the 63rd legislature.

**Section 7. Review by department of environmental quality.** The department of environmental quality shall review capital projects authorized in [section 2] for potential inclusion in the state building energy conservation program under Title 90, chapter 4, part 6. When a review shows that a capital project will result in energy improvements, that project must be submitted to the energy conservation program for funding consideration. Funding provided under the energy conservation program guidelines must be used to offset or add to the authorized funding for the project, and the amount will be dependent on the annual utility savings resulting from the facility improvement. Agencies must be notified of potential funding after the review.

**Section 8. Conditions of projects.** The legislature authorizes construction of the Butte-Silver Bow emergency operations center, to be occupied and operated by the consolidated government of Butte-Silver Bow in conjunction with the Butte justice center, if a long-term lease agreement is signed between the state of Montana and the consolidated government of Butte-Silver Bow ensuring payment of all operating and maintenance costs of the consolidated government of Butte-Silver Bow for its portion of the facility for the life of the building, until the term of the lease is altered, or until the building is sold.

**Section 9. Fund transfer.** The department of administration shall transfer the amount of $49,550,000 from the state general fund to the long-range building program account in the capital projects fund type in fiscal year 2014.

**Section 10. Legislative consent.** The appropriations authorized in [sections 1 through 9] constitute legislative consent for the capital projects contained in [sections 1 through 9] within the meaning of 18-2-102.

**Section 11. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 12. Effective date.** [This act] is effective on passage and approval.

Approved May 6, 2013

Note: The striking of language in section 4 was done by Governor's line item veto dated May 6, 2013.

# CHAPTER NO. 382

[HB 6]

AN ACT IMPLEMENTING THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO IMPLEMENT COMPACTS FOR THE BLACKFEET TRIBE AND THE FORT BELKNAP INDIAN COMMUNITY OF THE FORT BELKNAP RESERVATION; PRIORITIZING PROJECT GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; PROVIDING FOR A GENERAL FUND TRANSFER; PROVIDING A TRANSFER FROM THE ORPHAN SHARE ACCOUNT; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Appropriations for renewable resource grants.** (1) There is appropriated from the natural resources projects state special revenue account established in 15-38-302 to the department of natural resources and conservation up to:

(a) $350,000 to be used for emergency projects as follows:

(i) $100,000 for emergency projects to be awarded by the department over the course of the biennium; and

(ii) $250,000 for the Ten Mile/Pleasant Valley Sewer District;

(b) $1,062,000 to be used for planning grants to be awarded by the department over the course of the biennium;

(c) $300,000 to be used for irrigation development grants to be awarded by the department over the course of the biennium;

(d) $100,000 to be used for water project private grants to be awarded by the department over the course of the biennium;

(e) $200,000 to be used for development of the state water plan;

(f) $200,000 to be used for grants to build organizational capacity;

(g) $1,273,686 to be used for five grants to Jefferson County for the following Big Pipestone/Jefferson River Slough Watershed Restoration projects:

(i) Landowner #24 Ranch Channel Restoration, $760,500;

(ii) Riparian Management Plan Development, $15,500;

(iii) Beaver Management Planning, $21,240;

(iv) Landowner #7 Channel Restoration, $299,596; and

(v) Jefferson Slough Hydrology and Sedimentology Stations, $176,850;

(h) $3 million to be deposited in the Peoples Creek minimum flow account provided for in 85-20-1007 for implementation of the Fort Belknap Indian Community-Montana water rights compact; and

(i) $14 million to be deposited in the Blackfeet Tribe water rights compact infrastructure account provided for in 85-20-1505 for water-related infrastructure projects within the exterior boundaries of the Blackfeet Indian reservation as provided for in 85-20-1505.

(2) There is appropriated from the natural resources projects state special revenue account established in 15-38-302 to the department of natural resources and conservation $8,967,632 for grants to political subdivisions and

local governments during the biennium ending June 30, 2015. The funds referred to in this subsection must be awarded by the department to the named entities for the described purposes and in the grant amounts listed in subsection (4), subject to the conditions set forth in [sections 1 through 4] and the contingencies described in the renewable resource grant and loan program January 2013 report to the 63rd legislature. The legislature, pursuant to 85-1-605, approves the grants listed in subsection (4).

(3) Funds must be awarded up to the amounts approved in subsection (4) in the following order of priority. Funds not accepted or used by these projects may be provided for any renewable resource programs projects authorized under this section or for reclamation and development program projects authorized by the 63rd legislature in House Bill No. 7. If at any time a grant sponsor determines that a project will not begin before June 30, 2015, the sponsor shall notify the department of natural resources and conservation.

(4) The following are the prioritized grant projects:

RENEWABLE RESOURCE GRANT AND LOAN PROGRAM

| Applicant/Project | Amount |
|---|---|
| Deer Lodge Valley Conservation District (Racetrack Water Users Association: Water Efficiency and Energy Conservation Project - Phase 1) | $100,000 |
| South Wind Water and Sewer District (South Wind Water and Sewer District Improvements) | $100,000 |
| Craig County Water and Sewer District (Craig Wastewater System Improvements) | $100,000 |
| Forsyth, City of (Forsyth Wastewater System Improvements) | $100,000 |
| Clinton Irrigation District (Clark Fork Diversion Rehabilitation Project) | $100,000 |
| Beaverhead County Conservation District (Swamp Creek Siphon Project) | $100,000 |
| Miles City, City of (Miles City Wastewater System Improvements, Phase 2) | $100,000 |
| Alberton, Town of (Alberton Wastewater Project) | $100,000 |
| Richland County (Richland County-Savage Wastewater System Improvements) | $100,000 |
| Dawson County (Dawson County-West Glendive Wastewater System Improvements) | $100,000 |
| Fort Benton, City of (Fort Benton Wastewater System Improvements) | $100,000 |
| Belt, Town of (Belt Wastewater System Improvements) | $100,000 |
| Vaughn Cascade County Water and Sewer District (Vaughn Wastewater System Improvements) | $100,000 |
| Malta Irrigation District (Dodson South Canal Head Gate Replacement Project) | $100,000 |
| Park County (Park County Fairgrounds Wastewater System Improvements) | $100,000 |

| | |
|---|---|
| Bitter Root Irrigation District<br>(BRID Siphon 1 - Phase 4 Improvements Project) | $100,000 |
| Cut Bank, City of<br>(Cut Bank Wastewater System Improvements) | $100,000 |
| Ward Irrigation District<br>(Ward Irrigation District Lost Horse Creek/<br>Ward Canal Improvements) | $100,000 |
| Glendive, City of<br>(Glendive Wastewater System Improvements) | $100,000 |
| Harlowton, City of<br>(Harlowton Wastewater System Improvements) | $100,000 |
| Lockwood Irrigation District<br>(Lockwood ID Intake Canal Headgate Replacement Project) | $100,000 |
| Sweet Grass County Conservation District<br>(Pioneer Ditch Company Irrigation Diversion<br>Rehabilitation Project) | $100,000 |
| Glen Lake Irrigation District<br>(Glen Lake Irrigation District Rolling Hills Section of<br>the Main Canal Rehabilitation Project) | $100,000 |
| Hill County<br>(Beaver Creek Dam Outlet Works Rehabilitation) | $98,321 |
| Winnett, Town of<br>(Winnett Wastewater) | $100,000 |
| DNRC Water Resources Division<br>(East Fork Rock Creek Main Canal Lining Project) | $99,939 |
| Boulder, City of<br>(Boulder Wastewater System Improvements) | $100,000 |
| White Sulphur Springs, City of<br>(White Sulphur Springs Wastewater Improvements<br>Project - Phase 1) | $100,000 |
| Helena Valley Irrigation District<br>(Helena Valley ID Pump Automation Project) | $100,000 |
| Buffalo Rapids Irrigation Project District 1<br>(Buffalo Rapids 1 Lateral 20.6 Conversion Project) | $100,000 |
| Whitefish, City of<br>(City of Whitefish Nutrient Reduction Plan) | $100,000 |
| Fort Peck Tribes<br>(Fort Peck Tribes Phase 2 Lateral L-2M Rehabilitation<br>Project) | $100,000 |
| Flathead County<br>(Bigfork Stormwater Project - Phase IV) | $100,000 |
| Three Forks, City of<br>(Three Forks Wastewater System Improvements) | $100,000 |
| Libby, City of<br>(Libby Flower Creek Dam Water System Improvements) | $100,000 |
| Frenchtown Irrigation District<br>(Frenchtown Irrigation District: Main Canal Lining Project) | $99,978 |

| | |
|---|---|
| DNRC Water Resources Division (Replacement Headgates for the Deadman's Basin Supply Canal Project) | $100,000 |
| DNRC Water Resources Division (Cooney Dam Outlet Canal Weir Replacement and Automated Instrumentation Project) | $100,000 |
| Deer Lodge Valley Conservation District (Kohrs and Manning Ditch Company Infrastructure Improvements) | $100,000 |
| DNRC Flathead Basin Commission (Aquatic Invasive Species Prevention Project, Aquatic Invasive Species Prevention Project) | $100,000 |
| Dutton, Town of (Dutton Water System Improvements) | $100,000 |
| Fairfield, Town of (Fairfield Wastewater System Improvements) | $100,000 |
| Buffalo Rapids Irrigation Project District 2 (Buffalo Rapids 2 Terry Pump Station Discharge Line) | $100,000 |
| Choteau, City of (Choteau Wastewater System Improvements, Phase 2) | $100,000 |
| Daly Ditches Irrigation District (Daly Ditches Irrigation District Preservation and Conservation of Resources) | $100,000 |
| Toston Irrigation District (Toston ID Toston Canal Rehabilitation Project) | $100,000 |
| Gallatin County Conservation District (Darlington Creek Enhancement Project at Cobblestone Fishing Access) | $100,000 |
| Missoula County Conservation District (Missoula Conservation District Orchard Homes Ditch Company Intake Improvements Project) | $100,000 |
| Missoula Irrigation District (Missoula Irrigation District Water Conservation Project) | $100,000 |
| Valier, Town of (Valier Wastewater System Improvements) | $100,000 |
| Fort Belknap Indian Community (Fort Belknap Main Canal A Underdrain Rehabilitation Project) | $100,000 |
| Bozeman, City of (Bozeman Creek at Bogert Park Enhancement Project) | $100,000 |
| Hamilton, City of (Hamilton Wastewater System Improvements, Phase 2) | $100,000 |
| Lodge Grass, Town of (Lodge Grass Wastewater System Improvements) | $100,000 |
| Pondera County Conservation District (Pondera County Canal and Reservoir Company KB2 Canal Rehabilitation Project) | $100,000 |
| Manhattan, Town of (Manhattan Water System Improvements) | $100,000 |

| | |
|---|---|
| Greenfields Irrigation District<br>(Muddy Creek Wastewater and Erosion Reduction) | $100,000 |
| University of Montana<br>(An Algae Bioremediation System for Acidic Industrial Wastewaters) | $99,882 |
| Black Eagle-Cascade County Water & Sewer District<br>(Black Eagle Wastewater System Improvements) | $99,407 |
| Stevensville, City of<br>(Stevensville Wastewater System Improvements, Phase 2) | $100,000 |
| Havre, City of<br>(City of Havre Wastewater System Improvements) | $100,000 |
| Elk Meadows County Water District<br>(Elk Meadows Ranchettes County Water District Water System Improvements) | $100,000 |
| Cascade, Town of<br>(Cascade Water System Improvements) | $100,000 |
| Moore, Town of<br>(Moore Wastewater System Improvements) | $100,000 |
| Sweet Grass County Conservation District<br>(Big Timber Creek Channel Stabilization Project - Phase II) | $100,000 |
| Roundup, City of<br>(Roundup Water System Improvements) | $100,000 |
| Garfield County Conservation District<br>(CMR Range Monitoring Pilot Project) | $99,994 |
| Jefferson Valley Conservation District<br>(Jefferson Canal Headgate Improvements) | $100,000 |
| Philipsburg, Town of<br>(Philipsburg Water System Improvements) | $100,000 |
| Carbon County Conservation District<br>(Phase 2, Ground Water Surface Water Interaction, Phase 2, Ground Water and Surface Water Interaction in the Rock Creek Watershed) | $100,000 |
| Sunny Hills Suburban County Water District<br>(Sunny Hills WSD Water System Improvements) | $100,000 |
| Drummond, Town of<br>(Drummond Wastewater System Improvements) | $100,000 |
| Big Horn County Conservation District<br>(Evaluating the Influence of Irrigation on Ground Water Quality and Quantity in Northern Big Horn County) | $100,000 |
| Joliet, Town of<br>(Joliet Wastewater System Improvements) | $100,000 |
| Malta, City of<br>(Malta Water System Improvements) | $100,000 |
| Gallatin County<br>(Grayling Creek Stream and Riparian Restoration and Parade Rest Guest Ranch Irrigation Project) | $75,000 |
| Lower Musselshell County Conservation District<br>(East Brewer Irrigation Check Structure Rehabilitation and Southside Canal Lining) | $100,000 |

| | |
|---|---|
| Madison County<br>(Moore's Creek Culvert Replacement) | $100,000 |
| DNRC Water Resources Division<br>(2012 Infill Drilling and Piezometer Installation Project: East Fork, Fred Burr, Martinsdale, Middle Creek, and Tongue River Dams) | $95,580 |
| Hamilton, City of<br>(Hamilton Water System Improvements, Well 5) | $100,000 |
| Plevna, Town of<br>(Plevna Water System Improvements) | $100,000 |
| Stillwater Conservation District<br>(Assessing the Ground Water Resources of the Bedrock Aquifers in Stillwater County) | $100,000 |
| Sweet Grass County<br>(Greycliff Reach Yellowstone River Stabilization Project) | $100,000 |
| EmKayan County Water and Sewer District<br>(EmKayan WSD Water System Improvements, Phase 2) | $100,000 |
| Chinook, City of<br>(Chinook Water System Improvements) | $100,000 |
| Eureka, Town of<br>(Eureka Water Treatment Improvement Project) | $100,000 |
| Broadwater County Conservation District<br>(Big Springs Ditch Water Conservation and Spawning Bed Project) | $100,000 |
| Pinesdale, Town of<br>(Pinesdale Water System Improvements) | $100,000 |
| Jefferson County<br>(Big Pipestone Creek Remediation) | $99,531 |
| Fort Shaw Irrigation District<br>(Fort Shaw ID A-System Modification) | $100,000 |

(5) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds during the biennium ending June 30, 2015, pursuant to 17-7-302.

**Section 2. Coordination of fund sources for grants to political subdivisions and local governments.** A project sponsor listed under [section 1(4)] may not receive funds from both the reclamation and development grants program and the renewable resource grant and loan program for the same project during the same biennium.

**Section 3. Condition of grants.** Disbursement of funds under [sections 1 through 4] for grants is subject to the following conditions that must be met by project sponsors:

(1) approval of a scope of work and budget for the project by the department of natural resources and conservation. Changes in the project scope of work or budget that reduce the public or natural resource benefits as presented in department reports and applicant testimony to the 63rd legislature may result in a proportional reduction in the grant amount.

(2) satisfactory completion of conditions described in the recommendation section of the project narrative of the renewable resource grant and loan program report to the legislature for the biennium ending June 30, 2015, or, in

the case of grants issued under [section 1(1)], completion of conditions specified at the time of written notification of approved grant authority;

(3) execution of a grant agreement with the department; and

(4) accomplishment of other specific requirements considered necessary by the department to meet the purpose of the grant as evidenced from the application to the department or from the proposal to the legislature.

**Section 4. Appropriations established.** For any entity of state government that receives a grant under [sections 1 through 3], an appropriation is established for the amount of the grant listed in [section 1(4)]. Grants to entities from prior bienniums are reauthorized for completion of contract work.

**Section 5. Transfer of funds.** By July 15, 2013, the state treasurer shall transfer to the natural resources projects state special revenue account established in 15-38-302:

(1) $20,473,686 from the general fund; and

(2) $250,000 from the orphan share state special revenue account established in 75-10-743.

**Section 6. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

**Section 7. Coordination instruction.** If House Bill No. 14 is passed and approved and provides for funding for the projects outlined in [section 1(1)(h) or (1)(i) of this act], the appropriations made in [section 1(1)(h) or (1)(i) of this act] must be reduced by the amounts appropriated in House Bill No. 14 and the difference must revert to the general fund.

**Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 9. Effective date.** [This act] is effective July 1, 2013.

Approved May 6, 2013

# CHAPTER NO. 383

[HB 10]

AN ACT APPROPRIATING MONEY FOR INFORMATION TECHNOLOGY CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2015; PROVIDING FOR MATTERS RELATING TO THE APPROPRIATIONS; PROVIDING FOR A TRANSFER OF FUNDS FROM THE GENERAL FUND TO THE LONG-RANGE INFORMATION TECHNOLOGY PROGRAM ACCOUNT; PROVIDING FOR THE DEVELOPMENT AND ACQUISITION OF NEW INFORMATION TECHNOLOGY SYSTEMS FOR THE DEPARTMENT OF ADMINISTRATION, THE COMMISSIONER OF POLITICAL PRACTICES, THE DEPARTMENT OF ENVIRONMENTAL QUALITY, THE DEPARTMENT OF TRANSPORTATION, THE SECRETARY OF STATE, AND THE LEGISLATIVE BRANCH; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Definitions.** For the purposes of [sections 1 through 5], the following definitions apply:

(1) "Chief information officer" has the meaning provided in 2-17-506.

(2) "Information technology" has the meaning provided in 2-17-506.

(3) "Information technology capital project" means a group of interrelated information technology activities that are planned and executed in a structure sequence to create a unique product or service.

(4) "LRITP" means the long-range information technology program account in the capital projects fund type.

**Section 2. Appropriations and authorizations.** (1) All business application systems funded under this section must have a plan approved by the chief information officer for the design, definition, creation, storage, and security of the data associated with the application system. The security aspects of the plan must address but are not limited to authentication and granting of system privileges, safeguards against unauthorized access to or disclosure of sensitive information, and, consistent with state records retention policies, plans for the removal of sensitive data from the system when it is no longer needed. It is the intent of this subsection (1) that specific consideration be given to the potential sharing of data with other state agencies in the design, definition, creation, storage, and security of the data.

(2) Funds may not be released for a project until the chief information officer and budget director approve the plans described in subsection (1).

(3) The following money is appropriated to the department of administration to be used only for the indicated information technology capital projects:

| Agency/Project | LRITP | State Special Revenue | Federal Special Revenue | Proprietary | Total |
|---|---|---|---|---|---|
| DEPARTMENT OF ADMINISTRATION | | | | | |
| Public Safety Communications System Maintenance and Operations | 3,000,000 | | | | 3,000,000 |
| Computerized Maintenance Management System | | | | 350,000 | 350,000 |
| Statewide Data Protection | 2,000,000 | | | | 2,000,000 |
| Electronic Records Management/ Electronic Content Management Matching Grants | 1,000,000 | | | | 1,000,000 |
| COMMISSIONER OF POLITICAL PRACTICES | | | | | |
| Campaign Reporting Service/ Database Rewrite | 502,400 | | | | 502,400 |
| DEPARTMENT OF ENVIRONMENTAL QUALITY | | | | | |
| Remediation Information Management System | 700,000 | 1,060,000 | 40,000 | | 1,800,000 |
| DEPARTMENT OF TRANSPORTATION | | | | | |
| Maintenance Management System | | 2,000,000 | | | 2,000,000 |
| SECRETARY OF STATE | | | | | |
| Information Management System PHASE 2 | 4,078,385 | | | | 4,078,385 |

**Section 3. Fund transfer.** The amount of $11,451,785 is transferred from the general fund to the LRITP on July 1, 2013.

**Section 4. Legislative branch information technology capital projects appropriation.** (1) There is appropriated to the legislative services division $6,146,000 from the LRITP for the session systems replacement project in the legislative branch.

(2) Before encumbering any funds appropriated in subsection (1), the executive director of the legislative services division shall submit a plan, as described in [section 2(1)], to the chief information officer. The chief information officer shall promptly review the plan and, if necessary, make timely recommendations to the executive director of the legislative services division regarding implementation of the plan.

(3) As part of the reporting requirements to the legislative council required under 5-2-503, the executive director of the legislative services division shall include an update on the implementation of projects funded under this section.

**Section 5. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 6. Effective date.** [This act] is effective July 1, 2013.

Approved May 6, 2013

# CHAPTER NO. 384

[HB 11]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO LOCAL GOVERNMENT INFRASTRUCTURE PROJECTS THROUGH THE TREASURE STATE ENDOWMENT PROGRAM; AUTHORIZING GRANTS FROM THE TREASURE STATE ENDOWMENT STATE SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS UPON GRANTS AND FUNDS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR EMERGENCY GRANTS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR INFRASTRUCTURE PLANNING GRANTS; APPROPRIATING MONEY FROM THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM STATE SPECIAL REVENUE ACCOUNT TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR FINANCIAL ASSISTANCE TO REGIONAL WATER AUTHORITIES FOR REGIONAL WATER PROJECTS; PROVIDING FOR A TRANSFER OF FUNDS FROM THE STATE GENERAL FUND TO THE TREASURE STATE ENDOWMENT STATE SPECIAL REVENUE ACCOUNT; PROVIDING FOR A TRANSFER OF FUNDS FROM THE STATE GENERAL FUND TO THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM SPECIAL REVENUE ACCOUNT; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Appropriation from treasure state endowment state special revenue account.** (1) There is appropriated to the department of commerce $33,983,538 for the biennium beginning July 1, 2013, from the treasure state endowment state special revenue account to finance grants authorized by this section.

(2) The funds appropriated in this section must be used by the department to make grants to the governmental entities listed in subsection (3) for the described purposes and in amounts not to exceed the amounts set out in subsection (3). The grants authorized in this section are subject to the conditions set forth in [sections 2 and 3] and described in the treasure state endowment program 2015 biennium report to the 63rd legislature. The legislature,

pursuant to 90-6-710, authorizes the grants for the projects listed in subsection (3). The department shall commit funds to projects listed in subsection (3), up to the amounts authorized, based on the manner of disbursement set forth in [section 3] until the funds deposited into the treasure state endowment state special revenue account during the biennium beginning July 1, 2013, are expended.

(3) The following applicants and projects are authorized for grants and listed in the order of their priority:

| Bridge Applicant | | Grant Amount |
|---|---|---|
| 1. | Missoula County | $480,372 |
| 2. | Lewis & Clark County | $231,493 |
| 3. | Granite County | $376,004 |
| 4. | Carbon County | $455,675 |
| 5. | Ravalli County | $212,489 |
| 6. | Powell County | $320,940 |
| 7. | Judith Basin County | $235,211 |
| 8. | Blaine County | $254,000 |
| 9. | Anaconda-Deer Lodge Co. | $312,104 |
| 10. | Jefferson County | $381,882 |
| 11. | Stillwater County | $205,028 |
| 12. | Park County | $109,955 |
| 13. | Glacier County | $281,927 |
| 14. | Big Horn County | $237,462 |
| 15. | Chouteau County | $178,920 |
| 16. | Yellowstone County | $218,439 |

| Other Infrastructure Applicant (project type) | | Grant Amount |
|---|---|---|
| 1. | Craig County WSD (wastewater) | $750,000 |
| 2. | Glendive, City of (wastewater) | $750,000 |
| 3. | Manhattan, Town of (water) | $750,000 |
| 4. | Cascade, Town of (water) | $750,000 |
| 5. | Pinesdale, Town of (water) | $750,000 |
| 6. | Musselshell County WSD (water) | $450,125 |
| 7. | Valier, Town of (wastewater) | $750,000 |
| 8. | Hill County-North Havre (wastewater) | $211,500 |
| 9. | Hot Springs, Town of (water) | $592,550 |
| 10. | Chinook, City of (water) | $750,000 |
| 11. | Roundup, City of (water) | $500,000 |
| 12. | Dawson County-West Glendive (wastewater) | $750,000 |
| 13. | Seeley Lake Sewer District (wastewater) | $750,000 |
| 14. | Three Forks, City of (wastewater) | $750,000 |
| 15. | Libby, City of (water) | $750,000 |
| 16. | South Wind WSD (wastewater) | $750,000 |
| 17. | Richland County-Savage (wastewater) | $750,000 |
| 18. | Amsterdam/Churchill Sewer District (wastewater) | $750,000 |
| 19. | Philipsburg, Town of (water) | $550,000 |

| | | |
|---|---|---|
| 20. | Dutton, Town of (water) | $408,500 |
| 21. | Fort Benton, City of (wastewater) | $750,000 |
| 22. | Moore, Town of (wastewater) | $625,000 |
| 23. | Forsyth, City of (wastewater) | $500,000 |
| 24. | Vaughn County WSD (wastewater) | $750,000 |
| 25. | Choteau, City of (wastewater) | $750,000 |
| 26. | Boulder, City of (wastewater) | $625,000 |
| 27. | Polson, City of (water) | $625,000 |
| 28. | Cut Bank, City of (wastewater) | $625,000 |
| 29. | White Sulphur Springs, City of (wastewater) | $460,500 |
| 30. | Conrad, City of (water) | $625,000 |
| 31. | Winnett, Town of (wastewater) | $750,000 |
| 32. | Malta, City of (water) | $500,000 |
| 33. | Harlowton, City of (wastewater) | $625,000 |
| 34. | Stevensville, Town of (wastewater) | $750,000 |
| 35. | Lodge Grass, Town of (wastewater) | $750,000 |
| 36. | Harlem, City of (wastewater) | $625,000 |
| 37. | Winifred, Town of (wastewater) | $500,000 |
| 38. | Havre, City of (wastewater) | $500,000 |
| 39. | Fairfield, Town of (wastewater) | $625,000 |
| 40. | Miles City, City of (wastewater) | $500,000 |
| 41. | Drummond, Town of (wastewater) | $750,000 |
| 42. | Alberton, Town of (wastewater) | $292,000 |
| 43. | Eureka, Town of (water) | $550,000 |
| 44. | Shelby, City of (stormwater) | $625,000 |
| 45. | Belt, Town of (wastewater) | $625,000 |
| 46. | Joliet, Town of (wastewater) | $154,200 |
| 47. | Hamilton, City of (wastewater) | $322,262 |
| 48. | Plevna, Town of (water) | $500,000 |

(4) If sufficient funds are available, this section constitutes a valid obligation of funds to the grant recipients listed in subsection (3) for purposes of encumbering the treasure state endowment state special revenue account funds during the biennium beginning July 1, 2013, pursuant to 17-7-302. However, a grant recipient's entitlement to receive funds is dependent on the grant recipient's compliance with the conditions described in [section 3(1)] and on the availability of funds.

(5) Funding for projects in subsection (3) will be provided only as long as there are sufficient funds available from the amount that was deposited into the treasure state endowment state special revenue account during the biennium beginning July 1, 2013. Funding for these projects will be made available in the order that the grant recipients satisfy the conditions described in [section 3(1)]. However, any of the projects listed in subsection (3) that have not completed the conditions described in [section 3(1)] by September 30, 2014, must be reviewed by the next regular session of the legislature to determine if the authorized grant should be withdrawn.

(6) Grant recipients shall complete all of the conditions described in [section 3(1)] by September 30, 2016, or any obligation to the grant recipient will cease.

**Section 2. Approval of grants — completion of biennial appropriation.** (1) The legislature, pursuant to 90-6-701, authorizes grants for the projects identified in [section 1(3)], the emergency infrastructure projects in [section 5], and for the infrastructure planning grants in [section 6].

(2) The authorization of these grants completes a biennial appropriation from the treasure state endowment special revenue account provided for in 17-5-703(3)(c).

**Section 3. Condition of grants — disbursements of funds.** (1) The disbursement of grant funds for the projects specified in [section 1(3)] is subject to completion of the following conditions:

(a) The grant recipient shall document that other matching funds required for completion of the project are firmly committed.

(b) The grant recipient must have a project management plan that is approved by the department of commerce.

(c) The grant recipient must be in compliance with the auditing and reporting requirements provided for in 2-7-503 and have established a financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles. Tribal governments shall comply with auditing and reporting requirements provided for in OMB Circular A-133.

(d) The grant recipient shall satisfactorily comply with any conditions described in the application (project) summaries section of the treasure state endowment program 2015 biennium report to the 63rd legislature.

(e) The grant recipient shall satisfy other specific requirements considered necessary by the department of commerce to accomplish the purpose of the project as evidenced by the application to the department.

(f) The grant recipient shall execute a grant agreement with the department of commerce.

(2) With the exception of bridges, all projects must adhere to the design standards required by the department of environmental quality. Recipients of treasure state endowment program funds that are not subject to the department of environmental quality design standards must adhere to generally accepted industry standards, such as Recommended Standards for Wastewater Facilities or Recommended Standards for Water Works, published by the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, latest edition.

(3) Recipients of treasure state endowment program funds are subject to the requirements of the department of commerce as described in the most recent edition of the treasure state endowment program project administration manual, adopted by the department through the administrative rulemaking process.

**Section 4. Other powers and duties of department.** (1) The department of commerce shall disburse grant funds on a reimbursement basis as grant recipients incur eligible project expenses.

(2) If actual project expenses are lower than the projected expense of the project, the department may, at its discretion:

(a) reduce the amount of grant funds to be provided to grant recipients in proportion to all other project funding sources;

(b) authorize the use of the remaining authorized grant amounts for the construction of additional infrastructure components directly related to the approved project that will further enhance the overall system; or

(c) reduce the amount of grant funds to be provided so that the grant recipient's projected average residential user rates do not become lower than their target rate as determined by the department.

(3) If the grant recipient obtains a greater amount of grant funds than was contained in the treasure state endowment program application, the department may reduce the amount of the treasure state endowment program grant funds to be provided to ensure that the grant recipient continues to meet the threshold requirements contained in program guidelines for receiving the larger treasure state endowment program grant.

**Section 5. Appropriations from treasure state endowment state special revenue account for emergency grants.** There is appropriated to the department of commerce $100,000 for the biennium beginning July 1, 2013, from the interest earnings of the treasure state endowment state special revenue account for the purpose of providing local governments, as defined in 90-6-701, with emergency grants for infrastructure projects, as defined in 90-6-701.

**Section 6. Appropriations from treasure state endowment state special revenue account for infrastructure planning grants.** There is appropriated to the department of commerce $900,000 for the biennium beginning July 1, 2013, from the interest earnings of the treasure state endowment state special revenue account for the purpose of providing local governments, as defined in 90-6-701, with infrastructure planning grants for infrastructure projects as defined in 90-6-701.

**Section 7. Appropriation from treasure state endowment regional water system special revenue account.** (1) There is appropriated $17,000,000 to the department of natural resources and conservation for the biennium beginning July 1, 2013, from the treasure state endowment regional water system special revenue account to finance the state's share of regional water system projects authorized in subsection (2) and as set forth in 90-6-715.

(2) The Fort Peck-Dry Prairie rural water authority and the Rocky Boys-North Central Montana regional water authority are authorized to receive the funds appropriated in subsection (1).

(3) A regional water authority's receipt of funds is dependent on the authority's compliance with the conditions described in [section 9(1)].

(4) This section constitutes a valid obligation of funds to the regional water authorities listed in subsection (2) for purposes of encumbering the treasure state endowment regional water system special revenue account funds received during the biennium beginning July 1, 2013, under 17-7-302.

**Section 8. Approval of funds — completion of appropriation.** (1) The legislature, pursuant to 90-6-715, authorizes funds for the regional water authorities identified in [section 7(2)].

(2) The authorization of these funds completes an appropriation from the treasure state endowment regional water system special revenue account provided for in 17-5-703(3)(d).

**Section 9. Conditions — manner of disbursements of funds.** (1) The disbursement of funds under [sections 7 and 8] is subject to completion of the following conditions:

(a) The regional water authority shall execute an agreement with the department of natural resources and conservation.

(b) The regional water authority must have a project management plan that is approved by the department.

(c) The regional water authority shall establish a financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles.

(d) The regional water authority shall provide the department with a detailed preliminary engineering report.

(2) The department shall disburse funds on a reimbursement basis as the regional water authority incurs eligible project expenses.

**Section 10. Fund transfer.** The state treasurer shall transfer from the state general fund by June 30, 2015:

(1) the amount of $13,300,000 to the treasure state endowment account in the state special revenue fund; and

(2) the amount of $8,400,000 to the treasure state endowment regional water system account in the state special revenue fund.

**Section 11. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

**Section 12. Effective date.** [This act] is effective July 1, 2013.

Approved May 6, 2013

# CHAPTER NO. 385

[HB 13]

AN ACT GENERALLY REVISING LAWS GOVERNING STATE EMPLOYEE COMPENSATION; CLARIFYING BENEFITS FOR LAID-OFF EMPLOYEES; APPROPRIATING FUNDS TO IMPLEMENT PAY REVISIONS AND FOR PERSONAL SERVICES CONTINGENCIES; REQUIRING REPORTING ON THE IMPLEMENTATION OF PAY INCREASES; AMENDING SECTIONS 2-18-301, 2-18-303, AND 2-18-703, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-18-301, MCA, is amended to read:

**"2-18-301. Intent of part — rules.** (1) It is the intent of the legislature that compensation plans for state employees, excluding those employees excepted under 2-18-103 or 2-18-104, be based~~, in part,~~ on an analysis *and comparison* of the *municipal and state government* labor ~~market~~ *markets in North Dakota, South Dakota, Idaho, and Wyoming* as provided by the department ~~in a biennial salary survey~~ *from the national compensation association of state governments salary survey and other information relative to the state government salaries and compensation in those states*. ~~The salary survey must be submitted~~ *For the biennium beginning July 1, 2013, the department shall determine this information before pay raises are implemented. For legislative sessions following the biennium beginning July 1, 2013, the department shall submit* to the office of budget and program planning as a part of the information required by 17-7-111~~.~~*:*

*(a) an analysis of how Montana government employee salaries and other compensation compare to the municipal and state government salaries in North Dakota, South Dakota, Idaho, and Wyoming; and*

*(b) an analysis of the labor market as determined by the department in a biennial salary survey.*

(2) Pay adjustments, if any, provided for in 2-18-303 supersede any other plan or systems established through collective bargaining after the adjournment of the legislature.

(3) Total funds required to implement the pay increases, if any, provided for in 2-18-303 for any employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated by the legislature.

(4) The department shall administer the pay program established by the legislature on the basis of competency, internal equity, and competitiveness to ~~external labor markets~~ *the municipal and state government labor markets in North Dakota, South Dakota, Idaho, and Wyoming. The intent is to bring all pay bands to the same relationship percentage of the market rate midpoint salary comparison* when fiscally able.

(5) The broadband pay plan must consist of nine pay bands. Each pay band must contain a salary range with a minimum salary and a maximum salary.

(6) Based on the biennial salary survey, the department shall:

(a) identify current market rates for all occupations;

(b) establish salary ranges for each pay band; and

(c) recommend competitive pay zones *with the municipal and state government labor markets in North Dakota, South Dakota, Idaho, and Wyoming using the national compensation association of state governments salary survey and other relevant information for those states*.

(7) The department may promulgate rules not inconsistent with the provisions of this part, collective bargaining statutes, or negotiated contracts to carry out the purposes of this part.

(8) Nothing in this part prohibits the board of regents from engaging in negotiations with the collective bargaining units representing the classified staff of the university system."

**Section 2.** Section 2-18-303, MCA, is amended to read:

**"2-18-303. Procedures for administering broadband pay plan.** (1) On the first day of the first complete pay period in fiscal year ~~2010~~ *2014*, each employee is entitled to the amount of the employee's base salary as it was on June 30, ~~2009~~ *2013*.

(2) An employee's base salary may be no less than the minimum salary of the pay band to which the employee's position is allocated.

(3) ~~All full-time employees whose base pay is $45,000 or less annually will receive a one-time lump-sum payment of $450 for the first full pay period after July 1, 2009. All part-time employees who are regularly scheduled to work 20 hours or more per week and whose base pay is $21.635 per hour or less will receive a one-time lump-sum payment of $225 for the first full pay period after July 1, 2009.~~ *Funds appropriated under [section 3(1)] must be used to increase the base pay for each employee. The base pay of employees must be increased as determined by the executive branch, including those subject to the provisions of Title 39, chapter 31, with particular attention to the lower pay bands and those who did not receive a base pay increase during the biennium beginning July 1, 2011.*

(4) (a) (i) A member of a bargaining unit may not receive the pay adjustment provided for in subsection (3) until the employer's collective bargaining representative receives written notice that the employee's collective bargaining unit has ratified a collective bargaining agreement.

(ii) If ratification of a collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by the date on which a legislatively authorized pay increase is implemented, members of the bargaining unit must continue to receive the compensation that they were receiving until an agreement is ratified.

(b) Methods of administration consistent with the purpose of this part and necessary to properly implement the pay adjustments provided for in this section may be provided for in collective bargaining agreements.

(5) (a) Montana highway patrol officer base salaries must be established through the broadband pay plan. Before January 1 of each odd-numbered year, the department shall, after seeking the advice of the Montana highway patrol, conduct a salary survey to be used in establishing the base salary for existing and entry-level highway patrol officer positions. The county sheriff's offices in the following consolidated governments and counties are the labor market for purposes of the survey: Butte-Silver Bow, Cascade, Yellowstone, Missoula, Lewis and Clark, Gallatin, Flathead, and Dawson. The base salary for existing and entry-level highway patrol officer positions must then be determined by the department of justice, using the results of the salary survey and the department of justice pay plan guidelines. Base or biennial salary increases under this subsection are exclusive of and not in addition to any increases otherwise awarded to other state employees after July 1, 2006.

(b) To the extent that the plan applies to employees within a collective bargaining unit, the implementation of the plan is a negotiable subject under 39-31-305.

(c) The department of justice shall submit the salary survey to the office of budget and program planning as a part of the information required by 17-7-111.

(d) The salary survey and plan must be completed at least 6 months before the start of each regular legislative session."

**Section 3.** Section 2-18-703, MCA, is amended to read:

**"2-18-703. Contributions.** (1) Each agency, as defined in 2-18-601, and the state compensation insurance fund shall contribute the amount specified in this section toward the group benefits cost.

(2) For employees defined in 2-18-701 and for members of the legislature, the employer contribution for group benefits is ~~$626~~ *$733* a month from January ~~2009~~ *2011* through December ~~2009~~ *2013*, ~~$679~~ *$806* a month from January ~~2010~~ *2014* through December ~~2010~~ *2014*, and ~~$733~~ *$887* for January ~~2011~~ *2015* and for each succeeding month. For employees of the Montana university system, the employer contribution for group benefits is ~~$626~~ *$806* a month from July ~~2008~~ *2013* through June ~~2009~~ *2014, ~~$679~~ and $887* a month from July ~~2009~~ *2014* ~~through June 2010, and $733 for July 2010~~ and for each succeeding month. If a state employee is terminated to achieve a reduction in force, the continuation of contributions for group benefits beyond the termination date is subject to negotiation under 39-31-305 *and to the protections of 2-18-1205*. Permanent part-time, seasonal part-time, and temporary part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts, the employer's contributions may exceed but may not be less than $10 a month.

(4) (a) For employees of political subdivisions, as defined in 2-9-101, except school districts, the employer's contributions may exceed but may not be less than $10 a month.

(b) Subject to the public hearing requirement provided in 2-9-212(2)(b), the amount in excess of the base contribution of a local government's property tax levy for contributions for group benefits as determined in subsection (4)(c) is not subject to the mill levy calculation limitation provided for in 15-10-420.

(c) (i) Subject to subsections (4)(c)(ii) and (4)(c)(iii), the base contribution is determined by multiplying the average annual contribution for each employee on July 1, 1999, times the number of employees for whom the employer makes contributions for group benefits under 2-9-212 on July 1 of each fiscal year.

(ii) If a political subdivision did not make contributions for group benefits on or before July 1, 1999, and subsequently does so, the base contribution is determined by multiplying the average annual contribution for each employee in the first year the political subdivision provides contributions for group benefits times the number of employees for whom the employer makes contributions for group benefits under 2-9-212 on July 1 of each fiscal year.

(iii) If a political subdivision has made contributions for group benefits but has not previously levied for contributions in excess of the base contribution, the political subdivision's base is determined by multiplying the average annual contribution for each employee at the beginning of the fiscal year immediately preceding the year in which the levy will first be levied times the number of employees for whom the employer made contributions for group benefits under 2-9-212 in that fiscal year.

(5) Unused employer contributions for any state employee must be transferred to an account established for this purpose by the department of administration and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member.

(6) Unused employer contributions for any government employee may be transferred to an account established for this purpose by a self-insured government and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member or to increase the reserves of the group.

(7) The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents."

**Section 4. Appropriations.** (1) The following money for the indicated fiscal years is appropriated to the listed agencies to implement the adjustments provided in 2-18-303:

Fiscal Year 2014

| | General Fund | State Special | Federal Special | Proprietary |
|---|---|---|---|---|
| Legislative Branch | $397,735 | $52,500 | | |
| Consumer Counsel | | $18,922 | | |
| Judicial Branch | $859,838 | $50,113 | $1,821 | |
| Executive Branch | $9,060,825 | $7,918,525 | $5,737,675 | $2,049,016 |
| MUS | $6,665,150 | $3,703 | $157,792 | $2,437 |
| Total | $16,983,548 | $8,043,763 | $5,897,289 | $2,051,453 |

Fiscal Year 2015

| | General Fund | State Special | Federal Special | Proprietary |
|---|---|---|---|---|
| Legislative Branch | $808,775 | $142,820 | | |
| Consumer Counsel | | $51,293 | | |
| Judicial Branch | $2,360,621 | $137,768 | $5,008 | |
| Executive Branch | $20,939,617 | $19,036,495 | $14,600,371 | $5,265,622 |
| MUS | $16,907,439 | $10,373 | $441,075 | $6,715 |
| Total | $41,016,452 | $19,378,749 | $15,046,453 | $5,272,336 |

(2) The following money is appropriated for the biennium to the office of budget and program planning, from the designated state fund, to be distributed to agencies when personnel vacancies do not occur, retirement costs exceed agency resources, or other contingencies arise:

| General Fund | State Special | Federal Special | Proprietary |
|---|---|---|---|
| $1,000,000 | $600,000 | $125,000 | $25,000 |

(3) By June 30, 2015, any funds not expended for the purpose of increasing employee pay pursuant to 2-18-303 must revert to the fund from which it was appropriated.

(4) The following money is appropriated for the biennium beginning July 1, 2013, to the Legislative Services Division to be used when retirement costs exceed agency resources or other contingencies arise:

| General Fund |
|---|
| $100,000 |

**Section 5. Reporting of implementation of pay increase.** By December 31, 2013, and December 31, 2014, each agency shall submit to the legislative finance committee and the legislative fiscal analyst a report in an electronic format on the implementation of pay increases under 2-18-303 and the impacts of them on the lower pay bands.

**Section 6. Effective date.** [This act] is effective July 1, 2013.

Approved May 6, 2013

# CHAPTER NO. 386

[HB 97]

AN ACT REVISING THE COMPENSATION USED TO DETERMINE RETIREMENT BENEFITS IN CERTAIN PUBLIC RETIREMENT SYSTEMS; PLACING A CAP ON THE EARNINGS THAT MAY BE INCLUDED IN THE HIGHEST OR FINAL AVERAGE COMPENSATION USED TO DETERMINE A RETIREMENT BENEFIT UNDER THE PUBLIC EMPLOYEES', JUDGES', HIGHWAY PATROL OFFICERS', SHERIFFS', GAME WARDENS' AND PEACE OFFICERS', MUNICIPAL POLICE OFFICERS', AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS; AMENDING SECTIONS 19-2-303, 19-2-1005, 19-3-108, 19-5-101, 19-6-101, 19-7-101, 19-8-101, 19-9-104, AND 19-13-104, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 19-2-303, MCA, is amended to read:

**"19-2-303. Definitions.** Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumptions adopted by the board.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined benefit retirement plan over the present value of future normal costs in that retirement plan.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member of a defined benefit plan to purchase various types of optional service credit as allowed by the applicable retirement plan.

(8) "Annuity" means:

(a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are not subject to periodic or one-time increases; or

(b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

(9) "Banked holiday time" means the hours reported for work performed on a holiday that the employee may use for equivalent time off or that may be paid to the employee as specified by the employer's policy.

(10) "Benefit" means:

(a) the service retirement benefit, early retirement benefit, or disability retirement or survivorship benefit payment provided by a defined benefit retirement plan; or

(b) a payment or distribution under the defined contribution retirement plan, including a disability payment under 19-3-2141, for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124.

(11) "Board" means the public employees' retirement board provided for in 2-15-1009.

(12) "Contingent annuitant" means:

(a) under option 2 or 3 provided for in 19-3-1501, one natural person designated to receive a continuing monthly benefit after the death of a retired member; or

(b) under option 4 provided for in 19-3-1501, a natural person, charitable organization, estate, or trust that may receive a continuing monthly benefit after the death of a retired member.

(13) "Covered employment" means employment in a covered position.

(14) "Covered position" means a position in which the employee must be a member of the retirement system except as otherwise provided by law.

(15) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

(16) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and that is not a defined benefit plan.

(17) "Department" means the department of administration.

(18) "Designated beneficiary" means the person, charitable organization, estate, or trust for the benefit of a natural person designated by a member or payment recipient to receive any survivorship benefits, lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(19) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

(20) "Disability" or "disabled" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(21) "Distributee" means:

(a) a member;

(b) a member's surviving spouse;

(c) a member's spouse or former spouse who is the alternate payee under a family law order as defined in 19-2-907; or

(d) effective January 1, 2007, a member's nonspouse beneficiary who is a designated beneficiary as defined by section 401(a)(9)(E) of the Internal Revenue Code, 26 U.S.C. 401(a)(9)(E).

(22) "Early retirement benefit" means the retirement benefit payable to a member following early retirement and is the actuarial equivalent of the accrued portion of the member's service retirement benefit.

(23) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

(a) an individual retirement account described in section 408(a) of the Internal Revenue Code, 26 U.S.C. 408(a);

(b) an individual retirement annuity described in section 408(b) of the Internal Revenue Code, 26 U.S.C. 408(b);

(c) an annuity plan described in section 403(a) of the Internal Revenue Code, 26 U.S.C. 403(a);

(d) a qualified trust described in section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);

(e) effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b);

(f) effective January 1, 2002, a plan eligible under section 457(b) of the Internal Revenue Code, 26 U.S.C. 457(b), that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or a

political subdivision of a state that agrees to separately account for amounts transferred into that plan from a plan under this title; or

(g) effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code, 26 U.S.C. 408A.

(24) "Eligible rollover distribution":

(a) means any distribution of all or any portion of the balance from a retirement plan to the credit of the distributee, as provided in 19-2-1011;

(b) effective January 1, 2002, includes a distribution to a surviving spouse or to a spouse or former spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p).

(25) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying retirement contributions pursuant to 7-11-105.

(26) "Employer" means a governmental agency participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as responsible for paying retirement contributions pursuant to 7-11-105.

(27) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

(a) the position exists to perform the element;

(b) there are a limited number of employees to perform the element; or

(c) the element is highly specialized.

*(28) "Excess earnings" means the difference, if any, between reported compensation and the limits provided in 19-2-1005(2) used to calculate a member's highest average compensation or final average compensation.*

~~(28)~~*(29)* "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

~~(29)~~*(30)* "Inactive member" means a member who terminates service and does not retire or take a refund of the member's accumulated contributions.

~~(30)~~*(31)* "Internal Revenue Code" has the meaning provided in 15-30-2101.

~~(31)~~*(32)* "Member" means either:

(a) a person with accumulated contributions and service credited with a defined benefit retirement plan or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or

(b) a person with a retirement account in the defined contribution plan.

~~(32)~~*(33)* "Membership service" means the periods of service that are used to determine eligibility for retirement or other benefits.

~~(33)~~*(34)* (a) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a defined benefit retirement plan during any year in the future.

(b) Normal cost does not include any portion of the supplemental costs of a retirement plan.

~~(34)~~*(35)* "Normal retirement age" means the age at which a member is eligible to immediately receive a retirement benefit based on the member's age, length of service, or both, as specified under the member's retirement system, without disability and without an actuarial or similar reduction in the benefit.

~~(35)~~*(36)* "Pension" means benefit payments for life derived from contributions to a retirement plan made from state- or employer-controlled funds.

~~(36)~~*(37)* "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system or plan in public trust.

~~(37)~~*(38)* "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered by the defined contribution plan members that is allocated to the public employees' retirement system's defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member selection of the defined contribution plan.

~~(38)~~*(39)* "Regular contributions" means contributions required from members under a retirement plan.

~~(39)~~*(40)* "Regular interest" means interest at rates set from time to time by the board.

~~(40)~~*(41)* "Retirement" or "retired" means the status of a member who has:

(a) terminated from service; and

(b) received and accepted a retirement benefit from a retirement plan.

~~(41)~~*(42)* "Retirement account" means an individual account within the defined contribution retirement plan for the deposit of employer and member contributions and other assets for the exclusive benefit of a member of the defined contribution plan or the member's beneficiary.

~~(42)~~*(43)* "Retirement benefit" means:

(a) in the case of a defined benefit plan, the periodic benefit payable as a result of service retirement, early retirement, or disability retirement under a defined benefit plan of a retirement system. With respect to a defined benefit plan, the term does not mean an annuity.

(b) in the case of the defined contribution plan, a benefit as defined in subsection (10)(b).

~~(43)~~*(44)* "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan under one of the public employee retirement systems enumerated in 19-2-302.

~~(44)~~*(45)* "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

~~(45)~~*(46)* "Service" means employment of an employee in a position covered by a retirement system.

~~(46)~~*(47)* "Service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate retirement benefits or survivorship benefits under a defined benefit retirement plan.

~~(47)~~*(48)* "Service retirement benefit" means the retirement benefit that the member may receive at normal retirement age.

~~(48)~~*(49)* "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

~~(49)~~*(50)* "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to the date of

contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.

~~(50)~~*(51)* "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.

~~(51)~~*(52)* "Termination of employment", "termination from employment", "terminated employment", "terminated from employment", "terminate employment", or "terminates employment" means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both; and

(b) the member is no longer receiving compensation for covered employment, other than any outstanding lump-sum payment for compensatory leave, sick leave, or annual leave.

~~(52)~~*(53)* "Termination of service", "termination from service", "terminated from service", "terminated service", "terminating service", or "terminates service" means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both for at least 30 days;

(b) no written or verbal agreement exists between employee and employer that the employee will return to covered employment in the future;

(c) the member is no longer receiving compensation for covered employment; and

(d) the member has been paid all compensation for compensatory leave, sick leave, or annual leave to which the member was entitled. For the purposes of this subsection ~~(52)~~ *(53)*, compensation does not mean compensation as a result of a legal action, court order, or settlement to which the board was not a party.

~~(53)~~*(54)* "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

~~(54)~~*(55)* "Vested account" means an individual account within a defined contribution plan that is for the exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions and the income on all contributions in each of the following accounts:

(a) the member's contribution account;

(b) the vested portion of the employer's contribution account; and

(c) the member's account for other contributions.

~~(55)~~*(56)* "Vested member" or "vested" means:

(a) with respect to a defined benefit plan, a member or the status of a member who has at least 5 years of membership service; or

(b) with respect to the defined contribution plan, a member or the status of a member who meets the minimum membership service requirement of 19-3-2116.

~~(56)~~*(57)* "Written application" or "written election" means a written instrument, prescribed by the board or required by law, properly signed and filed with the board, that contains all required information, including documentation that the board considers necessary.

~~(57)~~*(58)* "Written instrument" includes an electronic record containing an electronic signature, as defined in 30-18-102."

**Section 2.** Section 19-2-1005, MCA, is amended to read:

**"19-2-1005. Compensation limit.** *(1)* A retirement system or plan subject to this chapter may not take into account compensation of a member in excess of the amount permitted in section 401(a)(17) of the Internal Revenue Code, 26 U.S.C. 401(a)(17), as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Internal Revenue Code, 26 U.S.C. 401(a)(17)(B).

*(2) (a) Except as provided in subsection (2)(b), for a member hired on or after July 1, 2013, a retirement system or plan subject to this chapter may not include the following amounts of excess earnings in the calculation of a member's highest average compensation or final average compensation:*

*(i) for the first year included in the calculation, any compensation that is greater than 110% of the compensation paid to the member in the previous year; and*

*(ii) for each subsequent year included in the calculation, any compensation that is greater than 110% of the compensation included in the calculation for the previous year.*

*(b) In determining a member's retirement benefit, total excess earnings, if any, must be divided by the member's total months of service credit and added to each month's compensation included in the member's highest average compensation or final average compensation as limited under subsection (2)(a).*"

**Section 3.** Section 19-3-108, MCA, is amended to read:

**"19-3-108. Definitions.** Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) (a) "Compensation" means remuneration paid out of funds controlled by an employer in payment for the member's services or for time during which the member is excused from work because of a holiday or because the member has taken compensatory leave, sick leave, annual leave, banked holiday time, or a leave of absence before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include:

(i) the contributions made pursuant to 19-3-403(4)(a) for members of a bargaining unit;

(ii) in-kind goods provided by the employer, such as uniforms, housing, transportation, or meals;

(iii) in-kind services, such as the retraining allowance paid pursuant to 2-18-622, or employment-related services;

(iv) contributions to group insurance, such as that provided under 2-18-701 through 2-18-704; ~~and~~

(v) lump-sum payments for compensatory leave, sick leave, banked holiday time, or annual leave paid without termination of employment*; or*

*(vi) bonuses provided after July 1, 2013, that are one-time, temporary payments in addition to and not considered part of base pay*.

(2) "Contracting employer" means any political subdivision or governmental entity that has contracted to come into the system under this chapter.

(3) "Defined benefit plan" means the plan within the public employees' retirement system established in 19-3-103 that is not the defined contribution plan.

(4) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units of the university system for the purposes of this chapter, or any contracting employer.

(5) "Employer contributions" means payments to a pension trust fund pursuant to 19-3-316 from appropriations of the state of Montana and from contracting employers.

(6) (a) "Highest average compensation" means:

(i) for a member hired prior to July 1, 2011, the highest average monthly compensation during any 36 consecutive months of membership service;

(ii) for a member hired on or after July 1, 2011, the highest average monthly compensation during any 60 consecutive months of membership service; or

(iii) in the event a member has not served the minimum specified period of service, the total compensation earned divided by the months of membership service.

(b) Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, banked holiday time, and annual leave, paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

*(c) Excess earnings limits must be applied to the calculation of the highest average compensation pursuant to 19-2-1005(2).*

(7) "System" or "retirement system" means the public employees' retirement system established in 19-3-103."

**Section 4.** Section 19-5-101, MCA, is amended to read:

**"19-5-101. Definitions.** Unless a different meaning is plainly implied by the context, the following definitions apply in this chapter:

(1) *(a)* "Compensation" means remuneration, as defined in 2-16-403, 3-5-211, and 3-7-222, paid to a member.

*(b) Compensation does not include bonuses provided after July 1, 2013, that are one-time, temporary payments in addition to and not considered part of base pay.*

(2) "Current salary" means the current compensation for the office retired from.

(3) *(a)* "Highest average compensation" means a member's highest average monthly compensation during any 36 consecutive months of membership service.

*(b) Excess earnings limits must be applied to the calculation of the highest average compensation pursuant to 19-2-1005(2).*

(4) "Involuntary retirement" means a retirement not for cause and before retirement age.

(5) "Retired judge" means any judge or justice in receipt of a retirement benefit under this chapter."

**Section 5.** Section 19-6-101, MCA, is amended to read:

**"19-6-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) (a) "Compensation" means remuneration paid from funds controlled by an employer in payment for the member's services or for time during which the

member is excused from work because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include*:*

*(i)* maintenance, allowances, and expenses*; or*

*(ii) bonuses provided after July 1, 2013, that are one-time, temporary payments in addition to and not considered part of base pay*.

(2) "Dependent child" means an unmarried child of a deceased retired member, who is:

(a) under 18 years of age; or

(b) under 24 years of age and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(3) *(a)* "Highest average compensation" means a member's highest average monthly compensation during any 36 consecutive months of membership service or, in the event a member has not served at least 36 months, the total compensation earned divided by the number of months of service.

*(b)* Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

*(c) Excess earnings limits must be applied to the calculation of the highest average compensation pursuant to 19-2-1005(2).*

(4) "Surviving spouse" means the spouse married to a retired member at the time of the retired member's death.

(5) "Survivor" means a surviving spouse or dependent child of a member."

**Section 6.** Section 19-7-101, MCA, is amended to read:

**"19-7-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) (a) "Compensation" means remuneration paid from funds controlled by an employer for the member's services or for time during which the member is excused from work because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include*:*

*(i)* maintenance, allowances, and expenses*; or*

*(ii) bonuses provided after July 1, 2013, that are one-time, temporary payments in addition to and not considered part of base pay*.

(2) "Detention officer" means any detention officer who is hired by a sheriff, employed in a detention center, and acting as a detention officer for the sheriff and who has received or is expected to receive training to meet the employment standards set for detention officers by the Montana public safety officer standards and training council established in 2-15-2029.

(3) (a) "Highest average compensation" means:

(i) for members hired prior to July 1, 2011, the member's highest average monthly compensation during any 36 consecutive months of membership service;

(ii) for members hired on or after July 1, 2011, the highest average compensation during any 60 consecutive months of membership service; or

(iii) if a member has not served the minimum specified period of membership service as applicable in subsection (3)(a)(i) or (3)(a)(ii), the total compensation earned divided by the number of months of service.

(b) Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

*(c) Excess earnings limits must be applied to the calculation of the highest average compensation pursuant to 19-2-1005(2).*

(4) "Investigator" means a person who is employed by the department of justice as a criminal investigator or as a gambling investigator.

(5) "Sheriff" means any elected or appointed county sheriff or undersheriff or any appointed, lawfully trained, appropriately salaried, and regularly acting deputy sheriff with the requisite professional certification and licensing."

**Section 7.** Section 19-8-101, MCA, is amended to read:

**"19-8-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) (a) "Compensation" means remuneration paid from funds controlled by an employer in payment for the member's services or for time during which the member is excused from work because the member has taken compensatory leave, sick leave, annual leave, banked holiday time, or a leave of absence before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include*:*

*(i)* maintenance, allowances, and expenses*; or*

*(ii) bonuses provided after July 1, 2013, that are one-time, temporary payments in addition to and not considered part of base pay*.

(2) (a) "Highest average compensation" means:

(i) for members hired prior to July 1, 2011, the highest average monthly compensation during any 36 consecutive months of membership service;

(ii) for members hired on or after July 1, 2011, the highest average monthly compensation during any 60 consecutive months of membership service; or

(iii) in the event a member has not served the minimum specified period of membership service, the total compensation earned divided by the number of months of service.

(b) Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, annual leave, and banked holiday time, paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

*(c) Excess earnings limits must be applied to the calculation of the highest average compensation pursuant to 19-2-1005(2).*

(3) "Game warden" means a state fish and game warden hired by the department of fish, wildlife, and parks and includes all warden supervisory personnel whose salaries or compensation is paid out of the department of fish, wildlife, and parks money.

(4) "Motor carrier officer" means an employee of the department of transportation designated or appointed as a peace officer pursuant to 61-10-154 or 61-12-201.

(5) "Peace officer" or "state peace officer" means a person who by virtue of the person's employment with the state is vested by law with a duty to maintain public order or make arrests for offenses while acting within the scope of the person's authority or who is charged with specific law enforcement responsibilities on behalf of the state."

**Section 8.** Section 19-9-104, MCA, is amended to read:

**"19-9-104. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) (a) "Compensation" means the remuneration paid from funds controlled by an employer in payment for the member's services before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include:

(i) overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave and annual leave; ~~and~~

(ii) maintenance, allowances, and expenses*; or*

*(iii) bonuses provided after July 1, 2013, that are one-time, temporary payments in addition to and not considered part of base pay*.

(2) "Dependent child" means a child of a deceased member:

(a) who is unmarried and under 18 years of age; or

(b) who is unmarried, under 24 years of age, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(3) "Employer" means any city that participated in a prior plan or that elects to join this retirement system under 19-9-207.

(4) *(a)* "Final average compensation" means the monthly compensation of a member averaged over the last 36 months of the member's service or, in the event a member has not served at least 36 months, the total compensation earned divided by the number of months of service.

*(b) Excess earnings limits must be applied to the calculation of the final average compensation pursuant to 19-2-1005(2).*

(5) "Minimum retirement date" means the first day of the month coinciding with or, if none coincides, the date on which a member both becomes age 50 and completes 5 years of membership service.

(6) Any reference to "municipality", "city", or "town" includes those jurisdictions that, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban law enforcement services, or the entire county included in the county-municipal consolidation.

(7) "Police officer" means an appointed, lawfully trained, appropriately salaried, and regularly acting officer with the requisite professional certification and licensing.

(8) "Prior plan" means the local police reserve or pension trust fund of a city that elects to join the retirement system under 19-9-207.

(9) "Retirement date" means the date on which the first payment of the retirement, disability, or survivorship benefits of a member or a survivor is payable.

(10) "Surviving spouse" means the spouse married to a member at the time of the member's death.

(11) "Survivor" means a surviving spouse or dependent child of the member."

**Section 9.** Section 19-13-104, MCA, is amended to read:

**"19-13-104. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) Any reference to "city" or "town" includes those jurisdictions that, before the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban firefighting services, or the entire county included in the county-municipal consolidation.

(2) "Compensation" means:

(a) for a full-paid firefighter, the remuneration paid from funds controlled by an employer in payment for the member's services before any pretax deductions allowed by state and federal law are made;

(b) for a part-paid firefighter employed by a city of the second class:

(i) 15% of the regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

(ii) if that city does not employ a full-paid firefighter, 15% of the average regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the second class.

(c) Compensation for full-paid and part-paid firefighters does not include:

(i) overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave; ~~and~~

(ii) maintenance, allowances, and expenses*; or*

*(iii) bonuses provided after July 1, 2013, that are one-time, temporary payments in addition to and not considered part of base pay*.

(3) "Dependent child" means a child of a deceased member who is:

(a) unmarried and under 18 years of age; or

(b) unmarried, under 24 years of age, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(4) "Employer" means:

(a) any city that is of the first or second class or that elects to join this retirement system under 19-13-211;

(b) a city or a rural fire district referred to in 19-13-210(3);

(c) with respect to firefighters covered in the retirement system pursuant to 19-13-210(2), the department of military affairs established in 2-15-1201; and

(d) any other statutorily allowed entity that elects to join this retirement system pursuant to 19-13-210.

(5) "Firefighter" means a person employed as a full-paid or part-paid firefighter by an employer.

(6) "Full-paid firefighter" means a person appointed by an employer as a firefighter under the standards provided in 7-33-4106 and 7-33-4107.

(7) *(a)* "Highest average compensation" means the monthly compensation of a member averaged over the highest consecutive 36 months of the member's active service or, in the event a member has not served at least 36 consecutive months, the total compensation earned divided by the number of months of service. *(b)* Lump-sum payments for annual leave paid to the member upon termination of employment may be used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of highest average compensation.

*(c) Excess earnings limits must be applied to the calculation of the highest average compensation pursuant to 19-2-1005(2).*

(8) "Minimum retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member reaches both 50 years of age or older and completes 5 or more years of membership service.

(9) "Part-paid firefighter" means a person employed under 7-33-4109 who receives compensation in excess of $300 a year for service as a firefighter and who is appointed by an employer as a firefighter under the standards provided in 7-33-4106 and 7-33-4107.

(10) "Prior plan" means the fire department relief association plan of a city that elects to join the retirement system under 19-13-211 or the fire department relief association plan of a city of the first or second class.

(11) "Retirement date" means the date on which the first payment of benefits is payable.

(12) "Retirement system" means the firefighters' unified retirement system provided for in this chapter.

(13) "Surviving spouse" means the spouse married to a member at the time of the member's death."

**Section 10. Effective date.** [This act] is effective July 1, 2013.

Approved May 6, 2013

# CHAPTER NO. 387

[HB 262]

AN ACT EXTENDING MEDICAID ELIGIBILITY TO CHILDREN PLACED IN A SUBSIDIZED GUARDIANSHIP; AMENDING SECTION 53-6-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 53-6-131, MCA, is amended to read:

**"53-6-131. Eligibility requirements.** (1) Medical assistance under the Montana medicaid program may be granted to a person who is determined by the department of public health and human services, in its discretion, to be eligible as follows:

(a) The person receives or is considered to be receiving supplemental security income benefits under Title XVI of the Social Security Act, 42 U.S.C. 1381, et seq., and does not have income or resources in excess of the applicable medical assistance limits.

(b) The person would be eligible for assistance under the program described in subsection (1)(a) if that person were to apply for that assistance.

(c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility, the person would be receiving assistance under the program in subsection (1)(a).

(d) The person is*:*

*(i)* under 21 years of age and in foster care under the supervision of the state or was in foster care under the supervision of the state and has been adopted as a child with special needs*; or*

*(ii) under 18 years of age and is in a guardianship subsidized by the department pursuant to 41-3-444.*

(e) The person meets the nonfinancial criteria of the categories in subsections (1)(a) through (1)(d) and:

(i) the person's income does not exceed the income level specified for federally aided categories of assistance and the person's resources are within the resource standards of the federal supplemental security income program; or

(ii) the person, while having income greater than the medically needy income level specified for federally aided categories of assistance:

(A) has an adjusted income level, after incurring medical expenses, that does not exceed the medically needy income level specified for federally aided categories of assistance or, alternatively, has paid in cash to the department the amount by which the person's income exceeds the medically needy income level specified for federally aided categories of assistance; and

(B) (I) in the case of a person who meets the nonfinancial criteria for medical assistance because the person is aged, blind, or disabled, has resources that do not exceed the resource standards of the federal supplemental security income program; or

(II) in the case of a person who meets the nonfinancial criteria for medical assistance because the person is pregnant, is an infant or child, or is the caretaker of an infant or child, has resources that do not exceed the resource standards adopted by the department.

(f) The person is a qualified pregnant woman or a child as defined in 42 U.S.C. 1396d(n).

(g) The person is under 19 years of age and lives with a family having a combined income that does not exceed 185% of the federal poverty level. The department may establish lower income levels to the extent necessary to maximize federal matching funds provided for in 53-4-1104.

(2) The department may establish income and resource limitations. Limitations of income and resources must be within the amounts permitted by federal law for the medicaid program. Any otherwise applicable eligibility resource test prescribed by the department does not apply to enrollees in the healthy Montana kids plan provided for in 53-4-1104.

(3) The Montana medicaid program shall pay, as required by federal law, the premiums necessary for medicaid-eligible persons participating in the medicare program and may, within the discretion of the department, pay all or a portion of the medicare premiums, deductibles, and coinsurance for a qualified

medicare-eligible person or for a qualified disabled and working individual, as defined in section 6408(d)(2) of the federal Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, who:

(a) has income that does not exceed income standards as may be required by the Social Security Act; and

(b) has resources that do not exceed standards that the department determines reasonable for purposes of the program.

(4) The department may pay a medicaid-eligible person's expenses for premiums, coinsurance, and similar costs for health insurance or other available health coverage, as provided in 42 U.S.C. 1396b(a)(1).

(5) In accordance with waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may grant eligibility for basic medicaid benefits as described in 53-6-101 to an individual receiving section 1931 medicaid benefits, as defined in 53-4-602, as the specified caretaker relative of a dependent child under the section 1931 medicaid program. A recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage, as provided in 53-6-101.

(6) The department, under the Montana medicaid program, may provide, if a waiver is not available from the federal government, medicaid and other assistance mandated by Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, and not specifically listed in this part to categories of persons that may be designated by the act for receipt of assistance.

(7) Notwithstanding any other provision of this chapter, medical assistance must be provided to infants and pregnant women whose family income does not exceed income standards adopted by the department that comply with the requirements of 42 U.S.C. 1396a(l)(2)(A)(i) and whose family resources do not exceed standards that the department determines reasonable for purposes of the program.

(8) Subject to appropriations, the department may cooperate with and make grants to a nonprofit corporation that uses donated funds to provide basic preventive and primary health care medical benefits to children whose families are ineligible for the Montana medicaid program and who are ineligible for any other health care coverage, are under 19 years of age, and are enrolled in school if of school age.

(9) A person described in subsection (7) must be provided continuous eligibility for medical assistance, as authorized in 42 U.S.C. 1396a(e)(5) through a(e)(7).

(10) Full medical assistance under the Montana medicaid program may be granted to an individual during the period in which the individual requires treatment of breast or cervical cancer, or both, or of a precancerous condition of the breast or cervix, if the individual:

(a) has been screened for breast and cervical cancer under the Montana breast and cervical health program funded by the centers for disease control and prevention program established under Title XV of the Public Health Service Act, 42 U.S.C. 300k, or in accordance with federal requirements;

(b) needs treatment for breast or cervical cancer, or both, or a precancerous condition of the breast or cervix;

(c) is not otherwise covered under creditable coverage, as provided by federal law or regulation;

(d) is not eligible for medical assistance under any mandatory categorically needy eligibility group; and

(e) has not attained 65 years of age.

(11) Subject to the limitation in 53-6-195, the department shall provide medicaid coverage to workers with disabilities as provided in 53-6-195 and in accordance with 42 U.S.C. 1396a(a)(10)(A)(ii)(XIII) and (r)(2) and 42 U.S.C. 1396o."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved May 6, 2013

# CHAPTER NO. 388

[HB 345]

AN ACT REVISING THE MONTANA FALSE CLAIMS ACT; REVISING CIVIL PENALTIES TO PROVIDE FOR INFLATION ADJUSTMENTS; REVISING PUBLIC DISCLOSURE PROVISIONS; REVISING THE STATUTE OF LIMITATIONS; PROVIDING A STATUTE OF LIMITATIONS AND DOUBLE BACK PAY FOR RETALIATORY ACTIONS; PROVIDING A REPORTING REQUIREMENT; AMENDING SECTIONS 17-8-402, 17-8-403, 17-8-404, 17-8-410, 17-8-411, AND 17-8-412, MCA; PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 17-8-402, MCA, is amended to read:

**"17-8-402. Definitions.** As used in this part, the following definitions apply:

(1) "Claim" includes any request or demand for money, property, or services, *whether made pursuant to a contract and regardless of whether a governmental entity holds title to the money or property, that is* made to*:*

*(a)* an employee, officer, ~~or~~ agent*, or other representative* of a governmental entity*;* or ~~to~~

*(b)* a contractor, grantee, or other ~~recipient~~ *person*, whether under contract or not, if any portion of the money, property, or services requested or demanded ~~issued from or was provided by a governmental entity.~~ *is to be spent or used on a governmental entity's behalf or to advance a governmental program or interest and if the governmental entity:*

*(i) provides or has provided any portion of the money, property, or services requested or demanded; or*

*(ii) will reimburse a contractor, grantee, or other person for any portion of the money, property, or services requested or demanded.*

(2) "Government attorney" means the attorney general except for complaints involving a unit of the university system.

(3) "Governmental entity" means:

(a) the state;

(b) a city, town, county, school district, tax or assessment district, or other political subdivision of the state; or

(c) a unit of the Montana university system.

(4) (a) "Knowingly" means that a person, with respect to information, does any of the following:

(i) has actual knowledge of the information;

(ii) acts in deliberate ignorance of the truth or falsity of the information; or

(iii) acts in reckless disregard of the truth or falsity of the information.

(b) A specific intent to defraud is not required.

*(5) "Material" means having a natural tendency to influence or be capable of influencing the payment or receipt of money, property, or services.*

*(6) "Obligation" means an established duty, whether fixed or not, arising from:*

*(a) an express or implied contractual, grantor-grantee, or licensor-licensee relationship;*

*(b) a fee-based or similar relationship;*

*(c) a statute or regulation; or*

*(d) the retention of any overpayment.*

~~(5)~~*(7)* "Person" includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business, trust, or other legal or business entity.

*(8) "State" means the state of Montana.*"

**Section 2.** Section 17-8-403, MCA, is amended to read:

**"17-8-403. False claims — procedures — penalties.** (1) Except as provided in subsection (2), a person is liable to a governmental entity for a civil penalty of not less than ~~$5,000~~ *$5,500* and not more than ~~$10,000~~ *$11,000* for each act specified in this section, plus three times the amount of damages that a governmental entity sustains ~~because of the person's act~~, along with expenses, costs, and attorney fees, if the person:

(a) knowingly presents or causes to be presented ~~to an officer or employee of the governmental entity~~ a false or fraudulent claim for payment or approval;

(b) knowingly makes, uses, or causes to be made or used a false record or statement *material* to ~~get~~ a false or fraudulent claim ~~paid or approved by the governmental entity~~;

(c) conspires to ~~defraud the governmental entity by getting a false or fraudulent claim allowed or paid by the governmental entity~~ *commit a violation of this subsection (1)*;

(d) has possession, custody, or control of public property or money used or to be used by the governmental entity and~~, with the intent to defraud the governmental entity or to willfully conceal the property,~~ *knowingly* delivers or causes to be delivered less *than all of the* property or money ~~than the amount for which the person receives a certificate or receipt~~;

(e) is authorized to make or deliver a document certifying receipt of property used or to be used by the governmental entity and, with the intent to defraud the governmental entity or to willfully conceal the property, makes or delivers a receipt without *completely* knowing that the information on the receipt is true;

(f) knowingly buys or receives as a pledge of an obligation or debt public property of the governmental entity from any person who may not lawfully sell or pledge the property;

(g) knowingly makes, uses, or causes to be made or used a false record or statement ~~to conceal, avoid, or decrease an obligation to pay or transmit money or property to the governmental entity or its contractors~~ *material to an obligation to pay or transmit money or property to a governmental entity or*

*knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to a governmental entity*; or

(h) as a beneficiary of an inadvertent submission of a false or fraudulent claim to the governmental entity, subsequently discovers the falsity of the claim or that the claim is fraudulent and fails to disclose the false or fraudulent claim to the governmental entity within a reasonable time after discovery of the false or fraudulent claim.

(2) ~~(a)~~ In a civil action brought under 17-8-405 or 17-8-406, a court shall assess a civil penalty of not less than ~~$5,000~~ *$5,500* and not more than ~~$10,000~~ *$11,000* for each act specified in this section, plus not less than two times and not more than three times the amount of damages that a governmental entity sustains ~~because of the person's act~~ if the court finds all of the following:

~~(i)~~*(a)* The person committing the act furnished the government attorney with all information known to that person about the act within 30 days after the date on which the person first obtained the information.

~~(ii)~~*(b)* The person fully cooperated with any investigation of the act by the government attorney.

~~(iii)~~*(c)* At the time that the person furnished the government attorney with information about the act, a criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and the person did not have actual knowledge of the existence of an investigation into the act.

~~(b)~~*(3)* A person who violates the provisions of this section is also liable to the governmental entity for the expenses, costs, and attorney fees of the civil action brought to recover the penalty or damages.

~~(3)~~*(4)* Liability under this section is joint and several for any act committed by two or more persons.

~~(4)~~*(5)* This section does not apply to claims, records, or statements made in relation to claims filed with the state compensation insurance fund under Title 39, chapter 71, or to claims, records, payments, or statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and conservation under Title 77.

*(6) (a) A court shall dismiss an action or claim brought under 17-8-406, unless opposed by the governmental entity or unless the action is brought by the government attorney or the person who is the original source of the information, if substantially the same allegations or transactions alleged in the action or claim were publicly disclosed in:*

*(i) a criminal, civil, or administrative hearing in which the governmental entity or an agent of the governmental entity is a party;*

*(ii) a state legislative, state auditor, or other governmental entity report, hearing, audit, or investigation; or*

*(iii) the news media.*

*(b) The production of a record pursuant to Article II, section 9, of the Montana constitution or Title 2, chapter 6, is not a public disclosure for purposes of this section.*

*(c) For purposes of this subsection (6), "original source" means an individual who:*

*(i) prior to a public disclosure, voluntarily disclosed to the governmental entity the information on which the allegations or transactions in a claim are based; or*

*(ii) has knowledge that is independent of and materially adds to the publicly disclosed allegations and transactions and voluntarily provided the information to the governmental entity before filing an action.*

~~(5)~~*(7)* A person may not file a complaint or civil action~~:~~

~~(a) against a governmental entity or an officer or employee of a governmental entity arising from conduct by the officer or employee within the scope of the officer's or employee's duties to the governmental entity;~~ *brought under 17-8-406 against the state or an officer or employee of the state arising from conduct by the officer or employee within the scope of the officer's or employee's duties to the state unless the officer or employee has a financial interest in the conduct upon which the complaint or civil action arises.*

~~(b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil penalty proceeding in which an agency of the governmental entity is already a party;~~

~~(c) that is based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing or in an investigation, report, hearing, or audit conducted by or at the request of the senate or house of representatives, the state auditor or legislative auditor, the auditor or legislative body of a political subdivision, or the news media, unless the person has direct and independent knowledge of the information on which the allegations are based and, before filing the complaint or civil action, voluntarily provided the information to the agency of the governmental entity that is involved with the claim that is the basis for the complaint or civil action and unless the information provided the basis or catalyst for the investigation, report, hearing, or audit that led to the public disclosure; or~~

~~(d) that is based upon information discovered by a present or former employee of the governmental entity during the course of employment unless the employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the governmental entity failed to act on the information provided within a reasonable period of time.~~

*(8) The amount of the civil penalty set forth in subsections (1) and (2) must be adjusted for inflation in a manner consistent with the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410.*

*(9) If a governmental entity does not intervene, the person who initiated the action has the same right to conduct the action as the government attorney would have had if the governmental entity had intervened, including the right to inspect government records and interview officers and employees of the governmental entity.*"

**Section 3.** Section 17-8-404, MCA, is amended to read:

**"17-8-404. Limitation of actions.** (1) A complaint or civil action filed under 17-8-405 or 17-8-406 must be brought by the later of:

(a) 6 years after the date on which the violation was committed; or

(b) 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the governmental entity charged with responsibility to act in the circumstances.

(2) In no event may an action brought pursuant to subsection (1)(b) be brought more than 10 years after the date on which the violation was committed.

*(3) If the governmental entity elects to intervene in any action brought under 17-8-406, the complaint in intervention must relate back to the filing date of the*

*original complaint to the extent that the governmental entity's claim arises out of the conduct, transactions, or occurrences set forth or attempted to be set forth in the original complaint.*"

**Section 4.** Section 17-8-410, MCA, is amended to read:

**"17-8-410. Distribution of damages and civil penalty.** (1) Except as provided in subsection (2), if the government attorney proceeds with an action brought by a person pursuant to 17-8-406, the person must receive at least 15% but not more than 25% of the proceeds recovered and collected in the action or in settlement of the claim, depending on the extent to which the person substantially contributed to the prosecution of the action.

(2) (a) The court may award an amount it considers appropriate but in no case more than 10% of the proceeds in an action that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions disclosed through:

(i) a criminal, civil, or administrative hearing;

(ii) a legislative, administrative, auditor, or inspector general report, hearing, audit, or investigation; or

(iii) the news media.

(b) In determining the award, the court shall take into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(3) Any payment to a person bringing an action pursuant to this part may be made only from the proceeds recovered and collected in the action or in settlement of the claim. The person must also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney fees and costs. The expenses, fees, and costs must be awarded against the defendant.

(4) If the government attorney does not proceed with an action pursuant to 17-8-406, the person bringing the action or settling the claim must receive an amount that the court decides is reasonable for collecting the civil penalty and damages on behalf of the government attorney or governmental entity. The amount may not be less than 25% or more than 30% of the proceeds recovered and collected in the action or settlement of the claim and must be paid out of the proceeds. The person must also receive an amount for reasonable expenses that the court finds were necessarily incurred, plus reasonable attorney fees and costs. All expenses, fees, and costs must be awarded against the defendant.

(5) Whether or not the government attorney proceeds with the action, if the court finds that the action was brought by a person who planned~~,~~ *and* initiated~~, or knowingly participated in~~ the violation of 17-8-403, the court may, to the extent the court considers appropriate, reduce or eliminate the share of the proceeds of the action that the person would otherwise receive pursuant to subsections (1) through (4) of this section, taking into account the role of the person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of this part, the person must be dismissed from the civil action and may not receive any share of the proceeds of the action. The dismissal does not prejudice the right of the government attorney to continue the action.

(6) The governmental entity is entitled to any damages and civil penalty not awarded to the person, and the damages and civil penalty must be deposited in

the general fund of the governmental entity, except that if a trust fund of the governmental entity suffered a loss as a result of the defendant's actions, the trust fund must first be fully reimbursed for the loss and the remainder of the damages and any civil penalty must be deposited in the general fund of the governmental entity.

(7) Unless otherwise provided, the remedies or penalties provided by this part are cumulative to each other and to the remedies or penalties available under all other laws of the state."

**Section 5.** Section 17-8-411, MCA, is amended to read:

**"17-8-411. Costs and attorney fees.** The governmental entity that filed a civil action or intervened is entitled to reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails. In an action in which outside counsel is engaged by a government attorney, the costs and attorney fees awarded to that counsel must equal the outside counsel's charges reasonably incurred for costs and attorney fees in prosecuting the action. In any other actions in which costs and attorney fees are awarded to the governmental entity, they must be calculated by reference to the hourly rate charged by the department of justice agency legal services bureau for the provision of legal services to state agencies, multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred in the prosecution of the action. A person who is a plaintiff or coplaintiff is entitled to ~~an amount or~~ reasonable expenses that the court finds to have been necessarily incurred, plus reasonable costs and attorney fees, if the action is settled favorably for the governmental entity or the governmental entity prevails in the action. ~~A~~ *A* defendant in a civil action brought pursuant to this part who prevails in an action that is not settled and that the court finds was clearly frivolous or brought solely for harassment purposes is entitled to the defendant's reasonable costs and attorney fees~~, which must be equitably apportioned against the person who brought the action and the governmental entity if a person and a governmental entity were coplaintiffs~~. *If the governmental entity does not intervene, it is not responsible for any of the defendant's fees and costs.*"

**Section 6.** Section 17-8-412, MCA, is amended to read:

**"17-8-412. ~~Prohibitions on employers — employee~~ *Retaliatory actions prohibited* — remedies.** (1) A governmental entity*,* ~~or~~ private entity*, or person* may not adopt or enforce a rule, regulation, or policy preventing an employee*, agent, or contractor* from disclosing information to a government or law enforcement agency with regard to or from acting in furtherance of an investigation of a violation of 17-8-403 or an action brought pursuant to 17-8-405 or 17-8-406.

(2) A governmental entity*,* ~~or~~ private entity*, or person* may not discharge, demote, suspend, threaten, harass, or deny promotion to or in any other manner discriminate against an employee*, agent, or contractor* in the terms and conditions of employment*, agency, or contract* because of the ~~employee's~~ disclosure *by the employee, agent, or contractor* of information to a government or law enforcement agency pertaining to a violation of 17-8-403.

(3) ~~(a) A governmental entity or private entity that violates the provisions of subsection (2) is liable for:~~

~~(i) reinstatement to the same position with the same seniority status, salary, benefits, and other conditions of employment that the employee would have had but for the discrimination;~~

~~(ii) back pay plus interest on the back pay;~~

~~(iii) compensation for any special damages sustained as a result of the discrimination; and~~

~~(iv) reasonable court or administrative proceeding costs and reasonable attorney fees.~~

~~(b) An employee may file an action for the relief provided in this subsection (3).~~

*An employee, contractor, or agent is entitled to all relief necessary to make the employee, contractor, or agent whole if the employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, or agent or associated others in furtherance of an action under this part or other efforts to stop one or more violations of this part.*

*(4) Relief under subsection (3) includes reinstatement with the same seniority status the employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney fees. A civil action may be brought in the appropriate district court of the state for the relief provided in this subsection.*

*(5) A civil action under this section may not be brought more than 3 years after the date on which the retaliation occurred.*"

**Section 7. Reporting.** Beginning February 15, 2014, and by February 15 of each year, the attorney general shall submit to the law and justice interim committee a report containing the following information:

(1) the number of cases filed under the Montana False Claims Act, Title 17, chapter 8, part 4, that were pending in the state during the previous calendar year;

(2) the number of cases filed under the Montana False Claims Act that were settled during the previous calendar year;

(3) the number of cases filed under the Montana False Claims Act in which judgment was entered during the previous calendar year;

(4) the total proceeds paid to the state and the total proceeds paid to the qui tam plaintiffs in cases filed under the Montana False Claims Act during the previous calendar year; and

(5) the number of qui tam cases pending in other jurisdictions involving the state in the previous calendar year.

**Section 8. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 10. Effective date.** [This act] is effective July 1, 2013.

**Section 11. Applicability.** [This act] applies to proceedings begun on or after July 1, 2013.

Approved May 6, 2013

# CHAPTER NO. 389

[HB 377]

AN ACT PROVIDING ADDITIONAL FUNDING FOR THE TEACHERS' RETIREMENT SYSTEM; CREATING TWO MEMBERSHIP TIERS WITHIN THE SYSTEM; INCREASING THE NORMAL CONTRIBUTION RATE FOR NEW MEMBERS; ENACTING A SUPPLEMENTAL CONTRIBUTION RATE FOR CURRENT MEMBERS; AUTHORIZING THE TEACHERS' RETIREMENT BOARD TO IMPOSE A SUPPLEMENTAL CONTRIBUTION RATE FOR TIER TWO MEMBERS AND EMPLOYERS; AUTHORIZING THE TEACHERS' RETIREMENT BOARD TO INCREASE OR DECREASE ANY SUPPLEMENTAL CONTRIBUTION RATE ACCORDING TO CERTAIN ACTUARIALLY DETERMINED FUNDING STANDARDS; REVISING HOW AVERAGE FINAL COMPENSATION IS CALCULATED FOR NEW MEMBERS; REVISING ELIGIBILITY FOR EARLY AND NORMAL RETIREMENT AND FOR DEATH AND DISABILITY BENEFITS FOR NEW MEMBERS; ESTABLISHING AN INCREASED NORMAL RETIREMENT BENEFIT FOR CERTAIN NEW MEMBERS; REVISING THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT FOR NEW AND CURRENT MEMBERS; DECREASING THE CAP ON SCHOOL DISTRICT RETIREMENT FUND OPERATING RESERVES AND PROVIDING THAT ANY RESERVES IN EXCESS OF THE CAP BE PAID TO THE TEACHERS' RETIREMENT SYSTEM; PROVIDING APPROPRIATIONS; SPECIFYING A TIMETABLE FOR THE PAYMENT OF STATE TRANSPORTATION REIMBURSEMENT TO THE SCHOOL DISTRICTS; AMENDING SECTIONS 19-20-101, 19-20-208, 19-20-409, 19-20-427, 19-20-602, 19-20-605, 19-20-607, 19-20-716, 19-20-719, 19-20-732, 19-20-801, 19-20-802, 19-20-804, 19-20-805, 19-20-901, 19-20-1001, 20-9-501, AND 20-10-145, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 through 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Teachers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for members currently in the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to current system participants in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, the current and increasing level of unfunded liabilities has the potential to compromise the credit ratings of the state of Montana and of local government entities, including public school districts; and

WHEREAS, because reasonable increases in employer contributions and reasonable reductions in benefits for future participants alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future participants and reduced benefits for future participants are also necessary to return the system to a position of actuarially sound funding; and

WHEREAS, section 19-20-501, MCA, provides that benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute, and this proposed legislation does not diminish the current or future pension benefits promised to current system participants; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning the system to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that the system remains actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy, state and local government budgets, and taxpayers, a modest supplemental contribution rate increase of 1% applied to current retirement system members, with appropriate mechanisms to reduce or terminate the supplemental contribution rate as system funding improves, in conjunction with additional employer and state contributions, is, pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment, reasonable and necessary and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the retirement system is funded in an actuarially sound manner.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 19-20-101, MCA, is amended to read:

**"19-20-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to the member's individual account in the annuity savings account, together with interest. Regular interest must be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumption set by the retirement board.

(3) "Average final compensation" means a member's highest average earned compensation ~~in 3 consecutive years~~, determined pursuant to 19-20-805, on which contributions have been made.

(4) "Beneficiary" means one or more persons formally designated by a member or retiree to receive a retirement allowance or payment upon the death of the member or retiree, except for a joint annuitant.

(5) "Benefit recipient" means a retired member, a joint annuitant, or a beneficiary who is receiving a retirement allowance.

(6) "Creditable service" is that service defined by 19-20-401.

(7) (a) "Earned compensation" means, except as limited by subsections (7)(b) and (7)(c) or by 19-20-715, remuneration paid for the service of a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted.

(b) Earned compensation does not include:

(i) direct employer premium payments on behalf of members for medical, pharmaceutical, disability, life, vision, dental, or any other insurance;

(ii) any direct employer payment or reimbursement for:

(A) professional membership dues;

(B) maintenance;

(C) housing;

(D) day care;

(E) automobile, travel, lodging, or entertaining expenses; or

(F) any similar form of maintenance, allowance, or expenses;

(iii) the imputed value of health, life, or disability insurance or any other fringe benefits;

(iv) any noncash benefit provided by an employer to or on behalf of a member;

(v) termination pay unless included pursuant to 19-20-716;

(vi) compensation paid to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f);

(vii) payment for sick, annual, or other types of leave paid to a member prior to termination from employment or accrued in excess of that normally allowed;

(viii) incentive or bonus payments paid to a member that are not part of a series of annual payments; or

(ix) any similar payment or reimbursement made to or on behalf of a member by an employer.

(c) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or a similar amount as a pretax deduction is considered a fringe benefit and not earned compensation.

(8) "Employer" means:

(a) the state of Montana;

(b) a public school district, as provided in 20-6-101 and 20-6-701;

(c) the office of public instruction;

(d) the board of public education;

(e) an education cooperative;

(f) the Montana school for the deaf and blind, as described in 20-8-101;

(g) the Montana youth challenge program, as defined in 10-1-101;

(h) a state youth correctional facility, as defined in 41-5-103;

(i) the Montana university system;

(j) a community college; or

(k) any other agency or subdivision of the state that employs a person who is designated a member of the retirement system pursuant to 19-20-302.

(9) "Full-time service" means service that is:

(a) at least 180 days in a fiscal year;

(b) at least 140 hours a month during at least 9 months in a fiscal year; or

(c) at least 1,080 hours in a fiscal year under an alternative school calendar adopted by a school board and reported to the office of public instruction as required by 20-1-302. The standard for full-time service for a school district operating under an alternative school calendar must be applied uniformly to all employees of the school district required to be reported to the retirement system.

(10) "Internal Revenue Code" has the meaning provided in 15-30-2101.

(11) "Joint annuitant" means the one person that a retired member who has elected an optional allowance under 19-20-702 has designated to receive a retirement allowance upon the death of the retired member.

(12) "Member" means a person who has an individual account in the annuity savings account. *Unless otherwise specified, "member" refers to a tier one member or a tier two member.* An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.

(13) "Normal form" or "normal form benefit" means a monthly retirement benefit payable during the lifetime of the retired member.

(14) "Normal retirement age" means an age no earlier than 55 years of age, with the right to receive immediate retirement benefits without an actuarial reduction in the benefits.

(15) "Part-time service" means service that is not full-time service. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

(16) "Regular interest" means interest at a rate set by the retirement board in accordance with 19-20-501(2).

(17) "Retired", "retired member", or "retiree" means a person who has terminated employment that qualifies the person for membership and who has received at least one monthly retirement benefit paid pursuant to this chapter.

(18) "Retirement allowance" or "retirement benefit" means a monthly payment due to a retired member who has qualified for service or disability retirement or due to a joint annuitant or beneficiary.

(19) "Retirement board" or "board" means the retirement system's governing board provided for in 2-15-1010.

(20) "Retirement system", "system", or "plan" means the teachers' retirement system of the state of Montana provided for in 19-20-102.

(21) "Service" means the performance of duties that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

(22) "Termination" or "terminate" means that the member has severed the employment relationship with the member's employer and that all, if any, payments due upon termination of employment, including but not limited to accrued sick and annual leave balances, have been paid to the member.

(23) (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other payments contingent on the employee terminating employment.

(b) Termination pay does not include:

(i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) amounts that are payable to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f).

*(24) "Tier one member" means a person who became a member before July 1, 2013, and who has not withdrawn the member's account balance.*

*(25) "Tier two member" means a person who became a member on or after July 1, 2013, or who, after withdrawing the member's account balance, became a member again after July 1, 2013.*

~~(24)~~*(26)* "Vested" means that a member has been credited with at least 5 full years of membership service upon which contributions have been made and has a right to a future retirement benefit.

~~(25)~~*(27)* "Written application" or "written election" means a written instrument, required by statute or the rules of the board, properly signed and filed with the board, that contains all the required information, including documentation that the board considers necessary."

**Section 2.** Section 19-20-208, MCA, is amended to read:

**"19-20-208. Duties and liability of employer.** (1) Each employer shall:

(a) pick up the ~~contribution~~ *contributions* of each employed member at the rate prescribed ~~by~~ *pursuant to* 19-20-602 *and [section 6]* and transmit the ~~contribution~~ *contributions* each month to the executive director of the retirement board;

(b) transmit to the executive director of the retirement board the employer's ~~contribution~~ *contributions* prescribed by 19-20-605 *and [section 8]*, at the time that the employee contributions are transmitted;

(c) keep records and, as required by the retirement board, furnish information to the board that is required in the discharge of the board's duties;

(d) upon the employment of a person who is required to become a member of the retirement system, inform the person of the rights and obligations relating to the retirement system;

(e) each month, report the name, social security number, time worked, and gross earnings of each retired member of the system who has been employed in a position that is reportable to the retirement system pursuant to 19-20-731;

(f) whenever applicable, inform an employee of the right to elect to participate in the optional retirement program under Title 19, chapter 21;

(g) at the request of the retirement board, certify the names of all persons who are eligible for membership or who are members of the retirement system;

(h) notify the retirement board of the employment of a person eligible for membership and forward the person's membership application to the board; and

(i) if the employer has converted to earned compensation amounts excluded from earned compensation, for each retiring member, certify to the board the amounts reported to the system in each of the 5 years preceding the member's retirement.

(2) An employer that fails to timely or accurately report the employment of, time worked by, or compensation paid to a retired member as required under subsection (1)(e) is jointly and severally liable with the retired member for repayment to the retirement system of retirement benefits paid to which the member was not entitled, plus interest."

**Section 3.** Section 19-20-409, MCA, is amended to read:

**"19-20-409. Transfer of service credits and contributions from public employees' retirement system.** (1) An active member may at any time before retirement file a written application with the retirement board to purchase all of the member's previous creditable service in the public employees' retirement system. The amount that must be paid to the retirement system to purchase this service under this section is the sum of subsections (2) and (3).

(2) The public employees' retirement system shall transfer to the teachers' retirement system an amount equal to 72% of the amount paid by the member.

(3) The member shall pay either directly or by transferring contributions on account with the public employees' retirement system an amount equal to the member's accumulated contributions at the time that active membership was terminated, plus accrued interest. Interest must be calculated from the date of termination until a transfer is received by the retirement system, based on the interest tables in use by the public employees' retirement system.

(4) A member who purchases service from the public employees' retirement system in the teachers' retirement system must have completed 5 years of membership service in the teachers' retirement system to receive credit or purchase military service, out-of-state service, employment while on leave, and private school employment.

(5) The retirement board shall determine the service credits that may be transferred.

(6) If an active member who also has creditable service in the public employees' retirement system before becoming a member of the teachers' retirement system dies before purchasing this service in the teachers' retirement system and if the member's service credits from both systems, when combined, entitle the member's beneficiary to a death benefit, the payment of the death benefit is the liability of the teachers' retirement system. Before payment of the death benefit, the public employees' retirement board must transfer to the teachers' retirement system the contributions necessary to purchase this service in the teachers' retirement system as provided in subsections (2) and (3).

(7) (a) If the teachers' retirement board determines that an individual's membership was erroneously classified and reported to the public employees' retirement system, the public employees' retirement board shall transfer to the teachers' retirement system the member's accumulated contributions and service, together with employer contributions plus interest.

(b) For the period of time that the employer contributions are held by the public employees' retirement system, interest paid on employer contributions transferred under this subsection (7) must be calculated at the short-term investment pool rate earned by the board of investments in the fiscal year preceding the transfer request.

(c) Any employee and employer contributions due as calculated in 19-20-602*,* ~~and~~ 19-20-605, *[section 6], and [section 8],* plus interest, are the liability of the employee and the employing entity where the error occurred.

(8) A member who participated in the public employees' retirement system defined contribution plan provided for in Title 19, chapter 3, part 21, may purchase creditable service for the time spent as a participant in the defined contribution plan if:

(a) the member has 5 years of membership service and has completed at least 1 full year in the teachers' retirement system following the member's public employees' retirement system service;

(b) for each full year or portion of a year to be purchased pursuant to this subsection (8), the member contributes the actuarial cost of the service based on the most recent valuation of the system; and

(c) the member has withdrawn the member's money in the member's public employees' retirement system defined contribution plan account or has rolled

over the amount required to purchase service in accordance with this subsection (8).

(9) Creditable service purchased under subsection (8) must be determined according to the laws and rules governing service credit in the public employees' retirement system."

**Section 4.** Section 19-20-427, MCA, is amended to read:

**"19-20-427. Redeposit of contributions previously withdrawn.** (1) In addition to the ~~normal~~ contributions required under 19-20-602 *and [section 6]*, subject to the approval of the retirement board, and to the extent permitted by section 415(k)(3) of the Internal Revenue Code, a member may redeposit in the annuity savings account, by a single payment or by an increased rate of contribution, an amount equal to the accumulated contributions that the member has previously withdrawn, plus interest paid as follows:

(a) if a written application to purchase service is signed prior to July 1, 2012, at the rate the contributions would have earned had the contributions not been withdrawn; or

(b) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(2) The redeposit must be made in accordance with 19-20-415."

**Section 5.** Section 19-20-602, MCA, is amended to read:

**"19-20-602. Annuity savings account — member's contribution.** (1) The annuity savings account is an account in which the contributions for the members to provide for their retirement allowance or benefits must be accumulated in individual accounts for each member.

*(2) (a)* The normal contribution *rate* of each *tier one* member is 7.15% of the member's earned compensation.

*(b) The normal contribution rate of each tier two member is 8.15% of the member's earned compensation.*

~~(2)~~*(3)* Contributions *under this section and [section 6]* to ~~and payments from~~ the annuity savings account must be made in the following manner:

(a) Each employer, pursuant to section 414(h)(2) of the Internal Revenue Code:

(i) shall pick up and pay the contributions that would be payable by the member under this subsection ~~(2)~~ *(3)* for service rendered after June 30, 1985;

(ii) shall pick up and pay the contributions that would be paid in the manner provided in 19-20-716; and

(iii) may pick up and pay the contributions that would be payable by the member pursuant to 19-20-415.

(b) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(c) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's earned compensation as defined in 19-20-101. The employer shall deduct from the member's compensation an amount equal to the

amount of the member's contributions picked up by the employer and remit the total of the contributions to the retirement board.

(d) The deductions must be made notwithstanding that the minimum compensation provided by law for a member may be reduced by the deductions. Each member is considered to consent to the deductions prescribed by this section, and payment of salary or compensation less the deductions is a complete discharge of all claims for the services rendered by the member during the period covered by the payment, except as to the benefits provided by the retirement system.

~~(3)~~*(4)* The accumulated contributions of a member withdrawn by the member or paid to the member's estate or to the member's designated beneficiary in event of the member's death must be paid from the annuity savings account. Upon the retirement of a member, the member's accumulated contributions must be transferred from the annuity savings account to the pension accumulation account."

**Section 6. Member supplemental contribution — actuarially determined adjustments — effective dates.** (1) (a) Subject to subsections (1)(b) and (1)(c), a tier one member shall contribute to the retirement system a supplemental amount equal to 1% of the member's earned compensation.

(b) The board may decrease the tier one member supplemental contribution if:

(i) the average funded ratio of the system based on the last three actuarial valuations is equal to or greater than 90%; and

(ii) the period necessary to amortize all liabilities of the system based on the most recent annual actuarial valuation is less than 15 years.

(c) Following one or more decreases in the supplemental contribution rate pursuant to subsection (1)(b), the board may increase the supplemental contribution to a rate not to exceed 1% if:

(i) the average funded ratio of the system based on the last three annual actuarial valuations is equal to or less than 80%; and

(ii) the period necessary to amortize all liabilities of the system based on the most recent annual actuarial valuation is greater than 20 years.

(2) (a) Subject to subsection (2)(b), on or after January 1, 2023, the board may require a tier two member to contribute to the retirement system a supplemental amount if:

(i) the average funded ratio of the system based on the last three annual actuarial valuations is equal to or less than 80%;

(ii) the period necessary to amortize all liabilities of the system based on the latest annual actuarial valuation is greater than 20 years; and

(iii) a state or employer contribution rate increase or a flat dollar contribution to the retirement system trust fund has been enacted that is equivalent to or greater than the supplemental contribution rate imposed by the board pursuant to this subsection (2)(a).

(b) A tier two member supplemental contribution increase under this subsection (2) may not:

(i) exceed 0.5% of earned compensation; and

(ii) result in an aggregate tier two member contribution rate of more than 9.15% when added to the normal contribution rate required under 19-20-602.

(c) Following imposition of a supplemental contribution rate increase under this subsection (2), the board may decrease the supplemental contribution rate if:

(i) the average funded ratio of the system based on the previous three annual actuarial valuations is equal to or greater than 90%; and

(ii) the period necessary to amortize all liabilities of the system based on the latest annual actuarial valuation is less than 15 years.

(3) After the board has actuarially determined the need to impose, increase, or decrease a supplemental contribution rate under this section, the imposition, increase, or decrease is effective on the first day of July following the board's determination.

**Section 7.** Section 19-20-605, MCA, is amended to read:

**"19-20-605. Pension accumulation account — employer's contribution.** (1) The pension accumulation account is the account in which the reserves for payment of retirement allowances and benefits must be accumulated and from which retirement allowances and benefits must be paid to retirees or their beneficiaries. ~~Contributions to and payments from~~ *Employer contributions to* the pension accumulation account must be made as provided in *[section 8] and* this section.

(2) Except as provided in subsection (3), for each member employed during the whole or part of the preceding payroll period, the employer shall pay into the pension accumulation account an amount equal to 9.85% of total earned compensation*, plus the supplemental contribution required under [section 8]*.

(3) For each member employed by a school district, an education cooperative, a county, or a community college during the whole or part of the preceding payroll period, the employer shall pay into the pension accumulation account an amount equal to 7.47% of total earned compensation*, plus the supplemental contribution required under [section 8]*.

(4) Beginning July 1, 2013, for each retired member who returns to covered employment under the provisions of 19-20-731 during all or part of the preceding payroll period, the employer shall pay into the pension accumulation account an amount equal to 9.85% of the total earned compensation paid to the retired member*, plus the supplemental contribution required under [section 8]*.

(5) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of 20-9-501.

(6) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's contribution.

(7) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.

(8) All interest and other earnings realized on the money of the retirement system must be credited to the pension accumulation account, and the amount required to allow regular interest on the annuity savings account must be transferred to that account from the pension accumulation account.

(9) The board may transfer from the pension accumulation account to the expense account an amount necessary to cover expenses of administration."

**Section 8. Employer's supplemental contribution — actuarially determined adjustments.** (1) (a) Subject to subsections (1)(b) through (1)(d), each employer shall contribute to the retirement system a supplemental amount equal to the percentage specified in subsection (1)(b) of total earned compensation of each member employed during the whole or part of the preceding payroll period.

(b) The percentage of compensation to be contributed under subsection (1)(a) is 1% for fiscal year 2014 and increases by 0.1% each fiscal year through fiscal year 2024. For fiscal years beginning after June 30, 2024, the percentage of compensation to be contributed under subsection (1)(a) is 2%.

(c) The board may decrease the employer's supplemental contribution if:

(i) the average funded ratio of the system based on the last three actuarial valuations is equal to or greater than 90%;

(ii) the period necessary to amortize all liabilities of the system based on the most recent annual actuarial valuation is less than 15 years; and

(iii) the guaranteed annual benefit adjustment has been increased to the maximum allowed under 19-20-719.

(d) Following one or more decreases in the supplemental contribution rate pursuant to subsection (1)(c), the board may increase the supplemental contribution to a rate not to exceed 1% if:

(i) the average funded ratio of the system based on the last three annual actuarial valuations is equal to or less than 80%; and

(ii) the period necessary to amortize all liabilities of the system based on the most recent annual actuarial valuation is greater than 20 years.

(2) After the board has actuarially determined the need to impose, increase, or decrease a supplemental contribution rate under this section, the imposition, increase, or decrease is effective on the first day of July following the board's determination.

**Section 9.** Section 19-20-607, MCA, is amended to read:

**"19-20-607. Supplemental state contribution — *appropriation.*** (1) *(a)* Each month, the state shall contribute, as a supplemental contribution to the teachers' retirement system, from the general fund to the pension trust fund an amount equal to~~:~~

~~(a) beginning July 1, 2007, through June 30, 2009, 2% of the total earned compensation of school district and community college active members participating in the system; and~~

~~(b) beginning July 1, 2009,~~ 2.38% of the total earned compensation of school district and community college active members participating in the system.

*(b) (i) Except as provided in subsection (1)(b)(ii), beginning [the effective date of this act] and on each July 1 thereafter, the state shall contribute from the general fund to the pension trust fund $25 million as a supplemental contribution to the teachers' retirement system.*

*(ii) If the legislative finance committee determines that the board has failed to provide a sufficient report pursuant to [section 20], it shall recommend that $5 million be subtracted from the amount allocated in subsection (1)(b)(i) subject to legislative approval.*

(2) The contributions are statutorily appropriated, as provided in 17-7-502, to the pension trust fund. The board shall determine and shall certify to the state treasurer amounts due under this section on a monthly basis. The state

treasurer shall transfer the certified amounts to the pension trust fund within 1 week following receipt of the certification from the board."

**Section 10.** Section 19-20-716, MCA, is amended to read:

**"19-20-716. Termination pay.** (1) If a member terminates and receives termination pay at the time of retirement, the member shall select, subject to subsections (5) and (6), by signing a binding, irrevocable written election at least 90 days before the member's termination date, one of the following options:

(a) Option 1—The member may use the total termination pay in the calculation of the member's average final compensation. The member and the employer shall pay contributions to the retirement system as determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time of termination.

(b) Option 2—The member may use a yearly amount of the total termination pay added to each of the 3 consecutive years' salary used in the calculation of the member's average final compensation. To determine the amount of termination pay used in the calculation of average final compensation, termination pay must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602 ~~and~~, 19-20-605(1)*, [section 6], and [section 8]*. For the purposes of this subsection (1)(b), the employer shall also pay as a contribution an amount equal to the termination pay multiplied by the rate established in 19-20-607 that would have been payable by the state as a supplemental contribution. The contributions must be made at the time of termination.

(c) Option 3—The member may exclude the termination pay from the average final compensation. A contribution is not required of either the member or the employer.

(2) A binding, irrevocable written election required by this section must be signed by both the member and the employer at least 90 days prior to the member's termination date and must contain statements with regard to the contributions required to be made by the member under subsections (1)(a) and (1)(b) that:

(a) the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the system in lieu of contributions by the member and that the picked up contributions are paid from the same source as compensation is paid;

(b) the member may not choose to directly receive the amounts deducted from the member's termination pay instead of having them paid by the employer to the system;

(c) the member may not prepay any portion of the contributions; and

(d) the effective date of the pickup is the date that the irrevocable written election is signed by both the member and employer. The effective date must be at least 90 days prior to the date of the member's termination. The pickup does not apply to a contribution made before the effective date of the pickup.

(3) For the purpose of this section, the date of termination is the last day the member is performing any services covered under this chapter.

(4) Pursuant to subsection (2), contributions required under subsection (1)(a) or (1)(b) must be:

(a) deducted from the portion of termination pay that:

(i) constitutes wages for the purposes of section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) can be included in the member's gross income for federal tax purposes; and

(b) picked up by the employer, except as provided in subsections (5) and (6).

(5) A member's contributions greater than the total amount of the member's termination pay may not be picked up by the employer and are subject to the limitations of section 415 of the Internal Revenue Code.

(6) If a member and the member's employer fail to sign the written election within the time period required in subsection (1), the member may contribute for the purposes specified in subsections (1)(a) and (1)(b) on all or any part of the termination pay received. A contribution made pursuant to this subsection may not be picked up by the employer and is subject to the limitations of section 415 of the Internal Revenue Code."

**Section 11.** Section 19-20-719, MCA, is amended to read:

**"19-20-719. Guaranteed annual benefit adjustment — rulemaking.** (1) On January 1 of each year, the retirement allowance payable to each ~~recipient~~ *tier one member or benefit recipient of a tier one member* who is eligible under subsection ~~(2)~~ *(3)* must be increased by ~~1.5%~~ *the amount provided in either subsection (1)(a) or subsection (1)(b) as follows:*

*(a) if the most recent actuarial valuation of the retirement system shows that retirement system liabilities are less than 90% funded, 0.5%; or*

*(b) if the most recent actuarial valuation of the retirement system shows that retirement system liabilities are at least 90% funded and the provision of the increase is not projected to cause the system's liabilities to be less than 85% funded, an amount greater than 0.5% but no more than 1.5%, as set by the retirement board.*

*(2) On January 1 of each year, the retirement allowance payable to each tier two member or benefit recipient of a tier two member who is eligible under subsection (3) must, if the most recent actuarial valuation of the retirement system shows that retirement system liabilities are at least 90% funded and the provision of the increase is not projected to cause the system's liabilities to be less than 85% funded, be increased by an amount equal to or greater than 0.5% but no more than 1.5%, as set by the retirement board.*

~~(2)~~*(3)* A benefit recipient is eligible for and must receive the annual benefit adjustment provided for in this section if ~~the retiree has received~~ at least 36 monthly retirement benefit payments *have been made* prior to January 1 of the year in which the adjustment is to be made."

**Section 12.** Section 19-20-732, MCA, is amended to read:

**"19-20-732. (Temporary) Reemployment of certain retired teachers, specialists and administrators — procedure — definitions.** (1) Subject to the provisions of this section:

(a) a teacher, specialist, or administrator who has been receiving a retirement allowance for no less than 2 months, except a disability retirement allowance pursuant to part 9 of this chapter, may be employed on a full-time basis by an employer for a maximum of 3 years during the lifetime of the retired member without the loss or interruption of any payments or retirement benefits if:

(i) the retired member completed 30 or more years of creditable service prior to retirement;

(ii) the retired member holds a valid certificate pursuant to the provisions of 20-4-106; and

(iii) each year, prior to employing a retired member, the employer certifies to the office of public instruction and to the retirement board that after having advertised the position for that year the employer has been unable to fill the position because the employer either has received no qualified applications or has not received an acceptance of an offer of employment made to a nonretired teacher, specialist, or administrator;

(b) the employer certification required by this section must include the retired member's name and social security number and a copy of the proposed contract of employment for the retired member;

(c) upon receipt of the employer's certification and of the proposed contract of employment, the retirement board shall verify whether the retired member meets the requirements of subsection (1)(a)(i) and shall notify the employer and the retired member of its findings;

(d) a retired member reemployed under this section is ineligible for active membership under 19-20-302 and is ineligible to receive service credit under any retirement system identified in Title 19; and

(e) the retirement board shall report to the appropriate committee each legislative session regarding the implementation of and results arising from this section.

(2) An employer employing a retired member pursuant to this section shall contribute monthly to the retirement system an amount equal to the sum of the contribution rates required by 19-20-602, 19-20-604, 19-20-605, ~~and~~ 19-20-607*, [section 6], and [section 8]*.

(3) A retired member reemployed pursuant to this section is exempt from the earnings and employment limits provided in 19-20-731.

(4) If reemployed in a position covered by a collective bargaining agreement pursuant to Title 39, chapter 31, the retired member is subject to all the terms and conditions of the agreement and is entitled to all the benefits and protections of the agreement.

(5) The board may adopt rules to implement this section.

(6) As used in this section, the following definitions apply:

(a) "Employer" means a school district as defined in 20-6-101 and 20-6-701.

(b) "Year" means all or any part of a school year. (Terminates June 30, 2015—sec. 5, Ch. 129, L. 2009.)"

**Section 13.** Section 19-20-801, MCA, is amended to read:

**"19-20-801. Eligibility for service retirement.** *(1)* A *tier one* member ~~who~~ *is eligible to receive a service retirement allowance calculated under 19-20-804(1) if the member:*

*(a)* has *been credited with* at least 5 full years of creditable service and ~~who~~ has attained the age of 60*;* or

*(b)* has been credited with full-time or part-time creditable service in 25 or more years ~~may retire from service if the member has~~.

*(2) Except as provided in subsection (3), a tier two member is eligible to receive a service retirement allowance calculated under 19-20-804(1) if the member:*

*(a) has been credited with at least 5 full years of creditable service and has attained the age of 60; or*

*(b) has been credited with full-time or part-time creditable service in 30 or more years and has attained the age of 55.*

*(3) A tier two member who has been credited with 30 or more years of creditable service and has attained the age of 60 is eligible for a professional retirement option allowance calculated under 19-20-804(2).*

*(4) To receive a retirement allowance under 19-20-804, the member must have* terminated employment in all positions from which the member is eligible to retire and ~~files~~ *must file a written application* with the retirement board ~~a written application~~."

**Section 14.** Section 19-20-802, MCA, is amended to read:

**"19-20-802. Early retirement.** (1) *(a)* A *tier one* member who is not eligible for service retirement but who has *been credited with* at least 5 years of creditable service and ~~who~~ has attained the age of 50 ~~may retire from service and be~~ *is* eligible for an early retirement allowance ~~if the member files with the retirement board the member's written application~~.

*(b) A tier two member who is not eligible for service retirement but who has at least 5 years of creditable service and has attained the age of 55 is eligible for an early retirement allowance.*

*(2) A member retiring early under subsection (1) must have terminated employment in all positions reportable to the retirement system and must file a written application with the retirement board.*

~~(2)~~*(3)* The early retirement allowance must be determined as prescribed in 19-20-804, with the exception that the allowance will be reduced using actuarially equivalent factors based on the most recent *actuarial* valuation of the system."

**Section 15.** Section 19-20-804, MCA, is amended to read:

**"19-20-804. Allowance for service retirement — *professional retirement option allowance — creditable service limitation.*** *(1)* Upon termination, a *tier one or tier two* member who qualifies for benefits pursuant to 19-20-801*(1) or (2)* must receive a retirement allowance equal to one-sixtieth of the member's average final compensation, as limited by 19-20-715, multiplied by the sum of the number of years of creditable service ~~and service transferred under 19-20-409~~.

*(2) (a) Upon termination, a tier two member who qualifies for benefits pursuant to 19-20-801(3) must receive a professional retirement option allowance equal to 1.85% of the member's final average compensation, as limited by 19-20-715, multiplied by the sum of the member's years of creditable service.*

*(b) For the purpose of calculating the professional retirement option, creditable service does not include:*

*(i) service credited before the member became a tier two member even if the member redeposits the member's withdrawn contributions pursuant to 19-20-427; or*

*(ii) service credit transferred under 19-20-409.*"

**Section 16.** Section 19-20-805, MCA, is amended to read:

**"19-20-805. Calculation of average final compensation.** (1) Except as limited by this section, average final compensation is calculated by averaging the earned compensation paid to*:*

*(a)* a *tier one* member in 3 consecutive fiscal years of full-time service that yields the highest average*; or*

*(b) a tier two member in 5 consecutive fiscal years of full-time service that yields the highest average*.

(2) *(a)* The earned compensation of a *tier one* member who retires under 19-20-802, 19-20-804, or 19-20-902 and has less than 3 consecutive years of full-time service during the 5 years immediately preceding the member's termination is the compensation that the member would have earned in the 3 years used to calculate average final compensation had the member's part-time service *during the 5 years preceding termination* been full-time service.

*(b) The earned compensation of a tier two member who retires under 19-20-802, 19-20-804, or 19-20-902 and has less than 5 consecutive years of full-time service during the 7 years immediately preceding the member's termination is the compensation that the member would have earned in the 5 years used to calculate average final compensation had the member's part-time service during the 7 years preceding termination been full-time service.*

*(3)* To determine the compensation that the member would have earned *under subsection (2)*, the compensation reported must be divided by the part-time service credited to the member's account.

~~(3)~~*(4)* (a) Subject to subsection ~~(3)(b)~~ *(4)(b)*, if a member has transferred service from the public employees' retirement system as provided under 19-20-409 and does not have 3 consecutive years of full-time service *if a tier one member or 5 consecutive years of full-time service if a tier two member* reported to the teachers' retirement system, the member's average final compensation must be calculated as follows:

(i) if the member's part-time service credit in the public employees' retirement system plus the member's part-time service credit in the teachers' retirement system equals 1 year in any of the fiscal years used in determining average final compensation, then the member's annual salary for that fiscal year must be the member's salary as a member of the public employees' retirement system plus the member's salary as a member of the teachers' retirement system; or

(ii) if the member's part-time service credit in the public employees' retirement system plus the member's part-time service credit in the teachers' retirement system equals less than 1 year in any of the fiscal years used to determine average final compensation, then the member's part-time salary as a member of the public employees' retirement system plus the member's part-time salary as a member of the teachers' retirement system must be divided by the sum of the member's part-time teachers' retirement system service credit and the member's part-time public employees' retirement system service credit.

(b) Compensation reported to the public employees' retirement system used to calculate average final compensation must be adjusted to exclude any compensation that would be considered termination pay under this chapter.

~~(4)~~*(5)* (a) If the benefits excluded from earned compensation pursuant to 19-20-101(7)(b) have been converted by an employer to earned compensation for all members and have been continuously reported as earned compensation in a like amount for at least 5 fiscal years preceding a member's retirement, the converted benefit amounts must be included in the calculation of average final compensation.

(b) If benefits have been converted to earned compensation as described in subsection ~~(4)(a)~~ *(5)(a)* but have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have benefits

converted to earned compensation, any converted benefits reported as earned compensation in the 3 years used to calculate average final compensation may be included in the calculation of average final compensation only as termination pay under 19-20-716(1)(b)."

**Section 17.** Section 19-20-901, MCA, is amended to read:

**"19-20-901. Eligibility for disability retirement — determination by board.** (1) ~~Upon~~ *Except as provided in subsection (5), upon* the application of a member or of the member's employer for a disability retirement allowance, any member who has 5 or more years of creditable service and who has become disabled while being an active member may be retired by the retirement board the month immediately following the month in which employment is terminated.

*(2)* In order for a member to be eligible for disability retirement, the retirement board or its representative shall certify that the member is mentally or physically incapacitated for the further performance of the member's duties, that the incapacity is likely to be permanent, and that the member should be retired. The board's representative shall report to the board the representative's findings and any action taken by the representative, and the action must be presented to the board for approval by the board.

~~(2)~~*(3)* In making a determination under subsection ~~(1)~~ *(2)*, the retirement board or its representative may:

(a) order examinations by a physician, psychologist, or vocational rehabilitation counselor;

(b) conduct hearings, administer oaths and affirmations, take depositions, and certify to official acts; and

(c) issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memorandums, and other records considered necessary as evidence in connection with a claim for disability retirement. The subpoenas issued under this subsection ~~(2)(c)~~ *(3)(c)* are enforceable as provided in 2-4-104.

~~(3)~~*(4)* The retirement board may secure and pay reasonable compensation for professional services and advice that the board determines necessary to carry out the purposes of this part.

*(5) (a) A tier two member is not eligible for disability retirement if the member is or will be eligible for service retirement on or before the member's date of termination.*

*(b) A disability retirement application filed by a member who is ineligible for disability retirement under subsection (5)(a) will be processed as an application for a service retirement allowance.*"

**Section 18.** Section 19-20-1001, MCA, is amended to read:

**"19-20-1001. Allowances for death of member prior to retirement.** (1) If a member dies before retirement, the member's accumulated contributions must be paid to the member's estate or to the beneficiary that the member nominated by a written application in a manner prescribed by the board and filed with the retirement board prior to the member's death.

(2) (a) ~~In~~ *Except as provided in subsection (2)(d), in* lieu of benefits provided for in subsection (1), if the deceased member qualified by reason of service for a retirement benefit, the nominated beneficiary may elect to receive a retirement allowance. The retirement allowance must be determined as prescribed in 19-20-804, without reference to 19-20-715(2), in the same manner as if the member elected option A provided for in 19-20-702(2)(a).

(b) The effective date of the retirement allowance provided for in subsection (2)(a) is the earlier of:

(i) the first of the month following the date of death; or

(ii) the effective date of the member's retirement, as acknowledged in writing by the retirement system before the member's death.

(c) In the event that a beneficiary receiving payments under subsection (2)(a) dies and payments made to the beneficiary do not equal the amount of the member's accumulated contributions at the time of the member's death, the difference between the total retirement allowance payments made and the amount of the accumulated contributions at the time of the member's death must be paid to the beneficiary's estate.

*(d) The nominated beneficiary of a deceased tier two member may elect to receive a retirement allowance as permitted under subsection (2)(a) only if the tier two member died within 1 year of the last day on which the tier two member was employed in a position reportable to the retirement system. If the tier two member was an inactive member for more than 1 year before the member's date of death, the tier two member's accumulated contributions must be paid pursuant to subsection (1).*

(3) If the deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year before the member's death, a lump-sum death benefit of $500 is payable to the member's designated beneficiary.

(4) If a deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year prior to the member's death, the sum of $200 a month must be paid to each minor child of the deceased member until the child reaches 18 years of age.

(5) If the member nominated more than one beneficiary to receive payment of a benefit provided by this section upon the member's death, then:

(a) each beneficiary is entitled to share in that benefit; and

(b) if a beneficiary predeceases the member, the benefit must be divided among the surviving beneficiaries.

(6) If a family law order has been issued, an alternate payee's rights under the family law order must be given priority over the rights of a beneficiary."

**Section 19.** Section 20-9-501, MCA, is amended to read:

**"20-9-501. Retirement costs and retirement fund.** (1) The trustees of a district or the management board of a cooperative employing personnel who are members of the teachers' retirement system or the public employees' retirement system, who are covered by unemployment insurance, or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to the systems as provided in subsection (2)(a). The district's or the cooperative's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 20, part 6. The district's or the cooperative's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-316. The district's or the cooperative's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's or the cooperative's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) (a) The district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the retirement fund for the following:

(i) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from state or local funding sources;

(ii) a cooperative employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the cooperative's interlocal cooperative fund if the fund is supported solely from districts' general funds and state special education allowable cost payments, pursuant to 20-9-321, or are paid from the miscellaneous programs fund, provided for in 20-9-507, from money received from the medicaid program, pursuant to 53-6-101;

(iii) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district's school food services fund provided for in 20-10-204; and

(iv) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district impact aid fund, pursuant to 20-9-514.

(b) For an employee whose benefits are not paid from the retirement fund, the district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the funding source that pays the employee's salary.

(3) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the final budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems in accordance with the financial administration provisions of this title.

(4) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year;

(ii) oil and natural gas production taxes;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating reserve may not be more than ~~35%~~ *20%* of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(v) property tax reimbursements made pursuant to 15-1-123(6);

(vi) any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid;

(b) notwithstanding the provisions of subsection (9), subtracting the money available for reduction of the levy requirement, as determined in subsection (4)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(5) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) report each levy requirement to the county commissioners by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(6) The county commissioners shall fix and set the county levy or district levy in accordance with 20-9-142.

(7) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(8) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the special education cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151, and the county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

(9) The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection (5)(a) by the sum of:

(a) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(10) The levy for a community college district may be applied only to property within the district.

(11) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements for county school funds supporting elementary and high school district retirement obligations to the superintendent of public instruction on or before September 15. The report must be completed on forms supplied by the superintendent of public instruction."

**Section 20. Board to make special report.** As soon as possible after the completion of each annual actuarial valuation for the teachers' retirement system, the board shall have its actuary present a detailed actuarial report to the legislative finance committee, provided for in 5-12-201, and the state administration and veterans' affairs interim committee, provided for in 5-5-228.

The actuarial report must provide a trend analysis of the system's actual and projected progress toward 100% funding.

**Section 21.** Section 20-10-145, MCA, is amended to read:

**"20-10-145. State transportation reimbursement.** (1) A district providing school bus transportation or individual transportation in accordance with this title, board of public education transportation policy, and superintendent of public instruction transportation rules must receive a state reimbursement of its transportation expenditures under the transportation reimbursement rate provisions of 20-10-141 and 20-10-142. The state transportation reimbursement is one-half of the reimbursement amounts established in 20-10-141 and 20-10-142 or one-half of the district's transportation fund budget, whichever is smaller, and must be computed on the basis of the number of days the transportation services were actually rendered, not to exceed 180 pupil-instruction days. In determining the amount of the state transportation reimbursement, an amount claimed by a district may not be considered for reimbursement unless the amount has been paid in the regular manner provided for the payment of other financial obligations of the district.

(2) Requests for the state transportation reimbursement must be made by each district semiannually during the school fiscal year on the claim forms and procedure promulgated by the superintendent of public instruction. The claims for state transportation reimbursements must be routed by the district to the county superintendent, who after reviewing the claims shall send them to the superintendent of public instruction. The superintendent of public instruction shall establish the validity and accuracy of the claims for the state transportation reimbursements by determining compliance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction. After making any necessary adjustments to the claims, the superintendent of public instruction shall order a disbursement from the state money appropriated by the legislature of the state of Montana for the state transportation reimbursement.

*(3) The superintendent of public instruction shall make the disbursement to each school district according to the following schedule:*

*(a) By September 1 of each year, the superintendent of public instruction shall make a payment equal to 50% of the state transportation reimbursement paid to the district in the previous school year.*

*(b) By March 31 of each year, the superintendent of public instruction shall make a payment to the district equal to the approved amount of state reimbursement for first semester transportation claims less the amount distributed to the district under subsection (3)(a).*

*(c) By June 30 of each year, the superintendent of public instruction shall make a payment to the district to pay the balance of the approved amount due to the district for first and second semester transportation.*

*(4)* The payment of all the district's claims within one county must be made to the county treasurer of the county, and the county superintendent shall apportion the payment in accordance with the apportionment order supplied by the superintendent of public instruction.

~~(3)~~*(5)* After adopting a budget amendment for the transportation fund in accordance with 20-9-161 through 20-9-166, the district shall send to the superintendent of public instruction a copy of each new or amended individual transportation contract and each new or amended bus route form to which the

budget amendment applies. State reimbursement for the additional obligations must be paid as provided in subsection (1)."

**Section 22. Transfer of excess retirement fund operating reserves.** On October 1, 2013, the trustees of a district maintaining a retirement fund as provided in 20-9-501 shall pay to the teachers' retirement system the greater of:

(1) the amount earmarked as an operating reserve on the adopted retirement fund budget for fiscal year 2013 minus 20% of the adopted retirement fund budget for fiscal year 2013; or

(2) the retirement fund balance for fiscal year 2013 minus the allowable retirement fund operating reserve for fiscal year 2014.

**Section 23. Appropriations.** (1) For the fiscal year beginning July 1, 2013, there is appropriated from the general fund for the purpose of making the supplemental employer contributions in [section 8]:

(a) to the office of budget and program planning, the following amounts from the indicated fund:

(i) $41,813 from the general fund;

(ii) $597 from the state special revenue fund; and

(iii) $17,323 from the federal special revenue fund;

(b) to the Montana university system, $191,725 from the general fund; and

(c) to the office of public instruction for school BASE aid, $2,061,932 from the general fund.

(2) For the fiscal year beginning July 1, 2014, there is appropriated from the general fund for the purpose of making the supplemental employer contributions in [section 8]:

(a) to the office of budget and program planning, the following amounts from the indicated fund:

(i) $45,995 from the general fund;

(ii) $657 from the state special revenue fund; and

(iii) $19,055 from the federal special revenue fund;

(b) to the Montana university system, $210,898 from the general fund; and

(c) to the office of public instruction for school BASE aid, $2,370,191 from the general fund.

**Section 24. Codification instruction.** (1) [Sections 6 and 8] are intended to be codified as an integral part of Title 19, chapter 20, part 6, and the provisions of Title 19, chapter 20, part 6, apply to [sections 6 and 8].

(2) [Section 20] is intended to be codified as an integral part of Title 19, chapter 20, part 2, and the provisions of Title 19, chapter 20, part 2, apply to [section 20].

**Section 25. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 26. Effective date.** [This act] is effective July 1, 2013.

Approved May 6, 2013

# CHAPTER NO. 390

[HB 454]

AN ACT PROVIDING FUNDING FOR THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; PROVIDING THAT THE UNALLOCATED PORTION OF COAL SEVERANCE TAX COLLECTIONS IS STATUTORILY APPROPRIATED TO THE PUBLIC EMPLOYEES' DEFINED BENEFIT RETIREMENT PLAN; REVISING THE ALLOCATION OF INTEREST INCOME FROM THE COAL TAX PERMANENT FUND AND PROVIDING A STATUTORY APPROPRIATION OF A PORTION OF THE INTEREST INCOME TO THE PUBLIC EMPLOYEES' DEFINED BENEFIT RETIREMENT PLAN; AMENDING THE TERMINATION DATE FOR THE TRANSFER OF CERTAIN MONEY FROM THE COAL SEVERANCE TAX BOND FUND TO THE TREASURE STATE ENDOWMENT FUND AND THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM FUND; TEMPORARILY INCREASING EMPLOYEE AND EMPLOYER CONTRIBUTIONS TO THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; REVISING THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT FOR NEW AND CURRENT MEMBERS; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 15-35-108, 17-5-703, 19-3-315, 19-3-316, 19-3-1605, AND 19-3-2117, MCA; AMENDING SECTION 6, CHAPTER 495, LAWS OF 1999, AND SECTIONS 15 AND 16, CHAPTER 389, LAWS OF 2011; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis" and that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 through 2009 and the subsequent slow rate of economic recovery have resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Public Employees' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for members currently in the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to current system participants in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, the current and increasing level of unfunded liabilities has the potential to compromise the credit ratings of the state of Montana and of local government entities, including public school districts; and

WHEREAS, because reasonable increases in employer contributions and reasonable reductions in benefits for future participants alone will not be sufficient to return the system to a position of actuarially sound funding, a reasonable increase in contributions for current participants is necessary to help return the system to a position of actuarially sound funding; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed and enacted alternatives for returning the system to a position of actuarially sound funding without raising contract

impairment issues for current members, which have failed to reduce system costs enough to restore the system to actuarial soundness; and

WHEREAS, in light of significant strains on the Montana economy, on state and local government budgets, and on taxpayers, a modest supplemental contribution rate increase of 1% imposed on current members, with an appropriate mechanism to terminate the supplemental contribution rate as system funding improves and in conjunction with additional employer and state contributions, is, pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment, reasonable and necessary, is for a valid public purpose, and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure that the retirement system is funded in an actuarially sound manner.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-35-108, MCA, is amended to read:

**"~~15-35-108. (Temporary) Disposal of severance taxes.~~** ~~Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:~~

~~(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.~~

~~(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.~~

~~(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Beginning July 1, 2012, any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.~~

~~(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.~~

~~(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.~~

~~(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.~~

~~(7) The amount of 5.8% through September 30, 2013, and beginning October 1, 2013, the amount of 2.9% must be credited to the coal natural resource account established in 90-6-1001(2).~~

~~(8) After the allocations are made under subsections (2) through (7), $250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.~~

~~(9) (a) Subject to subsection (9)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.~~

~~(b) The interest income from $140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:~~

~~(i) $65,000 to the cooperative development center;~~

~~(ii) $625,000 for the growth through agriculture program provided for in Title 90, chapter 9;~~

~~(iii) $1.275 million to the research and commercialization state special revenue account created in 90-3-1002, of which $375,000 per year is appropriated for fiscal years 2012 and 2013 to the department of commerce for the small business state matching grant program authorized in 90-1-117 to provide matching grants for small business innovation research and small business technology transfer, $125,000 per year is appropriated for fiscal years 2012 and 2013 to the high-performance supercomputing program in the department of commerce, and $300,000 per year is appropriated for fiscal years 2012 and 2013 to the board of regents for the development of energy and natural resources doctoral programs at Montana tech of the university of Montana;~~

~~(iv) to the department of commerce:~~

~~(A) $125,000 for a small business development center;~~

~~(B) $50,000 for a small business innovative research program;~~

~~(C) $425,000 for certified regional development corporations;~~

~~(D) $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and~~

~~(E) $300,000 for export trade enhancement. (Terminates June 30, 2013—sec. 5, Ch. 459, L. 2009.)~~

**15-35-108. (~~Effective July 1, 2013~~ *Temporary*) Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. ~~Beginning July 1, 2012, any~~ *Any* unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of 5.8% through September 30, 2013, and beginning October 1, 2013, the amount of 2.9% must be credited to the coal natural resource account established in 90-6-1001(2).

(8) After the allocations are made under subsections (2) through (7), $250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) (a) Subject to subsection (9)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state *and is statutorily appropriated, as provided in 17-7-502, on July 1 each year to the trust fund for the public employees' retirement system defined benefit plan established pursuant to 19-3-103*.

(b) The interest income ~~from $140 million~~ of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on ~~an annual basis~~ *July 1 each year* as follows:

(i) $65,000 to the cooperative development center;

(ii) ~~$1.25 million~~ *$625,000* for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) ~~$3.65~~ *$1.275* million to the research and commercialization state special revenue account created in 90-3-1002;

(iv) to the department of commerce:

(A) $125,000 for a small business development center;

(B) $50,000 for a small business innovative research program;

(C) $425,000 for certified regional development corporations;

(D) $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) $300,000 for export trade enhancement*; and*

*(v) except as provided in subsection (9)(c), up to $21 million to the public employees' retirement system defined benefit plan trust fund*.

*(c) If the legislative finance committee determines that the public employees' retirement board has failed to provide a sufficient report pursuant to [section 7], it shall recommend that $5 million be subtracted from the amount allocated in subsection (9)(b)(v) subject to legislative approval.* (Terminates June 30, 2019—secs. 2, 3, Ch. 459, L. 2009.)

**15-35-108. (Effective July 1, 2019) Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. ~~Beginning July 1, 2012, any~~ *Any* unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of 2.9% must be credited to the coal natural resource account established in 90-6-1001(2).

(8) After the allocations are made under subsections (2) through (7), $250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) *(a)* ~~All~~ *Subject to subsection (9)(b), all* other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state *and is statutorily appropriated, as provided in 17-7-502, on July 1 each year to the trust fund for the public employees' retirement system defined benefit plan pursuant to 19-3-103.*

*(b) Except as provided in subsection (9)(c), up to $24 million of the interest income from the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on July 1 each year to the public employees' retirement system defined benefit plan trust fund.*

*(c) If the legislative finance committee determines that the public employees' retirement board has failed to provide a sufficient report pursuant to [section 7], it shall recommend that $5 million be subtracted from the amount allocated in subsection (9)(b) subject to legislative approval.*"

**Section 2.** Section 17-5-703, MCA, is amended to read:

**"17-5-703. (Temporary) Coal severance tax trust funds.** (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a treasure state endowment regional water system fund;

(d) a coal severance tax permanent fund;

(e) a coal severance tax income fund; and

(f) a big sky economic development fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (3) and (4).

(3) (a) Until June 30, ~~2020~~ *2016*, the state treasurer shall quarterly transfer to the treasure state endowment fund 50% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) Until June 30, ~~2020~~ *2016*, the state treasurer shall quarterly transfer to the treasure state endowment regional water system fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(c) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(d) The state treasurer shall monthly transfer from the treasure state endowment regional water system fund to the treasure state endowment regional water system special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account for regional water systems authorized under 90-6-715. Earnings not transferred to the treasure state endowment regional water system special revenue account must be retained in the treasure state endowment regional water system fund.

(4) (a) From July 1, 2005, through June 30, 2025, the state treasurer shall quarterly transfer to the big sky economic development fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall monthly transfer from the big sky economic development fund to the economic development special revenue account, provided for in 90-1-205, the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-1-204. Earnings not transferred to the economic development special revenue account must be retained in the big sky economic development fund.

(5) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund. (Terminates June 30, ~~2020~~ *2016*—secs. 15, 16, Ch. 389, L. 2011.)

**17-5-703. (Effective July 1, ~~2020~~ *2016*) Coal severance tax trust funds.** (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a coal severance tax permanent fund;

(d) a coal severance tax income fund; and

(e) a big sky economic development fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (3) and (4).

(3) (a) Until June 30, ~~2020~~ *2016*, the state treasurer shall quarterly transfer to the treasure state endowment fund 50% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(4) (a) From July 1, 2005, through June 30, 2025, the state treasurer shall quarterly transfer to the big sky economic development fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall monthly transfer from the big sky economic development fund to the economic development special revenue account, provided for in 90-1-205, the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-1-204. Earnings not transferred to the economic development special revenue account must be retained in the big sky economic development fund.

(5) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund."

**Section 3.** Section 19-3-315, MCA, is amended to read:

**"19-3-315. Member's contribution to be deducted.** (1) (a) ~~Each~~ *Except as provided in subsection (2), each* member's contribution is~~:~~

~~(i) for a member hired prior to July 1, 2011, 6.9% of the member's compensation; and~~

~~(ii) for a member hired on or after July 1, 2011,~~ 7.9% of the member's compensation.

(b) ~~For members hired on or after July 1, 2011, the~~ *The* board shall ~~periodically~~ *annually* review the required contributions and recommend future adjustments to the legislature as needed to maintain the amortization schedule set by the board for the payment of the system's unfunded liability.

*(2) Each member's contribution must be reduced to 6.9% on January 1 following the system's annual actuarial valuation if the valuation determines that reducing the employee contribution pursuant to this subsection and reducing the employer contribution pursuant to 19-3-316(4) would not cause the system's amortization period to exceed 25 years.*

~~(2)~~*(3)* Payment of salaries or wages less the contribution is full and complete discharge and acquittance of all claims and demands for the service rendered by members during the period covered by the payment, except their claims to the benefits to which they may be entitled under the provisions of this chapter.

~~(3)~~*(4)* Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code, 26 U.S.C. 414(h)(2), shall pick up and pay the contributions that would be payable by the member under subsection (1) *or (2)* for service rendered after June 30, 1985.

~~(4)~~*(5)* (a) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system.

(b) In the case of a member of the defined benefit plan, these contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(c) In the case of a member of the defined contribution plan, these contributions must be allocated as provided in 19-3-2117.

~~(5)~~*(6)* The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and compensation. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

**Section 4.** Section 19-3-316, MCA, is amended to read:

**"19-3-316. Employer contribution rates.** (1) Each employer shall contribute to the system. Except as provided in subsection (2), the employer shall pay as employer contributions 6.9% of the compensation paid to all of the employer's employees plus any additional contribution under subsection (3), except for those employees properly excluded from membership. Of employer contributions made under this subsection for both defined benefit plan and defined contribution plan members, a portion must be allocated for educational programs as provided in 19-3-112. Employer contributions for members under the defined contribution plan must be allocated as provided in 19-3-2117.

(2) Local government and school district employer contributions must be the total employer contribution rate provided in subsection (1) minus the state contribution rates under 19-3-319.

(3) *(a)* Subject to subsection (4), each employer shall contribute to the system an additional employer contribution equal to ~~0.27%~~ *the percentage specified in subsection (3)(b)* of the compensation paid to all of the employer's employees, except for those employees properly excluded from membership.

*(b) The percentage of compensation to be contributed under subsection (3)(a) is 1.27% for fiscal year 2014 and increases by 0.1% each fiscal year through fiscal year 2024. For fiscal years beginning after June 30, 2024, the percentage of compensation to be contributed under subsection (3)(a) is 2.27%.*

(4) (a) The board shall ~~periodically~~ *annually* review the additional employer contribution provided for under subsection (3) and recommend adjustments to

the legislature as needed to maintain the amortization schedule set by the board for payment of the system's unfunded liabilities.

(b) The employer contribution required under subsection (3) terminates on ~~July 1~~ *January 1* following the board's receipt of the system's actuarial valuation if~~:~~

~~(i)~~ the actuarial valuation determines that ~~the period required to amortize the system's unfunded liabilities, including adjustments made for any benefit enhancements enacted by the legislature after the valuation, is less than 25 years; and~~

~~(ii)~~ terminating the additional employer contribution *pursuant to this subsection (4)(b) and reducing the employee contribution pursuant to 19-3-315(2)* would not cause the amortization period ~~as of the most recent actuarial valuation~~ to exceed 25 years."

**Section 5.** Section 19-3-1605, MCA, is amended to read:

**"19-3-1605. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by the applicable percentage provided in subsection (4).

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than an annualized increase of the applicable percentage provided in subsection (4), then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of the applicable percentage in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than an annualized increase of the applicable percentage provided in subsection (4), then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to the applicable percentage provided in subsection ~~(5)~~ *(4)(b)* more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made.

~~(4) (a) The applicable percentage is 3% for benefit recipients hired or assuming office:~~

~~(i) before July 1, 2007; or~~

~~(ii) on or after July 1, 2007, if the benefit recipient is an existing member of a benefit plan for which the applicable percentage is 3%.~~

~~(b) Except as provided in subsection (4)(a)(ii), the applicable percentage is 1.5% for benefit recipients hired or assuming office on or after July 1, 2007.~~

~~(5) (a) The applicable percentage rate for a contingent annuitant described in subsection (2)(c) is 3% if the original payee:~~

~~(i) was hired or assumed office before July 1, 2007; or~~

~~(ii) was an existing member of a benefit plan for which the applicable percentage is 3%.~~

~~(b) Except as provided in subsection (5)(a)(ii), the applicable percentage rate for a contingent annuitant described in subsection (2)(c) is 1.5% if the original payee was hired or assumed office on or after July 1, 2007.~~

*(4) (a) Subject to subsection (5), the applicable percentage rate is 1.5% for benefit recipients hired or assuming office:*

*(i) before July 1, 2007;*

*(ii) on or after July 1, 2007, and prior to [the effective date of this act] if the benefit recipient is an existing member of a benefit plan for which the applicable percentage before [the effective date of this act] was either 3% or 1.5%; or*

*(iii) on or after [the effective date of this act].*

*(b) The applicable percentage rate for a contingent annuitant described in subsection (2)(c) is the same as the applicable percentage rate applicable to the original payee under subsection (4)(a).*

*(5) (a) Except as provided in subsection (5)(b), if the most recent actuarial valuation of the retirement system shows that retirement system liabilities are less than 90% funded, the applicable percentage rate in subsection (4) must be reduced by 0.1% for each 2% below that 90% funding level.*

*(b) If the amortization period is 40 years or greater, the applicable percentage rate is 0% and the retirement allowance may not be increased.*

(6) The board shall adopt rules to administer the provisions of this section."

**Section 6.** Section 19-3-2117, MCA, is amended to read:

**"19-3-2117. Allocation of contributions and forfeitures.** (1) The member contributions made under 19-3-315 and additional contributions paid by the member for the purchase of service must be allocated to the plan member's retirement account.

(2) Subject to *subsection (3) and* adjustment by the board as provided in 19-3-2121, of the employer contributions under 19-3-316 received:

(a) an amount equal to:

(i) 4.19% of compensation must be allocated to the member's retirement account;

(ii) 2.37% of compensation must be allocated to the defined benefit plan as the plan choice rate;

(iii) 0.04% of compensation must be allocated to the education fund as provided in 19-3-112(1)(b); and

(iv) 0.3% of compensation must be allocated to the long-term disability plan trust fund established pursuant to 19-3-2141; ~~and~~

(b) on July 1, 2009, continuing until the additional employer contributions terminate pursuant to ~~19-3-316~~ *19-3-316(4)(b)*, ~~0.27%~~ *the percentage specified in subsection (3)* of compensation must be allocated in the following order:

(i) to the defined benefit plan to eliminate the plan choice rate unfunded actuarial liability; and

(ii) to the long-term disability plan trust fund to provide disability benefits to eligible members*; and*

*(c) on July 1, 2013, continuing until the additional employer contributions terminate pursuant to 19-3-316(4)(b), 1% of compensation must be allocated to the defined benefit plan unfunded liabilities.*

*(3) The percentage of compensation to be contributed under subsection (2)(b) is 0.27% for fiscal year 2014 and increases by 0.1% each fiscal year through fiscal year 2024. For fiscal years beginning after June 30, 2024, the percentage of compensation to be contributed under subsection (2)(b) is 1.27%.*

~~(3)~~*(4)* Forfeitures of employer contributions and investment income on the employer contributions may not be used to increase a member's retirement account. The board shall allocate the forfeitures under 19-3-2116 to meet the plan's administrative expenses, including startup expenses."

**Section 7. Board report required.** As soon as possible after the completion of each annual actuarial valuation for the public employees' retirement system, the board shall have its actuary present a detailed actuarial report to the legislative finance committee, provided for in 5-12-201, and the state administration and veterans' affairs interim committee, provided for in 5-5-228. The actuarial report must provide a trend analysis of the system's progress toward 100% funding.

**Section 8.** Section 6, Chapter 495, Laws of 1999, is amended to read:

"**Section 6. Termination.** [This act] terminates June 30, ~~2013~~ *2016*."

**Section 9.** Section 15, Chapter 389, Laws of 2011, is amended to read:

"**Section 15.** Section 6, Chapter 495, Laws of 1999, is amended to read:

**"Section 6. Termination.** [This act] terminates June 30, ~~2013~~ ~~*2020*~~ *2016*.""

**Section 10.** Section 16, Chapter 389, Laws of 2011, is amended to read:

"**Section 16.** Section 1, Chapter 70, Laws of 2001, is amended to read:

**"Section 1.** Section 6, Chapter 495, Laws of 1999, is amended to read:

**"Section 6. Termination.** ~~[This act]~~ *[This act]* ~~terminates~~ *terminates* June 30, ~~2013~~ ~~*2016*~~ ~~*2020*~~ *2016*."""

**Section 11. Appropriations.** (1) For the fiscal year beginning July 1, 2013, there is appropriated for the purpose of making the additional employer contributions in 19-3-316:

(a) to the office of budget and program planning, the following amounts from the indicated fund:

(i) $1,870,019 from the general fund;

(ii) $1,688,905 from the state special revenue fund;

(iii) $1,149,658 from the federal special revenue fund; and

(iv) $669,831 from other funds;

(b) to the Montana university system from the general fund, $548,527; and

(c) to the office of public instruction for school BASE aid, $377,500 from the general fund.

(2) For the fiscal year beginning July 1, 2014, there is appropriated for the purpose of making the additional employer contributions in 19-3-316:

(a) to the office of budget and program planning, the following amounts from the indicated fund:

(i) $2,057,021 from the general fund;

(ii) $1,857,796 from the state special revenue fund;

(iii) $1,264,624 from the federal special revenue fund; and

(iv) $736,814 from other funds;

(b) to the Montana university system from the general fund, $603,380; and

(c) to the office of public instruction for school BASE aid, $431,750 from the general fund.

**Section 12. Codification instruction.** [Section 7] is intended to be codified as an integral part of Title 19, chapter 3, part 1, and the provisions of Title 19, chapter 3, part 1, apply to [section 7].

**Section 13. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 14. Effective date.** [This act] is effective July 1, 2013.

Approved May 6, 2013

# CHAPTER NO. 391

[HB 477]

AN ACT GENERALLY REVISING UTILITY LAWS; REVISING LAWS RELATED TO ENERGY USE DISCLOSURE AND UTILITY LIABILITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Utility disclosure required — definition.** (1) Except as provided in subsection (3), a utility shall provide the average annual energy use for a property.

(2) Average annual energy use must:

(a) be calculated using an average of the past 12 months of usage on a property and the rates currently in effect;

(b) include the electricity, natural gas, or both used on the property based on meters used for measuring or registering utility service; and

(c) be expressed in dollars.

(3) (a) A utility may not make public or otherwise disclose personal information protected by an individual privacy interest or information of a personal nature that would constitute a clearly unwarranted invasion of personal privacy.

(b) A utility may provide the information required pursuant to subsection (1) only to a person or entity owning the property or representing the person or entity or to a person involved in a real estate-related transaction on the property.

(4) As used in [sections 1 and 2], the following definitions apply:

(a) "Real estate-related transaction" means any of the following:

(i) the making or purchasing of loans or providing other financial assistance:

(A) for purchasing, constructing, improving, repairing, or maintaining a housing accommodation or property; or

(B) secured by real estate; or

(ii) the selling, leasing, brokering, or appraising of real property.

(b) "Utility" means any public utility regulated by the commission pursuant to Title 69, chapter 3, that provides electricity or natural gas for sale to customers.

**Section 2. Utility — liability.** A utility is liable for direct damages resulting from a discontinuance of utility service caused by breach of a continuous service agreement.

**Section 3. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 69, chapter 3, and the provisions of Title 69, chapter 3, apply to [sections 1 and 2].

**Section 4. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 5. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 6. Effective date.** [This act] is effective on passage and approval.

**Section 7. Applicability.** [This act] applies to damage to property that occurs on or after [the effective date of this act].

Approved May 5, 2013

# CHAPTER NO. 392

[HB 554]

AN ACT REVISING LAWS RELATED TO LEGISLATOR PAYROLL AND BENEFITS; AMENDING SECTIONS 5-2-302 AND 5-2-303, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 5-2-302, MCA, is amended to read:

**"5-2-302. Compensation and expenses when legislature not in session.** When the legislature is not in session, a member of the legislature, while engaged in legislative business with prior authorization of the appropriate funding authority, is entitled to:

(1) a mileage allowance as provided in 2-18-503;

(2) expenses as provided in 2-18-501 and 2-18-502; and

(3) a salary equal to one full day's pay at the rate described in 5-2-301(1) for each 24-hour period of time (from midnight to midnight), or portion of a 24-hour period, spent ~~away from home~~ on authorized *interim or administrative committee* legislative business *or as otherwise provided by law*. However, if time spent for business other than authorized legislative *interim or administrative committee* business *or business related to 5-11-305* results in lengthening a legislator's stay away from home into an additional 24-hour period, the legislator may not be compensated for the additional day."

**Section 2.** Section 5-2-303, MCA, is amended to read:

**"5-2-303. Participation in state benefits group — employer contribution made to other plan.** (1) Individual members of the senate and the house of representatives may enroll in the state employees benefits group during the terms to which they have been elected. The provider of benefits shall enroll and collect employee contributions directly from ~~such~~ *those* legislators. The employer contribution ~~shall~~ *must* be paid from funds appropriated for that purpose.

(2) (a) If a member does not enroll or terminates enrollment under the state employees benefits group plan and is insured under a plan providing disability insurance as defined in 33-1-207, the department of administration, upon request of the member, shall pay to the member's insurer an amount equal to the premium required to be paid by the member for coverage of the member and any dependents under the disability insurance plan, subject to the limitation contained in subsection (2)(b).

(b) A payment made under subsection (2)(a) may not exceed the amount of the employer contribution for group benefits for members of the legislature as provided for in 2-18-703.

*(c) Unused employer contributions must be transferred to an account as provided in 2-18-703 for a legislator who is a state employee and who has contributions paid for by another agency when the legislature is not in session.*"

**Section 3. Effective date.** [This act] is effective July 1, 2013.

Approved May 11, 2013

# CHAPTER NO. 393

[HB 559]

AN ACT GENERALLY REVISING MOTOR VEHICLE LAWS; MODIFYING DATE RESTRICTIONS ON THE CONTINUED USE OF STANDARD LICENSE PLATE DESIGNS OR PLATE NUMBERS; ELIMINATING THE COUNTY PREFIX REQUIREMENTS FOR SMALL LICENSE PLATES; REMOVING COLLEGIATE LICENSE PLATES AND GENERIC SPECIALTY LICENSE PLATES FROM PERMANENT REGISTRATION RESTRICTIONS ON CERTAIN VEHICLES; CLARIFYING CERTAIN SPEEDING OFFENSES AND PENALTIES; ELIMINATING THE REQUIREMENT TO PROVIDE A LIST OF AMATEUR RADIO LICENSE PLATE HOLDERS TO CERTAIN AGENCIES; AMENDING SECTIONS 61-3-321, 61-3-332, 61-3-337, 61-3-562, 61-8-303, 61-8-309, 61-8-310, AND 61-8-725, MCA; REPEALING SECTION 61-3-424, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-3-321, MCA, is amended to read:

**"61-3-321. Registration fees of vehicles and vessels — certain vehicles exempt from registration fees — disposition of fees.** (1) Except as otherwise provided in this section, registration fees must be paid upon registration or, if applicable, renewal of registration of motor vehicles, snowmobiles, watercraft, trailers, semitrailers, and pole trailers as provided in subsections (2) through (20):

(2) Unless a light vehicle is permanently registered under 61-3-562, the annual registration fee for light vehicles, trucks and buses under 1 ton, and logging trucks less than 1 ton is as follows:

(a) if the vehicle is 4 or less years old, $217;

(b) if the vehicle is 5 through 10 years old, $87; and

(c) if the vehicle is 11 or more years old, $28.

(3) Except as provided in subsection (15), the one-time registration fee based on the declared weight of a trailer, semitrailer, or pole trailer is as follows:

(a) if the declared weight is less than 6,000 pounds, $61.25; or

(b) if the declared weight is 6,000 pounds or more, $148.25.

(4) Except as provided in subsection (15), the one-time registration fee for motor vehicles owned and operated solely as collector's items pursuant to 61-3-411, based on the weight of the vehicle, is as follows:

(a) 2,850 pounds and over, $10; and

(b) under 2,850 pounds, $5.

(5) Except as provided in subsection (15), the one-time registration fee for off-highway vehicles other than a quadricycle or motorcycle is $61.25.

(6) The annual registration fee for heavy trucks, buses, and logging trucks in excess of 1 ton is $22.75.

(7) (a) The annual registration fee for a motor home, based on the age of the motor home, is as follows:

(i) less than 2 years old, $282.50;

(ii) 2 years old and less than 5 years old, $224.25;

(iii) 5 years old and less than 8 years old, $132.50; and

(iv) 8 years old and older, $97.50.

(b) The owner of a motor home that is 11 years old or older and that is subject to the registration fee under this section may permanently register the motor home upon payment of:

(i) a one-time registration fee of $237.50;

(ii) unless a new set of license plates is being issued, an insurance verification fee of $5, which must be deposited in the account established under 61-6-158; ~~and~~

(iii) if applicable, five times the renewal fees for personalized license plates under 61-3-406*; and*

*(iv) if applicable, the donation fee for a generic specialty license plate under 61-3-480 or a collegiate license plate under 61-3-465*.

(8) (a) Except as provided in subsection (15), the one-time registration fee for motorcycles and quadricycles registered for use on public highways is $53.25, and the one-time registration fee for motorcycles and quadricycles registered for both off-road use and for use on the public highways is $114.50.

(b) An additional fee of $16 must be collected for the registration of each motorcycle or quadricycle as a safety fee, which must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(9) Except as provided in subsection (15), the one-time registration fee for travel trailers, based on the length of the travel trailer, is as follows:

(a) under 16 feet in length, $72; and

(b) 16 feet in length or longer, $152.

(10) Except as provided in subsection (15), the one-time registration fee for a motorboat, sailboat, personal watercraft, or motorized pontoon required to be numbered under 23-2-512 is as follows:

(a) for a personal watercraft or a motorboat, sailboat, or motorized pontoon less than 16 feet in length, $65.50;

(b) for a motorboat, sailboat, or motorized pontoon at least 16 feet in length but less than 19 feet in length, $125.50; and

(c) for a motorboat, sailboat, or motorized pontoon 19 feet in length or longer, $295.50.

(11) (a) Except as provided in subsections (11)(b) and (15), the one-time registration fee for a snowmobile is $60.50.

(b) (i) A snowmobile that is licensed by a Montana business and is owned exclusively for the purpose of daily rental to customers is assessed:

(A) a fee of $40.50 in the first year of registration; and

(B) if the business reregisters the snowmobile for a second year, a fee of $20.

(ii) If the business reregisters the snowmobile for a third year, the snowmobile must be permanently registered and the business is assessed the registration fee imposed in subsection (11)(a).

(12) (a) The one-time registration fee for a low-speed electric vehicle is $25.

(b) The one-time registration fee for a golf cart that is owned by a person who has or is applying for a low-speed restricted driver's license is $25.

(c) The one-time registration fee for golf carts authorized to operate on certain public streets and highways pursuant to 61-8-391 is $25. Upon receipt of the fee, the department shall issue the owner a decal, which must be displayed visibly on the golf cart.

(13) (a) Except as provided in subsection (13)(b), a fee of $10 must be collected when a new set of standard license plates, a new single standard license plate, or a replacement set of special license plates required under 61-3-332 is issued. The $10 fee imposed under this subsection does not apply when previously issued license plates are transferred under 61-3-335. All registration fees imposed under this section must be paid if the vehicle to which the plates are transferred is not currently registered.

(b) ~~Until January 1, 2015, an~~ *An* additional fee of $15 must be collected if a vehicle owner elects to keep the same license plate number from license plates issued ~~on or after January 1, 2006, but~~ before January 1, 2010, when replacement of those plates is required under 61-3-332(3).

(c) The fees imposed in this subsection (13) must be deposited in the account established under 61-6-158, except that $2 of the fee imposed in subsection (13)(a) must be deposited in the state general fund.

(14) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, snowmobiles, watercraft, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202, or to a vehicle or vessel that meets the description of property exempt from taxation under 15-6-201(1)(a), (1)(d), (1)(e), (1)(g), (1)(h), (1)(i), (1)(k), (1)(l), (1)(n), or (1)(o), 15-6-203, or 15-6-215, except as provided in 61-3-520.

(15) Whenever ownership of a trailer, semitrailer, pole trailer, off-highway vehicle, motorcycle, quadricycle, travel trailer, motor home, motorboat, sailboat, personal watercraft, motorized pontoon, snowmobile, motor vehicle owned and operated solely as a collector's item pursuant to 61-3-411, or low-speed electric vehicle is transferred, the new owner shall title and register the vehicle or vessel as required by this chapter and pay the fees imposed under this section.

(16) A person eligible for a waiver under 61-3-460 is exempt from the fees required under this section.

(17) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund.

(18) The fees imposed by subsections (2) through (12) are not required to be paid by a dealer for the enumerated vehicles or vessels that constitute inventory of the dealership.

(19) (a) Unless a person exercises the option in either subsection (19)(b) or (19)(c), an additional fee of $6 must be collected for each light vehicle registered under this part. This fee must be accounted for and transmitted separately from the registration fee. The fee must be deposited in an account in the state special revenue fund to be used for state parks, for fishing access sites, and for the operation of state-owned facilities. Of the $6 fee, the department of fish, wildlife, and parks shall use $5.37 for state parks, 25 cents for fishing access sites, and 38 cents for the operation of state-owned facilities at Virginia City and Nevada City.

(b) A person who registers a light vehicle may, at the time of annual registration, certify that the person does not intend to use the vehicle to visit state parks and fishing access sites and may make a written election not to pay the additional $6 fee provided for in subsection (19)(a). If a written election is made, the fee may not be collected.

(c) (i) A person who registers one or more light vehicles may, at the time of annual registration, certify that the person does not intend to use any of the vehicles to visit state parks and fishing access sites and may make a written election not to pay the additional $6 fee provided for in subsection (19)(a). If a written election is made, the fee may not be collected at any subsequent annual registration unless the person makes the written election to pay the additional fee on one or more of the light vehicles.

(ii) The written election not to pay the additional fee on a light vehicle expires if the vehicle is registered to a different person.

(20) For each light vehicle, trailer, semitrailer, pole trailer, heavy truck, motor home, motorcycle, quadricycle, and travel trailer subject to a registration fee under this section, an additional fee of $5 must be collected and forwarded to the state for deposit in the account established in 44-1-504.

(21) This section does not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is governed by 61-3-721."

**Section 2.** Section 61-3-332, MCA, is amended to read:

**"61-3-332. Standard license plates.** (1) In addition to special license plates, collegiate license plates, generic specialty license plates, and fleet license plates authorized under this chapter, a separate series of standard license plates must be issued for motor vehicles, quadricycles, travel trailers, trailers, semitrailers, and pole trailers registered in this state or offered for sale by a vehicle dealer licensed in this state. Standard license plates issued to licensed vehicle dealers must be readily distinguishable from license plates issued to vehicles owned by other persons.

(2) (a) Except as provided in 61-3-479 and subsections (2)(b), (3)(b), and (3)(c) of this section, all standard license plates for motor vehicles, trailers, semitrailers, or pole trailers must bear a distinctive marking, as determined by the department, and be furnished by the department. In years when standard license plates are not reissued for a vehicle, the department shall provide a registration decal that must be affixed to the rear license plate of the vehicle.

(b) For light vehicles that are permanently registered as provided in 61-3-562 and motor vehicles described in 61-3-303(9) that are permanently registered, the department shall provide a distinctive registration decal indicating that the motor vehicle is permanently registered. The registration decal must be affixed to the rear license plate of the permanently registered motor vehicle.

(c) For a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer that is permanently registered as provided in 61-3-313(2), the department may use the word or an abbreviation for the word "permanent" on the plate in lieu of issuing a registration decal for the plate.

(3) (a) (i) New license plates issued under 61-3-303 or this section must be a standard license plate design first issued ~~within the last 35 years~~ *in 1989 or later* or current collegiate or generic ~~speciality~~ *specialty* license plate designs. For the purposes of this subsection (3), all military, veteran, and amateur radio license plates and any license plate with a wheelchair design, excluding collegiate or generic specialty plates with a wheelchair design, are treated as standard license plates.

(ii) License plates issued on or after January 1, 2010, must be replaced with new license plates if, upon renewal of registration under this section, the license plates are 5 or more years old or will become older than 5 years during the registration period. New license plates must be issued in accordance with the implementation schedule adopted by the department under 61-3-315.

(iii) ~~Until January 1, 2015, and upon payment of the fee required in 61-3-321(13)(b), a~~ *A* vehicle owner may elect to keep the same license plate number from license plates issued ~~on or after January 1, 2006, but~~ before January 1, 2010, when replacement of those plates is required under this subsection.

(b) A motor vehicle that is registered for a 13-month to a 24-month period, as provided in 61-3-311, may display the license plate and plate design in effect at the time of registration for the entire registration period.

(c) A light vehicle described in subsection (2)(b) or a motor home that is permanently registered may display the license plate and plate design in effect at the time of registration for the entire period that the light vehicle or motor home is permanently registered.

(d) The provisions of this subsection (3) do not apply to a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer.

(e) The requirements of this subsection (3) apply to collegiate license plates authorized under 61-3-461 through 61-3-468, generic specialty license plates authorized under 61-3-472 through 61-3-481, commemorative centennial license plates authorized under 61-3-448, and special military or veteran license plates authorized under 61-3-458.

(4) (a) All license plates must be metal and treated with a reflectorized background material according to specifications prescribed by the department. The word "Montana" must be placed on each license plate and*, except for license plates that are 4 inches wide and 7 inches in length,* the outline of the state of Montana must be used as a distinctive border on each standard license plate.

(b) Plates for semitrailers, travel trailers, pole trailers, trailers with a declared weight of 6,000 pounds or more, and motor vehicles, other than motorcycles and quadricycles, must be 6 inches wide and 12 inches in length.

(c) Plates for motorcycles and quadricycles must be 4 inches wide and 7 inches in length.

(d) The department shall issue plates that are 4 inches wide and 7 inches in length for trailers with a declared weight of less than 6,000 pounds unless a person registering a trailer with a declared weight of less than 6,000 pounds requests plates that are 6 inches wide and 12 inches in length. A person registering a trailer shall pay all applicable fees for the plates chosen.

(5) The distinctive registration numbers for standard license plates must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. Except for special license plates, collegiate license plates, generic specialty license plates, ~~and~~ fleet license plates, *and standard license plates that are 4 inches wide and 7 inches in length,* the distinctive registration number or letter-number combination assigned to the motor vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of exempt motor vehicles, trailers, semitrailers, or pole trailers and motor vehicles, trailers, semitrailers, or pole trailers that are exempt from the registration fee as provided in 61-3-321, in addition to the markings provided in this section, standard license plates must bear the following distinctive markings:

(a) For motor vehicles, trailers, semitrailers, or pole trailers owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For motor vehicles, trailers, semitrailers, or pole trailers that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for motor vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the standard license plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles, trailers, semitrailers, or pole trailers of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these standard license plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the license plates requires it and a year number may not be displayed on the plates.

(7) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55;

Lincoln, 56. Any new counties must be assigned numbers by the department as they are formed, beginning with the number 57.

(8) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a design that distinguishes each separate plate series. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of standard license plates, must be placed or mounted on a motor vehicle, trailer, semitrailer, or pole trailer owned by the person who is eligible to receive them, with the registration decal affixed to the rear license plate of the motor vehicle, trailer, semitrailer, or pole trailer, and must be removed upon sale or other disposition of the motor vehicle, trailer, semitrailer, or pole trailer.

(9) (a) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may and a person with a low-speed restricted driver's license operating a low-speed electric vehicle or golf cart as provided in 61-5-122 must, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(b) If the motor vehicle to which the license plate is attached is permanently registered, the owner of the motor vehicle shall provide, upon request of a person authorized to enforce special parking laws or ordinances in this or any state, evidence of continued eligibility to use the license plate in the form of a valid special parking permit issued to or renewed by the vehicle owner under 49-4-304 and 49-4-305.

(c) A person with a permanent condition, as provided in 49-4-301(2)(b), who has been issued a special license plate upon written application, as provided in this subsection (9), is not required to reapply upon reregistration of the motor vehicle.

(10) The provisions of this section do not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."

**Section 3.** Section 61-3-337, MCA, is amended to read:

**"61-3-337. Permanently registered motor homes — plate restriction.** The following series of license plates may not be used for purposes of permanent registration of a motor home:

(1) Montana national guard license plates issued under 61-3-458(2)(b);

(2) reserve armed forces license plates issued under 61-3-458(2)(c); *and*

(3) amateur radio operator license plates issued under 61-3-422~~;~~

~~(4) collegiate license plates issued under 61-3-465; and~~

~~(5) generic specialty license plates issued under 61-3-479~~."

**Section 4.** Section 61-3-562, MCA, is amended to read:

**"61-3-562. Permanent registration — transfer of light vehicle ownership — rules.** (1) (a) The owner of a light vehicle 11 years old or older subject to the registration fee, as provided in 61-3-321(2), may permanently register the light vehicle upon payment of a $87.50 registration fee, the applicable registration and license fees under 61-3-412, if applicable, the administrative fee and the annual one-time-only donation fee for a generic specialty license plate under 61-3-480 *or collegiate license plates under*

*61-3-465*, and an amount equal to five times the local option motor vehicle tax or flat fee on vehicles under 61-3-537 and, as applicable, either:

(i) (A) the original fee and four times the renewal fee for personalized plates; or

(B) five times the renewal fees for personalized plates; or

(ii) if a new set of license plates is not being issued, an insurance verification fee of $5, which must be deposited in the account established under 61-6-158.

(b) The following series of license plates may not be used for purposes of permanent registration of a light vehicle:

(i) Montana national guard license plates issued under 61-3-458(2)(b);

(ii) reserve armed forces license plates issued under 61-3-458(2)(c); *and*

(iii) amateur radio operator license plates issued under 61-3-422~~; and~~

~~(iv) collegiate license plates issued under 61-3-465~~.

(2) In addition to the fees described in subsection (1), an owner of a truck with a manufacturer's rated capacity of 1 ton or less that is permanently registered shall pay five times the applicable fees imposed under 61-10-201.

(3) The owner of a motor vehicle that is permanently registered under this section is not subject to additional registration fees or to other motor vehicle registration fees described in this section for as long as the owner owns the vehicle.

(4) The county treasurer shall once each month remit to the state the amounts collected under this section, other than the local option motor vehicle tax or flat fee, for the purposes of 61-3-321(2) and 61-10-201. The county treasurer shall retain the local option motor vehicle tax or flat fee.

(5) (a) The permanent registration of a light vehicle allowed by this section may not be transferred to a new owner. If the light vehicle is transferred to a new owner, the department shall cancel the light vehicle's permanent registration.

(b) Upon transfer of a light vehicle registered under this section to a new owner, the new owner shall apply for a certificate of title under 61-3-201 and 61-3-216 and register the light vehicle under 61-3-303."

**Section 5.** Section 61-8-303, MCA, is amended to read:

**"61-8-303. Speed restrictions.** (1) Except as provided in 61-8-309, 61-8-310, and 61-8-312, the speed limit for vehicles traveling:

(a) on a federal-aid interstate highway outside an urbanized area of 50,000 population or more is 75 miles an hour at all times and the speed limit for vehicles traveling on federal-aid interstate highways within an urbanized area of 50,000 population or more is 65 miles an hour at all times;

(b) on any other public highway of this state is 70 miles an hour during the daytime and 65 miles an hour during the nighttime;

(c) in an urban district is 25 miles an hour.

(2) A vehicle subject to the speed limits imposed in subsection (1) traveling on a two-lane road may exceed the speed limits imposed in subsection (1) by 10 miles an hour in order to overtake and pass a vehicle and return safely to the right-hand lane.

(3) Subject to the maximum speed limits set forth in subsection (1), a person shall operate a vehicle in a careful and prudent manner and at a reduced rate of speed no greater than is reasonable and prudent under the conditions existing at the point of operation, taking into account the amount and character of traffic, visibility, weather, and roadway conditions.

(4) Except when a special hazard exists that requires lower speed for compliance with subsection (3), the limits specified in ~~61-8-312 and in~~ this section ~~or established as authorized in 61-8-309 through 61-8-311 and 61-8-313~~ are the maximum lawful speeds allowed.

(5) "Daytime" means from one-half hour before sunrise to one-half hour after sunset. "Nighttime" means at any other hour.

(6) The speed limits set forth in this section may be altered by the transportation commission or a local authority as authorized in 61-8-309, 61-8-310, 61-8-313, and 61-8-314."

**Section 6.** Section 61-8-309, MCA, is amended to read:

**"61-8-309. Establishment of special speed zones.** (1) (a) If the commission determines upon the basis of an engineering and traffic investigation that a speed limit set by 61-8-303 is greater or less than is reasonable or safe under the conditions found to exist at an intersection, curve, or dangerous location or on a segment of a highway less than 50 miles in length under its jurisdiction, the commission may set a reasonable and safe special speed limit at that location.

(b) If a local authority requests the department of transportation or an engineer, as provided in subsection (1)(c)(i), to conduct an engineering and traffic investigation based on the belief that a speed limit on a highway under the jurisdiction of the department of transportation is greater than is reasonable or safe, the commission may not increase the speed limit under consideration as a result of the investigation.

(c) (i) A local authority may request at its own expense that an engineering and traffic investigation be completed by a licensed professional engineer selected from a list compiled and approved by a committee as provided in subsection (1)(c)(ii).

(ii) A committee containing two department of transportation staff appointed by the director and two representatives of associations whose membership comprises cities, towns, and counties, as authorized by 7-5-2141 and 7-5-4141, shall review credentials submitted by licensed professional engineers and shall determine who appears on the list of individuals authorized to conduct engineering and traffic investigations for local governments. The list must be updated every 2 years.

(iii) Upon completion of an engineering and traffic investigation conducted for a local government, the department of transportation shall submit a report to the commission with findings and recommendations. The commission shall decide on an appropriate speed limit based on the traffic investigation within 120 days from the date the investigation is submitted to the department of transportation.

(d) A local authority may request a temporary special reduced or increased speed zone for a route or route segment that is under consideration for a reduced or increased speed limit under subsection (1)(a), (1)(b), or (1)(c). If a local authority makes multiple requests for temporary special reduced or increased speed zones, the local authority shall prioritize the requests. The department of transportation shall conduct a preliminary visual and engineering review of a route or a route segment for which a temporary special speed zone is requested. The reviewing party must include a representative of the local authority. Upon completion of the preliminary review, if the department of transportation concurs with the local authority that a temporary special reduced or increased speed limit is warranted, a temporary special reduced or increased speed zone

may be established upon formal approval by the commission. The temporary special reduced or increased speed limit remains in effect until a complete traffic and engineering study has been done on the route or route segment and the commission has made a determination on changing the speed limit.

(2) The department of transportation shall erect and maintain appropriate signs giving notice of special limits. When the signs are erected, the limits are effective for those zones at all times or at other times that the commission sets.

(3) The authority of the commission under this section includes the authority to set reduced nighttime speed limits on curves and other dangerous locations.

(4) This section does not authorize the commission to set a statewide speed limit.

*(5) The violation of a speed limit established under this section is a misdemeanor offense and is punishable as provided in 61-8-711.*"

**Section 7.** Section 61-8-310, MCA, is amended to read:

**"61-8-310. When local authorities may and shall alter limits or establish or alter area of school zone.** (1) If a local authority in its jurisdiction determines on the basis of an engineering and traffic investigation that the speed permitted under 61-8-303 and 61-8-309 through 61-8-313 is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may set a reasonable and safe limit that:

(a) decreases the limit at an intersection;

(b) increases the limit within an urban district, but not to more than 65 miles an hour during the nighttime;

(c) decreases the limit outside an urban district, but not to less than 35 miles an hour on a paved road or less than 25 miles an hour on an unpaved road; or

(d) decreases the limit in a school zone or in an area near a senior citizen center, as defined in 23-5-112, or a designated crosswalk that is close to a school or a senior citizen center to not less than 80%, rounded down to the nearest whole number evenly divisible by 5, of the limit that would be set on the basis of an engineering and traffic investigation, but not less than 15 miles an hour. If warranted by an engineering and traffic investigation, a local authority may adopt variable speed limits to adapt to traffic conditions by time of day, provided that the variable limits comply with the provisions of 61-8-206.

(2) A board of county commissioners may set limits, as provided in subsection (1)(c), without an engineering and traffic investigation on a county road.

(3) A local authority in its jurisdiction may determine the proper speed for all arterial streets and shall set a reasonable and safe limit on arterial streets that may be greater or less than the speed permitted under 61-8-303 for an urban district.

(4) (a) An altered limit established as authorized under this section is effective at all times or at other times determined by the authority when appropriate signs giving notice of the altered limit are erected upon the highway.

(b) If a local authority decreases a speed limit in a school zone, the local authority shall erect signs conforming with the manual adopted by the department of transportation under 61-8-202 giving notice that the school zone

has been entered, of the altered speed limit and the penalty provided in 61-8-726, and that the school zone has ended.

(5) Except as provided in subsection (1)(d), the commission has exclusive jurisdiction to set special speed limits on all federal-aid highways or extensions of federal-aid highways in all municipalities or urban areas. The commission shall set these limits in accordance with 61-8-309.

(6) A local authority establishing or altering the area of a school zone shall consult with the department of transportation and the commission if the school zone includes a state highway or a federal-aid highway or extension of a federal-aid highway.

(7) A local authority shall consult with district officials for a school when:

(a) establishing or altering the area of a school zone near the school; or

(b) setting a speed limit pursuant to subsection (1)(d) in a school zone near the school.

(8) A speed limit set on an unpaved road under subsection (1)(c) must be the same for all types of motor vehicles that may be operated on the road.

*(9) The violation of a speed limit established under subsections (1)(a) through (1)(c) is a misdemeanor offense and is punishable as provided in 61-8-711. The violation of a speed limit established under subsection (1)(d) is a misdemeanor offense and is punishable as provided in 61-8-726.*"

**Section 8.** Section 61-8-725, MCA, is amended to read:

**"61-8-725. Penalty for violation of speed limits — no record for certain violations.** (1) A person violating the speed limit imposed pursuant to 61-8-303 shall be fined in accordance with the following schedule:

| Amount of Fine | MPH in Excess of Speed Limit |
|---|---|
| $ 20 | 1 - 10 (daytime) |
| 20 | 1 - 10 (nighttime) |
| 40 | 11 - 20 |
| 70 | 21 - 30 |
| 100 | 31+ |

(2) A violation of a speed limit imposed pursuant to 61-8-303 is not a criminal offense within the meaning of 3-1-317, 45-2-101, 46-18-236, 61-8-104, and 61-8-711 and, except as provided in subsection (4), may not be recorded or charged against a driver's record, and an insurance company may not hold a violation of a speed limit against the insured or increase premiums because of the violation if the speed limit is exceeded by no more than:

(a) 10 miles an hour during the daytime; or

(b) 5 miles an hour during the nighttime.

(3) The surcharge provided for in 3-1-317 may not be imposed for a violation of 61-8-303.

(4) The recordkeeping restrictions provided in subsection (2) with respect to a person's driving record do not apply to a speed limit violation or conviction that was committed by:

(a) a Montana resident in another state whose violation or conviction was reported to the department by a court or the licensing authority in the state in which the violation occurred; or

(b) a person who holds a commercial driver's license regardless of whether or not the violation occurred while the person was operating a commercial motor vehicle.

*(5) This section does not apply to the violation of a special speed zone established under 61-8-309 or 61-8-310.*"

**Section 9. Repealer.** The following section of the Montana Code Annotated is repealed:

61-3-424. List of amateur radio operator license plates — distribution to public officials.

**Section 10. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 1 and 2] are effective October 1, 2013.

Approved May 6, 2013

# CHAPTER NO. 394

[HB 603]

AN ACT PROVIDING THAT A GOVERNMENT ENTITY MUST OBTAIN A SEARCH WARRANT PRIOR TO OBTAINING LOCATION INFORMATION OF AN ELECTRONIC DEVICE; AND PROVIDING EXCEPTIONS, DEFINITIONS, AND A CIVIL PENALTY.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Location information privacy — civil penalty.** (1) Except as provided in subsection (2), a government entity may not obtain the location information of an electronic device without a search warrant issued by a duly authorized court.

(2) A government entity may obtain location information of an electronic device under any of the following circumstances:

(a) the device is reported stolen by the owner;

(b) in order to respond to the user's call for emergency services;

(c) with the informed, affirmative consent of the owner or user of the electronic device; or

(d) there exists a possible life-threatening situation.

(3) Any evidence obtained in violation of this section is not admissible in a civil, criminal, or administrative proceeding and may not be used in an affidavit of probable cause in an effort to obtain a search warrant.

(4) A violation of this section will result in a civil fine not to exceed $50.

**Section 2. Definitions.** As used in [section 1] and this section, the following definitions apply:

(1) "Electronic communication service" means a service that provides to users of the service the ability to send or receive wire or electronic communications.

(2) "Electronic device" means a device that enables access to or use of an electronic communication service, remote computing service, or location information service.

(3) "Government entity" means a state or local agency, including but not limited to a law enforcement entity or any other investigative entity, agency, department, division, bureau, board, or commission or an individual acting or purporting to act for or on behalf of a state or local agency.

(4) "Location information" means information concerning the location of an electronic device that, in whole or in part, is generated or derived from or obtained by the operation of an electronic device.

(5) "Location information service" means the provision of a global positioning service or other mapping, locational, or directional information service.

(6) "Remote computing service" means the provision of computer storage or processing services by means of an electronic communications system.

**Section 3. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 46, chapter 5, and the provisions of Title 46, chapter 5, apply to [sections 1 and 2].

Approved May 6, 2013

# CHAPTER NO. 395

[HB 609]

AN ACT PROVIDING FOR AN INTERIM STUDY OF HUNTING AND FISHING LICENSING; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, the Montana Legislature establishes hunting and fishing license fees; and

WHEREAS, hunting and fishing license fees provide approximately $34 million annually to fund most of the operations of the department of fish, wildlife, and parks; and

WHEREAS, hunting and fishing license fees are historically set at a stable level for 8 to 10 years, when revenue exceeds expenses and creates a surplus in the general license account; and

WHEREAS, revenue from hunting and fishing licenses no longer matches expenses, and the general license account has declined since fiscal year 2010; and

WHEREAS, the last major adjustment to hunting and fishing license fees was in 2005; and

WHEREAS, reduced cost hunting and fishing licenses for certain population groups result in approximately $4 million less in general license account revenue; and

WHEREAS, the sale of hunting and fishing licenses has declined in recent years, most notably in 2011; and

WHEREAS, the general license account may be close to a critical point, and hunting and fishing license fee increases may be necessary to fund current operations.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Interim study — evaluation of hunting and fishing licensing — reporting.** (1) The environmental quality council shall conduct a study of Montana's hunting and fishing license statutes and fees, including:

(a) the appropriate roles of hunting and fishing license buyers and other fish and wildlife users in funding fish and wildlife management;

(b) options for improving the structural balance between revenue and expenditures for fish and wildlife management;

(c) options for changing and simplifying Montana's hunting and fishing license structure and statutes;

(d) options to improve services and better meet the needs of license buyers;

(e) an assessment of the impact of free and reduced cost hunting and fishing licenses on the funding for fish and wildlife management and whether any of these licenses should be modified; and

(f) a comparison of license structures and fees in other states.

(2) The committee shall prepare a final report of its findings and conclusions and of its recommendations and shall prepare draft legislation whenever appropriate.

**Section 2. Appropriation.** There is appropriated $1,000 from the general fund for the biennium beginning July 1, 2013, to the legislative services division for use by the environmental quality council to complete the study required by [section 1].

**Section 3. Effective date.** [This act] is effective on passage and approval.

**Section 4. Termination.** [This act] terminates December 31, 2014.

Approved May 6, 2013

# CHAPTER NO. 396

[SB 96]

AN ACT REDUCING THE TAX RATE FOR A PORTION OF THE TAXABLE MARKET VALUE OF CLASS EIGHT BUSINESS EQUIPMENT OWNED BY A TAXPAYER; INCREASING THE CLASS EIGHT BUSINESS EQUIPMENT TAX EXEMPTION; PROVIDING THAT THE EXEMPTION APPLIES TO CLASS EIGHT PROPERTY THAT EXCEEDS THE EXEMPTION AMOUNT; CHANGING CERTAIN OTHER PROVISIONS RELATING TO TAXATION OF CLASS EIGHT PROPERTY; REMOVING A CONTINGENCY REGARDING FUTURE TAX REDUCTIONS BASED ON INCREASES IN STATE COLLECTIONS OF INDIVIDUAL INCOME TAX AND CORPORATION LICENSE TAX; PROVIDING A PARTIAL REIMBURSEMENT TO LOCAL GOVERNMENTS AND TAX INCREMENT FINANCING DISTRICTS UNDER THE ENTITLEMENT SHARE PAYMENT, TO SCHOOL DISTRICTS THROUGH THE BLOCK GRANT PROGRAM, TO COUNTY SCHOOL RETIREMENT AND COUNTY TRANSPORTATION REIMBURSEMENT, AND TO THE MONTANA UNIVERSITY SYSTEM THROUGH SUPPORT OF PUBLIC EDUCATION INSTITUTIONS FOR THE LOSS OF CLASS EIGHT AND CLASS TWELVE PROPERTY TAX REVENUE; PROVIDING CONTINGENT INCREASES AND DECREASES TO APPROPRIATIONS; AMENDING SECTIONS 15-1-123, 15-6-138, 15-6-141, AND 15-23-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-1-123, MCA, is amended to read:

**"15-1-123. Reimbursement for class eight rate reduction and exemption — distribution — appropriations.** (1) For the tax rate reductions in ~~15-6-138~~ *15-6-138(3), the increased exemption amount in 15-6-138(4),* ~~and for~~ the effective tax rate reductions on property under 15-6-145 because of the rate reductions required by the ~~amendment~~ *amendments* of 15-6-138 in section 2, Chapter 411, Laws of 2011, *and [section 2 of Senate Bill*

*No. 96], and the effective tax rate reductions on property under 15-6-145 because of the increased exemption amount required by the amendment of 15-6-138 in [section 2 of House Bill No. 96],* the department shall~~, by June 1, 2012, and for each calendar year that the tax rate is adjusted under 15-6-138(4)~~ *for the fiscal years ending June 30, 2014, and June 30, 2015*, estimate for each local government, as defined in 15-1-121(5), each school district, the county retirement fund under 20-9-501, the countywide school transportation reimbursement under 20-10-146, each tax increment financing district, and the 6-mill university levy for the purposes of 15-10-108~~,~~ the difference between property tax collections under 15-6-138~~,~~ as amended by section 2, Chapter 411, Laws of 2011, *and [section 2 of Senate Bill No. 96]* and under 15-6-145 and the property tax revenue that would have been collected under 15-6-138 and 15-6-145 if 15-6-138 had not been amended by section 2, Chapter 411, Laws of 2011*, and [section 2 of Senate Bill No. 96]*. The difference is the annual reimbursable amount for each local government, each school district, each tax increment financing district, and the 6-mill levy for the support of the Montana university system under 15-10-108.

(2) (a) The department shall distribute the ~~reimbursement~~ *reimbursements calculated in subsection (1)* to local governments with the entitlement share payments under 15-1-121(7) for ~~fiscal year 2012 and for all other~~ *the* fiscal ~~years in which rate reductions occur~~ *year ending June 30, 2015*. Local government reimbursements for subsequent years are made pursuant to the entitlement share recomputation as provided in 15-1-121(6).

(b) For ~~fiscal year 2012 and all other~~ *the* fiscal ~~years in which rate reductions occur~~ *year ending June 30, 2014*, the department shall determine from the amount calculated under subsection (1) the amount that is attributable to personal property taxes that are not a lien on real property for each local government. By ~~August 1 following each of those fiscal years~~ *June 15, 2014*, the department shall distribute the amount determined under this subsection (2)(b) for local governments as provided in 15-1-121(6)(a).

(3) (a) The office of public instruction shall distribute the ~~reimbursement~~ *reimbursements calculated in subsection (1)* to school districts with the block grants pursuant to 20-9-630 for ~~fiscal year 2012 and all other~~ *the* fiscal ~~years in which rate reductions occur~~ *year ending June 30, 2015*. School district reimbursements for subsequent fiscal years are made pursuant to 20-9-630.

(b) For ~~fiscal year 2012 and all other~~ *the* fiscal ~~years in which rate reductions occur~~ *year ending June 30, 2014*, the department shall determine from the amount calculated under subsection (1) the amount that is attributable to personal property taxes that are not a lien on real property for each school district. By November 30*, 2014* ~~following each of those fiscal years~~, the office of public instruction shall distribute the amount determined under this subsection (3)(b) in the same manner as the block grant is distributed by fund under 20-9-630.

(4) (a) For ~~each~~ *the* fiscal year *ending June 30, 2015* ~~beginning after fiscal year 2012 and all other fiscal years in which rate reductions occur~~, the amount determined under subsection (1) for each tax increment financing district must be added to the reimbursement amount for the tax increment financing district as provided in 15-1-121(8)(b) if the tax increment financing district is still in existence. If a tax increment financing district that is entitled to a reimbursement under this section is not listed under 15-1-121(8)(b), the reimbursement must be made to that tax increment financing district at the same time as other districts.

(b) For ~~fiscal year 2012 and all other~~ *the* fiscal ~~years in which rate reductions occur~~ *year ending June 30, 2014*, the department shall determine from the amount calculated under subsection (1) the amount that is attributable to personal property taxes that are not a lien on real property for each tax increment financing district. By ~~August 1 following each of those fiscal years~~ *June 15, 2014*, the department shall distribute the amount determined under this subsection (4)(b) to each tax increment financing district as provided in 15-1-121(8) and to any other tax increment financing district that is entitled to a reimbursement under this section.

(5) (a) For ~~fiscal year 2012 and all other~~ *the* fiscal ~~years in which rate reductions occur~~ *year ending June 30, 2015*, the amount determined under subsection (1) for the 6-mill university levy must be added to current collections and reimbursements for the support of the Montana university system as provided in 15-10-108.

(b) For ~~fiscal year 2012 and all other~~ *the* fiscal ~~years in which rate reductions occur~~ *year ending June 30, 2014*, the department shall determine from the amount calculated under subsection (1) the amount that is attributable to personal property taxes that are not a lien on real property for the 6-mill university levy. By ~~August 1 following each of those fiscal years~~ *June 15, 2014*, the department of administration shall transfer the amount determined under this subsection (5)(b) from the general fund to the state special revenue fund for the support of the Montana university system as provided in 15-10-108.

(c) Beginning in fiscal year 2013, the department of administration shall transfer the amounts determined under this subsection (5) from the general fund to the state special revenue fund for the support of the Montana university system as provided in 15-10-108.

(6) (a) The office of public instruction shall distribute the ~~reimbursement~~ *reimbursements calculated in subsection (1)* to the countywide retirement fund under 20-9-501 for ~~fiscal year 2012 and all other~~ *the* fiscal ~~years in which rate reductions occur~~ *year ending June 30, 2015*. One-half of the amount must be distributed in November and the remainder in May.

(b) For ~~fiscal year 2012 and all other~~ *the* fiscal ~~years in which rate reductions occur~~ *year ending June 30, 2014*, the department shall determine from the amount calculated under subsection (1) the amount that is attributable to personal property taxes that are not a lien on real property in the county. By November 30*, 2014* ~~following each of those fiscal years~~, the office of public instruction shall distribute the amount determined under this subsection (6)(b) to the countywide retirement fund.

(7) (a) The office of public instruction shall distribute the ~~reimbursement~~ *reimbursements calculated in subsection (1)* to the county transportation reimbursement under 20-10-146 for ~~fiscal year 2012 and all other~~ *the* fiscal ~~years in which rate reductions occur~~ *year ending June 30, 2015*. The reimbursement must be made at the same time as countywide school transportation block grants are distributed under 20-9-632.

(b) For ~~fiscal year 2012 and all other~~ *the* fiscal ~~years in which rate reductions occur~~ *year ending June 30, 2014*, the department shall determine from the amount calculated under subsection (1) the amount that is attributable to personal property taxes that are not a lien on real property in the county. By November 30*, 2014* ~~following each of those fiscal years~~, the office of public instruction shall distribute the amount determined under this subsection (7)(b) to the county transportation reimbursement."

**Section 2.** Section 15-6-138, MCA, is amended to read:

**"15-6-138. Class eight property — description — taxable percentage.** (1) Class eight property includes:

(a) all agricultural implements and equipment that are not exempt under 15-6-207 or 15-6-220;

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-219, and supplies except those included in class five under 15-6-135;

(c) for oil and gas production, all:

(i) machinery;

(ii) fixtures;

(iii) equipment, including flow lines and gathering lines, pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, and gas boosters, together with equipment that is skidable, portable, or movable;

(iv) tools that are not exempt under 15-6-219; and

(v) supplies except those included in class five;

(d) all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors as provided in 15-6-220, and supplies except those included in class five;

(e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class or that are rented under a purchase incentive rental program as defined in 15-6-202(4);

(f) special mobile equipment as defined in 61-1-101;

(g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(h) x-ray and medical and dental equipment;

(i) citizens' band radios and mobile telephones;

(j) radio and television broadcasting and transmitting equipment;

(k) cable television systems;

(l) coal and ore haulers;

(m) theater projectors and sound equipment; and

(n) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

(2) As used in this section, the following definitions apply:

(a) "Coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds an axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(b) "Commercial establishment" includes any hotel, motel, office, petroleum marketing station, or service, wholesale, retail, or food-handling business.

(c) "Flow lines and gathering lines" means pipelines used to transport all or part of the oil or gas production from an oil or gas well to an interconnection with a common carrier pipeline as defined in 69-13-101, a pipeline carrier as defined in 49 U.S.C. 15102(2), or a rate-regulated natural gas transmission or oil transmission pipeline regulated by the public service commission or the federal energy regulatory commission.

(3) Except as provided in 15-24-1402~~,~~ *and* 15-24-2102, ~~and subsection (4) of this section~~ class eight property is taxed at:

(a) ~~as determined pursuant to subsection (4):~~

~~(i) for the first $2 million of taxable market value, 2%; or~~

~~(ii)~~ for the first ~~$3~~ *$6* million of taxable market value *in excess of the exemption amount in subsection (4)*, 1.5%; and

(b) for all taxable market value in excess of ~~the applicable amount of taxable market value in subsection (3)(a)~~ *$6 million*, 3%.

~~(4) (a) The adjusted taxable market value and rate in subsection (3)(a)(i) apply for class eight property unless in any year beginning with fiscal year 2013 the revenue collected from individual income tax and corporation income tax exceeds the revenue collected from individual income tax and corporation income tax in the previous fiscal year by more than 4%. In that case, for tax years beginning after the next December 31, the taxable market value and rate in subsection (3)(a)(ii) apply.~~

~~(b) For the purpose of making the determination required in subsection (4)(a), the department of administration shall certify to the secretary of state, by August 1 of each year in which class eight property is not taxed pursuant to subsection (3)(a)(ii), the amount of unaudited individual income tax and corporation income tax revenue in the prior fiscal year as recorded when that fiscal year statewide accounting, budgeting, and human resource system records are closed in July.~~

~~(5) The class eight property of a person or business entity that owns an aggregate of $20,000 or less in market value of class eight property is exempt from taxation.~~

*(4) The first $100,000 in market value of class eight property of a person or business entity is exempt from taxation.*

~~(6)~~*(5)* The gas gathering facilities of a stand-alone gas gathering company providing gas gathering services to third parties on a contractual basis, owning more than 500 miles of gas gathering lines in Montana, and centrally assessed in tax years prior to 2009 must be treated as a natural gas transmission pipeline subject to central assessment under 15-23-101. For purposes of this subsection, the gas gathering line ownership of all affiliated companies, as defined in section 1504(a) of the Internal Revenue Code, 26 U.S.C. 1504(a), must be aggregated for purposes of determining the 500-mile threshold."

**Section 3.** Section 15-6-141, MCA, is amended to read:

**"15-6-141. Class nine property — description — taxable percentage.** (1) Class nine property includes:

(a) centrally assessed allocations of an electric power company or centrally assessed allocations of an electric power company that owns or operates transmission or distribution facilities or both;

(b) if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by congress to transmit or distribute electrical energy produced at privately owned generating facilities, not including rural electric cooperatives;

(c) rural electric cooperatives' property, except wind generation facilities, biomass generation facilities, and energy storage facilities classified under 15-6-157 and property used for headquarters, office, shop, or other similar facilities, used for the sole purpose of serving customers representing less than 95% of the electric consumers located within the incorporated limits of a city or town of more than 3,500 persons in which a centrally assessed electric power company also owns property or serving an incorporated municipality with a

population that is greater than 3,500 persons formerly served by a public utility that after January 1, 1998, received service from the facilities of an electric cooperative;

(d) allocations for centrally assessed natural gas distribution utilities, rate-regulated natural gas transmission or oil transmission pipelines regulated by either the public service commission or the federal energy regulatory commission, a common carrier pipeline as defined in 69-13-101, a pipeline carrier as defined in 49 U.S.C. 15102(2), or the gas gathering facilities specified in 15-6-138~~(6)~~*(5)*; and

(e) centrally assessed companies' allocations except:

(i) electrical generation facilities classified under 15-6-156;

(ii) all property classified under 15-6-157;

(iii) all property classified under 15-6-158 and 15-6-159;

(iv) property owned by cooperative rural electric and cooperative rural telephone associations and classified under 15-6-135;

(v) property owned by organizations providing telephone communications to rural areas and classified under 15-6-135;

(vi) railroad transportation property included in 15-6-145;

(vii) airline transportation property included in 15-6-145; and

(viii) telecommunications property included in 15-6-156.

(2) Class nine property is taxed at 12% of market value."

**Section 4.** Section 15-23-101, MCA, is amended to read:

**"15-23-101. Properties centrally assessed.** The department shall centrally assess each year:

(1) the railroad transportation property of railroads and railroad car companies operating in more than one county in the state or more than one state;

(2) property owned by a corporation or other person operating a single and continuous property operated in more than one county or more than one state including but not limited to:

(a) telegraph, telephone, microwave, and electric power or transmission lines;

(b) rate-regulated natural gas transmission or oil transmission pipelines regulated by the public service commission or the federal energy regulatory commission;

(c) common carrier pipelines as defined in 69-13-101 or a pipeline carrier as defined in 49 U.S.C. 15102(2);

(d) natural gas distribution utilities;

(e) the gas gathering facilities specified in 15-6-138~~(6)~~*(5)*;

(f) canals, ditches, flumes, or like properties; and

(g) if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, property constructed, owned, or operated by a public agency created by congress to transmit or distribute electrical energy produced at privately owned generating facilities, not including rural electric cooperatives;

(3) all property of scheduled airlines;

(4) the net proceeds of mines, except bentonite mines;

(5) the gross proceeds of coal mines; and

(6) property described in subsections (1) and (2) that is subject to the provisions of Title 15, chapter 24, part 12."

**Section 5. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

**Section 6. Coordination instruction.** If both House Bill No. 472 and [this act] are passed and approved, then House Bill No. 472 is void.

**Section 7. Coordination instruction.** If both House Bill No. 2 and [this act] are passed and approved, then:

(1) the general fund appropriation for BASE Aid in House Bill No. 2 of $580,680,837 is decreased by $3,053,710 in fiscal year 2015; and

(2) the general fund appropriation for Reimbursement Block Grants in House Bill No. 2 of $66,334,425 is increased by $7,931,716 in fiscal year 2015.

**Section 8. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 9. Effective date.** [This act] is effective on passage and approval.

**Section 10. Applicability.** [This act] applies to property tax years beginning after December 31, 2013.

Approved May 6, 2013

# CHAPTER NO. 397

[SB 101]

AN ACT REVISING THE QUALIFICATIONS TO OBTAIN A PERMIT TO HUNT FROM A VEHICLE; AMENDING SECTION 87-2-803, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 87-2-803, MCA, is amended to read:

**"87-2-803. Persons with disabilities — service members — definitions.** (1) Persons with disabilities are entitled to fish and to hunt game birds, not including turkeys, with only a conservation license if they are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule. A person who has purchased a conservation license and a resident fishing license or game bird license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the fishing license or game bird license previously purchased for that license year. A person who is certified as disabled pursuant to subsection (3) and who was issued a permit to hunt from a vehicle for license year ~~2000~~ *2014* or a subsequent license year is automatically entitled to a permit to hunt from a vehicle for subsequent license years if the criteria for obtaining a permit does not change.

(2) A resident of Montana who is certified as disabled by the department and who is not residing in an institution may purchase a Class A-3 deer A tag for $6.50 and a Class A-5 elk tag for $8. A person who has purchased a conservation license and a resident deer license or resident elk license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the deer license or elk license previously purchased and reissuance of the license for that license year at the rate established in this subsection.

(3) A person may be certified as disabled by the department and issued a permit to hunt from a vehicle, on a form prescribed by the department, if the person ~~establishes one or more of the disabilities pursuant to~~ *meets the requirements of* subsection (9).

(4) (a) A person with a disability carrying a permit to hunt from a vehicle, referred to in this subsection (4) as a permitholder, may hunt by shooting a firearm from:

(i) the shoulder, berm, or barrow pit right-of-way of a public highway, as defined in 61-1-101, except a state or federal highway;

(ii) within a self-propelled or drawn vehicle that is parked on a shoulder, berm, or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or that is parked in an area, not a public highway, where hunting is permitted; or

(iii) an off-highway vehicle or snowmobile, as defined in 61-1-101, in any area where hunting is permitted and that is open to motorized use, unless otherwise prohibited by law, as long as the off-highway vehicle or snowmobile is marked as described in subsection (4)(d) of this section.

(b) This subsection (4) does not allow a permitholder to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner.

(c) A permitholder must have a companion to assist in immediately dressing any killed game animal. The companion may also assist the permitholder by hunting a game animal that has been wounded by the permitholder when the permitholder is unable to pursue and kill the wounded game animal.

(d) Any vehicle from which a permitholder is hunting must be conspicuously marked with an orange-colored international symbol of persons with disabilities on the front, rear, and each side of the vehicle, or as prescribed by the department.

(5) A veteran who meets the qualifications in subsection (9) as a result of a combat-connected injury may apply at a fish, wildlife, and parks office for a regular Class A-3 deer A tag, a Class A-4 deer B tag, a Class B-7 deer A tag, a Class B-8 deer B tag, and a special antelope license at one-half the license fee. Fifty licenses of each license type must be made available annually. Licenses issued to veterans under this part do not count against the number of special antelope licenses reserved for people with permanent disabilities, as provided in 87-2-706.

(6) (a) A resident of Montana who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued a lifetime fishing license for the blind upon payment of a one-time fee of $10. The license is valid for the lifetime of the blind individual and allows the licensee to fish as authorized by department rule. An applicant for a license under this subsection need not obtain a wildlife conservation license as a prerequisite to licensure.

(b) A person who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued regular resident deer and elk licenses, in the manner provided in subsection (2) of this section, and must be accompanied by a companion, as provided in subsection (4)(c) of this section.

(7) The department shall adopt rules to establish the qualifications that a person must meet to be a companion and may adopt rules to establish when a companion can be a designated shooter for a disabled person.

(8) As used in this section, "disabled person", "person with a disability", or "disabled" means or refers to a person experiencing a condition medically

determined to be permanent and substantial and resulting in significant impairment of the person's functional ability.

(9) *(a)* A person ~~is entitled to~~ *qualifies for* a permit to hunt from a vehicle if the person~~:~~

~~(a) is certified by a licensed physician, a licensed chiropractor, an advanced practice registered nurse, or a licensed physician assistant to be dependent on an oxygen device or dependent on a wheelchair, crutch, or cane for mobility;~~

~~(b) is an amputee above the wrist or ankle; or~~

~~(c) is certified by a licensed physician, a licensed chiropractor, an advanced practice registered nurse, or a licensed physician assistant to be unable to walk, unassisted, 600 yards over rough and broken ground while carrying 15 pounds within 1 hour and to be unable to handle and maneuver up to 25 pounds.~~ *is certified by a licensed physician, a licensed chiropractor, a licensed physician assistant, or an advanced practice registered nurse to be nonambulatory, to have substantially impaired mobility, or to have a documented genetic condition that limits the person's ability to walk or carry significant weight for long distances.*

*(b) For the purposes of this subsection (9), the following definitions apply:*

*(i) "Advanced practice registered nurse" means a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, as specified by the board of nursing pursuant to 37-8-202, in addition to completing basic nursing education.*

*(ii) "Chiropractor" means a person who has a valid license to practice chiropractic in this state pursuant to Title 37, chapter 12, part 3.*

*(iii) "Documented genetic condition" means a diagnosis derived from genetic testing and confirmed by a licensed physician.*

*(iv) "Nonambulatory" means permanently, physically reliant on a wheelchair or a similar compensatory appliance or device for mobility.*

*(v) "Physician" means a person who holds a degree as a doctor of medicine or doctor of osteopathy and who has a valid license to practice medicine or osteopathic medicine in this state.*

*(vi) "Physician assistant" has the meaning provided in 37-20-401.*

*(vii) "Substantially impaired mobility" means virtual inability to move on foot due to permanent physical reliance on crutches, canes, prosthetic appliances, or similar compensatory appliances or devices.*

(10) Certification ~~by a licensed physician, a licensed chiropractor, an advanced practice registered nurse, or a licensed physician assistant~~ under subsection (9) must be on a form provided by the department.

(11) The department or a person who disagrees with a determination of disability or eligibility for a permit to hunt from a vehicle may request a review by the board of medical examiners pursuant to 37-3-203.

(12) (a) A Montana resident who is a member of the Montana national guard or the federal reserve as provided in 10 U.S.C. 10101 or who was otherwise engaged in active duty and who participated in a contingency operation as provided in 10 U.S.C. 101(a)(13) that required the member to serve at least 2 months outside of the state, upon request and upon presentation of the documentation described in subsection (12)(b), must be issued a free resident wildlife conservation license or a Class AAA resident combination sports license, which may not include a bear license, upon payment of the resident hunting access enhancement fee provided for in 87-2-202(3)(c), in the license year that the member returns from military service or in the year following the

member's return, based on the member's election, and in any of the 4 years after the member's election. A member who participated in a contingency operation after September 11, 2001, that required the member to serve at least 2 months outside of the state may make an election in 2007 or in the year following the member's return, based on the member's election, and in any of the 4 years after the member's election and be entitled to a free resident wildlife conservation license or a free Class AAA resident combination sports license in the year of election and in any of the 4 years after the member's election.

(b) To be eligible for the free resident wildlife conservation license or free Class AAA resident combination sports license provided for in subsection (12)(a), an applicant shall, in addition to the written application and proof of residency required in 87-2-202(1), provide to any regional department office or to the department headquarters in Helena, by mail or in person, the member's DD form 214 verifying the member's release or discharge from active duty. The applicant is responsible for providing documentation showing that the applicant participated in a contingency operation as provided in 10 U.S.C. 101(a)(13).

(c) A Montana resident who meets the service qualifications of subsection (12)(a) and the documentation required in subsection (12)(b) is entitled to a free Class A resident fishing license in the license year that the member returns from military service or in the year following the member's return, based on the member's election, and in any of the 4 years after the member's election.

(d) The department's general license account must be reimbursed by a quarterly transfer of funds from the general fund to the general license account for costs associated with the free licenses granted pursuant to this subsection (12) during the preceding calendar quarter. Reimbursement costs must be designated as license revenue.

(13) A member of the armed forces who forfeited a license or permit issued through a drawing as a result of deployment outside of the continental United States in support of a contingency operation as provided in 10 U.S.C. 101(a)(13) is guaranteed the same license or permit, without additional fee, upon application in the year of the member's return from deployment or in the first year that the license or permit is made available after the member's return."

**Section 2. Effective date.** [This act] is effective March 1, 2014.

Approved May 6, 2013

# CHAPTER NO. 398

[SB 117]

AN ACT PROVIDING THAT FEDERALLY QUALIFIED HIGHER EDUCATION SAVINGS PLANS OF OTHER STATES HAVE THE SAME TAX ADVANTAGES AS ALLOWED FOR THE MONTANA FAMILY EDUCATION SAVINGS PLAN; AMENDING SECTION 15-30-2110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-30-2110, MCA, is amended to read:

**"15-30-2110. Adjusted gross income.** (1) Subject to subsection (13), adjusted gross income is the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105;

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after December 31, 2002, the amount of any dividend to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, or a county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-2101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions *or earnings* withdrawn from a family education savings account or ~~earnings withdrawn from a family education savings account~~ *from a qualified tuition program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii),* for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and ranch risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-2602.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;

(r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero; and

(s) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in 15-31-163.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and who file separate Montana income tax returns are not required to recompute allowable passive losses according to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C. 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

(9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(11) *(a)* An individual who contributes to one or more accounts established under the Montana family education savings program *or to a qualified tuition program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii),* may reduce adjusted gross income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner~~, as defined in 15-62-103,~~ is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

*(b) Contributions made pursuant to this subsection (11) are subject to the recapture tax provided in 15-62-208.*

(12) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection (12)(a)(iv), not to exceed $5,000, from the taxpayer's adjusted gross income if the taxpayer:

(i) is a health care professional licensed in Montana as provided in Title 37;

(ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;

(iii) has had a student loan incurred as a result of health-related education; and

(iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment program described in subsection (12)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (12)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional.

(13) Notwithstanding the provisions of subsection (1), adjusted gross income does not include 40% of capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

(14) By November 1 of each year, the department shall multiply the amount of pension and annuity income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii) by the inflation factor for that tax year, but using the year 2009 consumer price index, and rounding the results to the nearest $10. The resulting amounts are effective for that tax year and must be used as the basis for the exemption determined under subsection (2)(c). (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)"

**Section 2. Effective date.** [This act] is effective on passage and approval.

**Section 3. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2012.

Approved May 6, 2013

# CHAPTER NO. 399

[SB 162]

AN ACT GENERALLY REVISING HAIL INSURANCE LAWS; TRANSFERRING THE ADMINISTRATIVE RESPONSIBILITY FOR HAIL INSURANCE FEES FROM THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF AGRICULTURE; TRANSFERRING CERTAIN ADMINISTRATIVE DUTIES FOR THE HAIL INSURANCE PROGRAM FROM THE BOARD OF HAIL INSURANCE TO THE DEPARTMENT OF AGRICULTURE; CLARIFYING THE HAIL INSURANCE APPLICATION PROCESS; IMPOSING INTEREST ON DELINQUENT HAIL INSURANCE FEES; PROVIDING RULEMAKING AUTHORITY; CLARIFYING THE PROCESS FOR ADJUSTING CROP LOSSES FROM HAIL FOR THE PURPOSES OF THE HAIL INSURANCE PROGRAM; AMENDING SECTIONS 80-2-203, 80-2-204, 80-2-206, 80-2-207, 80-2-208, 80-2-221, 80-2-222, 80-2-224, 80-2-225, 80-2-230, 80-2-232, 80-2-242, 80-2-243, AND 80-2-244, MCA; REPEALING SECTIONS 80-2-226 AND 80-2-231, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 80-2-203, MCA, is amended to read:

**"80-2-203. Participation in program — fee.** (1) A person or an association of persons engaged in the growing of crops or other agricultural or horticultural products subject to injury or destruction by hail may, by individual or joint election filed with and approved by the board of hail insurance, accept the provisions of this part and elect to become subject to this part. The risks may be classified by the board, and suitable fees may be imposed as agreed upon by the board and the persons. The persons are entitled to the benefits and protection afforded by the insurance provisions of this part.

(2) Each person who ~~signifies a desire~~ *desires* to become subject to the provisions of this part shall file with the department ~~of revenue~~ the properly filled out form not later than August 15. The person is chargeable with the fee provided for on lands growing crops subject to injury or destruction by hail and shall share in the protection and benefits under the hail insurance provisions of

this part. The application for hail insurance is in full force and effect at 12:01 a.m. on the day immediately following ~~the acceptance~~ *submission* of the application ~~by~~ *to* the department ~~of revenue~~.

(3) This part may not be construed to empower anyone except the actual owner of the land to make the land subject to the hail fee provided in this part."

**Section 2.** Section 80-2-204, MCA, is amended to read:

**"80-2-204. Duty of department ~~of revenue~~ — election of benefits of law.** The department ~~of revenue~~ shall upon request explain *the provisions of this part* to each person engaged in the growing of crops subject to injury or destruction by hail ~~the provisions of this part~~. The department ~~of revenue~~ shall issue hail insurance policies to each person who desires to become subject to this part, to become liable for the fee provided *for* in this part, and to be eligible for the benefits and protection of this part. A person who elects to become subject to this part is liable for the fees for hail insurance and shall participate in the benefits and protection afforded by this part. The owners of lands worked by others under lease or contract *or the lessee of land under lease or contract* may make the election for hail insurance~~, or the lessee of the land~~ *and* may tender payment~~, in cash,~~ of the fee ~~levied~~ *charged* for hail insurance to the officer authorized to receive payment."

**Section 3.** Section 80-2-206, MCA, is amended to read:

**"80-2-206. ~~Cash payment~~ *Payment.*** When an applicant for hail insurance ~~tenders cash~~ pays for the insurance ~~to the department of revenue~~ *at the time of application*, the applicant is allowed a discount of 4%~~. The hail~~*, less any transaction fees, and the* insurance must be issued ~~upon the cash payment less the 4%~~ *when the application and payment are received*. ~~The charge for the insurance must be based on the maximum rates shown on the application for hail insurance. If the current rates are reduced later, the board of hail insurance shall arrange for the proper refund to the insured.~~ All ~~cash~~ *payments for hail insurance* received by the department ~~of revenue~~ must be ~~deposited with~~ *transferred to* the state treasurer *for deposit pursuant to 80-2-232*."

**Section 4.** Section 80-2-207, MCA, is amended to read:

**"80-2-207. Delinquent fees — application by delinquent — crop lien.** (1) An owner of land who ~~has more than 1 year's~~ *is* delinquent *in paying* fees ~~on the land~~ *pursuant to this part* may not be allowed hail insurance under the provisions of this part~~,~~ unless the owner's application is accompanied by a ~~cash~~ payment for the *delinquent* amount*, including interest imposed under 80-2-230, plus the amount* that would be due on the application for that year.

(2) Any grower who is unable to secure state hail insurance under the provisions of this part because of delinquent fees or for other reasons may make an application to the department ~~of revenue~~, and the department ~~of revenue~~ may ~~receive and~~ accept the application when the applicant furnishes a sufficient crop lien that is subject only to a seed lien. The crop lien may be accepted only under rules ~~and requirements that may be~~ prescribed by the board of hail insurance and under the provision that the board may cancel any hail insurance accepted in violation of the rules ~~and requirements~~. Upon receipt of the application, the department ~~of revenue~~ shall make a record of the application and shall file the ~~original in the office of the clerk and recorder of the county~~ *lien with the secretary of state*. The department ~~of revenue~~ shall also send a bill to the grower for the proper amount due for hail insurance under the provisions of this part.

(3) A tenant who has delinquent hail insurance that was secured by a crop lien ~~and was not secured~~ *but not* by real estate ~~may~~ *is* not ~~be~~ allowed another policy in any succeeding year until the delinquent amount*, including interest imposed pursuant to 80-2-230,* is paid ~~or until the tenant pays cash for the current hail insurance~~.

(4) If a tenant becomes delinquent *in paying* for hail insurance after having failed to apply for relief as provided by the board under 80-2-229, the tenant may apply to the board for a reduction *in the fee initially charged*. If the reasons for requesting a reduction are approved by the board, the board may reduce the ~~charge~~ *fee* to not less than one-half the original amount charged."

**Section 5.** Section 80-2-208, MCA, is amended to read:

**"80-2-208. Maximum insurance.** ~~When the reserve fund is determined actuarially sound, as provided in 80-2-228, the~~ *The* board may write not more than $50 *of* insurance on each acre of crops on nonirrigated land and not more than $76 *of insurance* on each acre on irrigated land*, except that the board may specify different maximums for specialty crops*. When more than one party desires hail insurance on the same crop, each party is entitled to the share of the maximum provided on each acre as represented by that person's interest in the crop. ~~Either~~ *Any* party may insure the party's share in the crop for any amount up to and including the maximum on each acre if the ~~others~~ *other parties* waive their right to insure."

**Section 6.** Section 80-2-221, MCA, is amended to read:

**"80-2-221. Fee for hail insurance.** (1) A fee is imposed on all ~~lands~~ *land* in this state growing crops subject to injury or destruction by hail~~,~~ *if* the owners of ~~which~~ *the land* have elected to become subject to the provisions of this part.

(2) The board of hail insurance shall annually estimate, as accurately as possible, the amount required to pay all losses, interest on warrants, and costs of administration and shall recommend *to the department* a fee to be imposed on each kind of land ~~respectively,~~ subject to the provisions of this part~~, to the department of revenue~~. The rates recommended to apply on the ~~lands of owners~~ *land* must be applied in the same proportions to the crops of those *landowners* insured on a personal basis."

**Section 7.** Section 80-2-222, MCA, is amended to read:

**"80-2-222. Board to establish amount of rates — disposition of funds.** (1) The board of hail insurance may, when it considers it advisable, establish as many districts as it considers advisable and may maintain maximum rates in various parts of the state. The rates must be commensurate with the risk incurred as nearly as it can determine from past experiences or from any records available.

(2) Notice of the various rates established for any year must be plainly printed on the application for hail insurance, and the rates for the year must be determined and imposed by the board of hail insurance for each of the various districts as established, in proportions that will in the board's judgment be fair and equitable.

(3) The ~~board of hail insurance~~ *department* may accept and expend all funds received by it, including amounts repaid as principal and interest on investments. The funds are statutorily appropriated, as provided in 17-7-502, to the board of hail insurance for the purposes of this chapter. Expenditures for actual and necessary expenses required for the efficient administration of this part must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

(4) In establishing the rates provided in this section, the board of hail insurance shall provide for:

(a) the payment of all expenses of administration, together with all interest owed or to be owing on registered warrants;

(b) that portion of the losses incurred during the current year that are not paid from funds drawn from the reserve;

(c) the maintenance of the reserve, a part or all of which may be used in any 1 year for the purpose of paying the costs of administration, interest on the warrants, and losses as settled and adjusted by the board, including the losses sustained in any prior year or years under the hail insurance law that have not been paid.

(5) If at the end of any hail insurance season the board determines that more funds are accumulating from the current year's rates than were estimated when the rates were established and are in excess of the need for the payment of losses and expenses and maintenance of the reserve, the board may, at its discretion, refund the excess to the persons insured for the year~~,~~ on a pro rata or percentage basis.

(6) The board of hail insurance may direct the board of investments to invest funds from the enterprise fund pursuant to the provisions of the unified investment program for state funds. The income from the investments must be credited to the board of hail insurance account in the enterprise fund."

**Section 8.** Section 80-2-224, MCA, is amended to read:

**"80-2-224. Fee — notice — when payable.** ~~Notice of the fee must be mailed by the department of revenue to~~ *No later than November 1, the department shall notify* each person insured ~~in the same manner and at the same time as notices of property taxes~~ *of the amount of the fee* due~~. The~~ *for hail insurance and that the* fee ~~is payable~~ *must be paid* to the department ~~of revenue~~ *by November 30*."

**Section 9.** Section 80-2-225, MCA, is amended to read:

**"80-2-225. Real estate lien — creation.** The hail insurance fees chargeable to the lands of each person who elects to become subject to this part must be collected by the department ~~of revenue~~. If the fees are not paid, they are a lien on the lands against which they are imposed."

**Section 10.** Section 80-2-230, MCA, is amended to read:

**"80-2-230. Collection of fees — release of lien — *interest*.** (1) The department ~~of revenue~~ shall collect all fees imposed under this part~~. The department of revenue shall deposit~~ *and transfer* the money ~~with~~ *collected to* the state treasurer *for deposit pursuant to 80-2-232.* The department ~~of revenue~~ shall use due diligence in ~~making the collections of~~ *collecting* the fees provided *for* in this part.

(2) All insurance fees~~, whether imposed against land or in the form of special assessments secured by crop liens,~~ are payable in full ~~and not in semiannual payments~~ on or before November 30 of each year in which the fees are imposed.

(3) When the amount due on any hail insurance secured by a ~~crop~~ lien is paid, the department ~~of revenue~~ shall promptly endorse on the lien ~~on file in the office of the county clerk and recorder~~ the amount paid ~~with~~ *and* the date of payment. The endorsement is considered a satisfaction and release of the lien.

(4) The ~~penalty and~~ *department shall impose* interest ~~provisions of 15-1-216 apply to~~ *for* late payments of fees imposed under this part~~.~~ *at the rate of 2% a month or fraction of a month on the unpaid fees. The interest imposed under this*

*subsection accrues daily on all unpaid fees from the date on which the fees were originally due.*"

**Section 11.** Section 80-2-232, MCA, is amended to read:

**"80-2-232. ~~Department of revenue's~~ *Department's* duty — warrants — transfers to state general fund.** (1) The department ~~of revenue~~ shall ~~receive~~ *transfer to the state treasurer* all money ~~paid~~ *collected* under this part ~~and shall place the money in trust for the hail insurance program to the credit of the enterprise fund. All money collected by the board must be deposited~~ *for deposit* in the enterprise fund~~, and all~~. *All covered* losses must be paid from ~~that~~ *the* fund.

*(2) (a)* All ~~other~~ costs *other than covered losses* are administrative expenses and must be paid from the ~~board's~~ enterprise fund.

*(b)* If registered warrants are presented and there is no money to pay the warrants, the warrants must be registered and bear interest at the rate of 4% a year until called for payment by the state treasurer.

~~(2) The department of revenue may retain 2% of the gross annual fees imposed and collected under this part for administrative costs associated with billing and collection of hail insurance premiums.~~

(3) Upon authorization from the board of hail insurance, the ~~state treasurer~~ *department* shall transfer ~~out of the board's~~ *from the* enterprise fund to the *state* general fund ~~of the state of Montana~~ 1.5% of the ~~gross annual fees imposed and~~ *hail insurance premiums* collected ~~in the state of Montana~~ *during the calendar year not to exceed $100,000*."

**Section 12.** Section 80-2-242, MCA, is amended to read:

**"80-2-242. ~~Appraisers~~ *Adjusters* — appointment — qualifications — duties.** (1) The department ~~of agriculture~~ shall ~~as soon as practicable each year~~ retain a sufficient number of ~~appraisers~~ *adjusters* to appraise all losses by hail ~~incurred~~ *that are covered by hail insurance* under this part ~~in the various counties. The persons so appointed shall be actively engaged in farming or shall have had practical experience in farming.~~

(2) The ~~board~~ *department* may call on one or more of the ~~duly appointed appraisers for the adjustment of~~ *adjusters to appraise* each ~~and every~~ loss, and the ~~said appraisers~~ *adjusters* shall promptly report their findings to the ~~board~~ *department* according to the rules ~~provided~~ *adopted* by the board.

(3) ~~No appraiser who shall be~~ *An adjuster who is* a relative, attorney, agent, employee, or creditor *of a person incurring a crop loss due to hail and subject to insurance coverage under this part* or ~~in any manner interested by~~ *who has an interest in a* lien~~,~~ *or* mortgage~~, or otherwise in~~ *on* the crop injured or destroyed ~~shall~~ *may not appraise or* assist in ~~adjusting any such~~ *appraising the* loss.

~~(4) The board may send any duly appointed appraiser or appraisers into any county as the occasion may require.~~"

**Section 13.** Section 80-2-243, MCA, is amended to read:

**"80-2-243. Disputed appraisal.** (1) If the party that has sustained the loss is dissatisfied with and refuses to accept the ~~adjustment~~ *appraisal* made by the official ~~appraiser~~ *adjuster*, the party has the right to appeal to the board of hail insurance. The party shall make the appeal ~~by certified mail~~ within 10 days after receiving the ~~adjustment offer of the board in writing~~ *appraisal. The board of hail insurance shall arrange for a second appraisal by another adjuster.* ~~Also the board may require the posting of a cash bond of $25 with the request for reappraisal of the first adjustment. If the board requires the posting of the $25~~

~~bond, the board may retain it if an increase is not allowed. If an increase is obtained, the board shall return the bond to the claimant.~~

(2) If the adjuster who makes ~~the~~ *a* second appraisal *pursuant to the appeal* fails to secure an agreement, the claimant may submit the matter to arbitration as provided in this subsection or sue the board in the district court of the county where the loss occurred, within 90 days from the date of receipt of written notice of the second appraisal. The actions must be trials de novo and the Montana Rules of Civil Procedure apply. ~~If a claimant demands arbitration, the claimant shall, if required by the board, furnish a cash bond to the board in the sum of $50, which must accompany the application. If there is not sufficient allowance made to any claimant after arbitration to cover the cost of arbitration without the use of the $50 bond, the board may use a part or all of the cash bond. If the claimant secures an increase, the bond must be promptly returned to the claimant.~~ If the claimant elects to submit the matter to arbitration, the claimant shall then appoint one disinterested person as ~~appraiser~~ *an adjuster*, the official ~~appraiser~~ *adjuster* shall appoint another person as ~~appraiser~~ *an adjuster*, the two shall select a third disinterested person *as an adjuster*, and the three shall then proceed to ~~adjust~~ *appraise* the loss in the same manner as specified in 80-2-242. The judgment of the majority is the judgment of the ~~appraisers~~ *adjusters* and is binding upon both parties as the final determination of the loss.

(3) (a) If the insured does not recover a greater sum than allowed by the ~~official appraiser~~ *adjuster* in the first instance, the insured shall pay the expenses of the three ~~appraisers~~ *adjusters* and their witnesses in making the ~~adjustment~~ *appraisal*, but if the insured is awarded a larger sum, the expenses must be paid by the ~~board~~ *department*.

(b) If the insured is required to pay the expenses of the ~~reappraisement~~ *reappraisal* as provided in subsection (3)(a), the ~~board~~ *department* may deduct the amount of the expenses from the amount allowed the insured before making settlement for the loss.

(4) The *department or the* board shall examine all reports of ~~appraisers~~ *adjusters* and verify the reports and adjust all losses and for those purposes may order hearings, subpoena witnesses, conduct examinations, and do all things necessary to secure a fair and impartial ~~appraisement~~ *appraisal* of losses by hail."

**Section 14.** Section 80-2-244, MCA, is amended to read:

**"80-2-244. Payment of losses.** (1) The ~~board of hail insurance~~ *department* shall, as soon as practicable after the loss has been sustained, arrange for the payment of the loss in the following manner. From the amount of the loss as adjusted for each claimant, the ~~board~~ *department* shall deduct the amount that the claimant then owes as a delinquent hail insurance fee and the maximum amount assessed as a hail insurance fee for the current year.

(2) The ~~board~~ *department* shall on or before November 1 order payment for the balance of the adjustment to be sent to the claimant, provided that the payment for loss may not exceed the maximum amounts established in 80-2-208. A claimant may not receive payment for any loss incurred if the loss does not equal or exceed 5% of the total value of the crop insured. If the losses in any year exceed the current fees plus the reserve, then the payment of all losses must be prorated among all growers having loss claims adjusted and approved, and the unpaid balance of the losses must be paid out of the reserve without interest in the order that the ~~board~~ *department* directs when, in the judgment of the ~~board~~ *department*, there is sufficient money to provide for the payment of the claims and other items payable out of the reserve. ~~In any year, the board may by~~

~~resolution authorize its presiding officer and secretary to borrow money that the board may consider necessary for the purpose of paying all warrants as issued.~~

~~(3) For any money borrowed under the provisions of this part, the board shall cause warrants to be drawn. The warrants must bear interest at a rate not to exceed 6% a year, and the warrants and the interest on the warrants must be paid out of funds from the state hail insurance program as they are collected. The board may not at any time borrow a total sum greater than the amount of the fees imposed for the current year, together with delinquent fees that remain unpaid.~~"

**Section 15. Rules — hail insurance fees.** The department and the board of hail insurance shall adopt rules necessary for the administration and collection of hail insurance fees pursuant to this part.

**Section 16. Repealer.** The following sections of the Montana Code Annotated are repealed:

80-2-226. Crop lien — when created — assessment.

80-2-231. Foreclosure of lien.

**Section 17. Codification instruction.** [Section 15] is intended to be codified as an integral part of Title 80, chapter 2, part 2, and the provisions of Title 80, chapter 2, part 2, apply to [section 15].

**Section 18. Effective date.** [This act] is effective January 1, 2014.

Approved May 6, 2013

# CHAPTER NO. 400

[SB 175]

AN ACT GENERALLY REVISING SCHOOL FINANCE LAWS BY INCREASING FUNDING, REDUCING SCHOOL DISTRICT PROPERTY TAXES, AND INCREASING FLEXIBILITY TO SUPPORT IMPROVED ACADEMIC PERFORMANCE OF STUDENTS ENROLLED IN PUBLIC SCHOOLS; CREATING A K-12 DATA TASK FORCE; ESTABLISHING A DATA-FOR-ACHIEVEMENT PAYMENT; REDIRECTING OIL AND NATURAL GAS PRODUCTION TAX REVENUE FROM THE STATE GENERAL FUND TO A NEW NATURAL RESOURCE DEVELOPMENT K-12 FUNDING PAYMENT TO SUPPORT BASE BUDGETS OF SCHOOL DISTRICTS; ENHANCING THE STATEWIDE K-12 DATA SYSTEM TO IMPROVE TIMELY ACCESS TO INFORMATION NEEDED TO POSITIVELY IMPACT STUDENT PERFORMANCE; STRENGTHENING SAFEGUARDS TO PROTECT THE PRIVACY OF STUDENT DATA; AMENDING THE DEFINITION OF BASE AID TO INCLUDE THE NATURAL RESOURCE DEVELOPMENT K-12 FUNDING PAYMENT AND THE TOTAL DATA-FOR-ACHIEVEMENT PAYMENT; APPLYING INFLATIONARY ADJUSTMENTS TO ENTITLEMENTS; REVISING AND INCREASING THE BASIC ENTITLEMENT; ALLOWING SCHOOL DISTRICTS TO ADD INCREASES IN THEIR BASIC AND PER-ANB ENTITLEMENT TO THE PREVIOUS YEAR'S GENERAL FUND BUDGET; REVISING AND CREATING EXCEPTIONS TO THE LIMITS, ALLOCATION, AND BUDGETING REQUIREMENTS FOR A SCHOOL DISTRICT RECEIVING OIL AND NATURAL GAS PRODUCTION TAX REVENUE; ADDING A THIRD ENROLLMENT COUNT TO CALCULATE ANB; REVISING THE CALCULATION OF ANB TO INCLUDE STUDENTS MASTERING CONTENT IN FEWER HOURS THAN OTHERWISE REQUIRED; ALIGNING

THE REQUIREMENT OF REMOVING FUNDING FOR A SCHOOL LOSING ACCREDITATION WITH THE BOARD OF PUBLIC EDUCATION'S ACCREDITATION MODEL; REVISING WHEN AN INCREASE TO ANB IS APPROVED BASED ON UNUSUAL ENROLLMENT FOR PURPOSES OF ESTABLISHING THE DISTRICT'S ENSUING YEAR'S BASIC ENTITLEMENT AND PER-ANB ENTITLEMENT; EXTENDING THE DEADLINE FOR CERTAIN SCHOOL DISTRICT FUND BALANCE LIMITS; AMENDING BONDING PROVISIONS TO ALLOW FOR THE ISSUANCE AND NEGOTIATION OF OIL AND NATURAL GAS REVENUE BONDS FOR SCHOOL PURPOSES; PROVIDING FOR SECURITY FOR OIL AND NATURAL GAS PRODUCTION BONDS; MODIFYING RECIPIENTS OF THE STATE OIL AND NATURAL GAS IMPACT ACCOUNT; PROVIDING THAT ANY EXCESS INTEREST AND INCOME REVENUE ABOVE $1 MILLION IN THE GUARANTEE ACCOUNT MUST BE ALLOCATED TO THE DISTRIBUTION OF THE REVENUE BETWEEN SCHOOL DISTRICT PROPERTY TAX RELIEF AND INCREASED BUDGET AUTHORITY FOR FACILITIES REPAIRS AND OTHER PURPOSES; SPECIFYING AN INTENT THAT INCREASED BUDGET AUTHORITY OF SCHOOL DISTRICTS ABOVE INFLATION BE USED TO IMPLEMENT RECENT CHANGES TO THE ACCREDITATION STANDARDS ADOPTED BY THE BOARD OF PUBLIC EDUCATION; PROVIDING AN APPROPRIATION; ESTABLISHING A STATE SPECIAL REVENUE ACCOUNT TO TRANSFER MONEY TO THE GUARANTEE ACCOUNT TO SUPPORT INCREASES IN THE BASIC ENTITLEMENT AND PROVIDING FOR A TRANSFER FROM THE GENERAL FUND TO THE ACCOUNT; ESTABLISHING A STATE SCHOOL OIL AND NATURAL GAS DISTRIBUTION ACCOUNT; AMENDING SECTIONS 20-7-102, 20-7-104, 20-9-141, 20-9-306, 20-9-308, 20-9-310, 20-9-311, 20-9-314, 20-9-323, 20-9-326, 20-9-342, 20-9-344, 20-9-403, 20-9-406, 20-9-408, 20-9-422, 20-9-423, 20-9-426, 20-9-427, 20-9-430, 20-9-437, 20-9-438, 20-9-440, 20-9-517, 20-9-518, AND 20-9-622, MCA; AMENDING SECTION 29, CHAPTER 418, LAWS OF 2011; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. K-12 data task force.** (1) There is a K-12 data task force established by the office of public instruction.

(2) The K-12 data task force is composed of:

(a) The presiding officer and vice presiding officer of the senate and house standing committees on education and the presiding officer and vice presiding officer of the joint subcommittee for education that deals with appropriations or their designees;

(b) additional positions appointed by the majority vote of the presiding officers and vice presiding officers referred to in subsection (2)(a), as follows:

(i) three elected school board trustees consisting of one each from a class 1, class 2, and class 3 school district;

(ii) three school administrators consisting of one each employed by a class 1, class 2, and class 3 school district;

(iii) three teachers consisting of one each employed by a class 1, class 2, and class 3 school district;

(iv) three technology staff consisting of one each employed by a class 1, class 2, and class 3 school district;

(v) six parents, consisting of one parent of an elementary pupil currently enrolled in each of a class 1, class 2, and class 3 school district and one parent of a high school pupil currently enrolled in each of a class 1, class 2, and class 3 school district; and

(vi) three school district clerks, as provided in 20-3-325, consisting of one each employed by a class 1, class 2, and class 3 school district.

(3) The K-12 data task force shall serve in an advisory capacity to the office of public instruction. The task force shall review, monitor, and provide input and guidance in enhancing the statewide K-12 data system pursuant to 20-7-104.

(4) Unless otherwise provided by law, each member is entitled to be paid $50 for each day in which the member is engaged in the performance of duties under this section and is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of task force duties. Members who are full-time salaried officers or employees of this state or of a political subdivision of this state are not entitled to be compensated for their service as members except when they perform their task force duties outside their regular working hours or during hours charged against their leave time, but those members are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

**Section 2. Data-for-achievement payment.** (1) The state shall provide a data-for-achievement payment to public school districts as defined in 20-6-101 and 20-6-701. The data-for-achievement payment is the district's ANB, calculated in accordance with 20-9-311, multiplied by:

(a) $10 for fiscal year 2014;

(b) $15 for fiscal year 2015; and

(c) $20 for fiscal year 2016 and subsequent fiscal years.

(2) Funds received for the data-for-achievement payment must be used by a school district to pay for access fees or other costs associated with use of or participation in the statewide data system administered by the office of public instruction or a comparable data system provided by a private vendor, including data entry and staff training on use of the systems.

(3) Unless funds are otherwise appropriated at higher amounts by the legislature, the office of public instruction may spend no more than $500,000 per biennium for the purposes of mediating with vendors, developing a plan, preparing a request for proposal solicitation package, managing the vendor contract, and implementing a plan with school districts for the statewide data system. This limitation does not apply if the office of public instruction develops and administers the statewide data system without a vendor.

**Section 3.** Section 20-7-102, MCA, is amended to read:

**"20-7-102. Accreditation of schools.** (1) The conditions under which each elementary school, each middle school, each junior high school, 7th and 8th grades funded at high school rates, and each high school operates must be reviewed by the superintendent of public instruction to determine compliance with the standards of accreditation. The accreditation status of each school must then be established by the board of public education upon the recommendation of the superintendent of public instruction. Notification of the accreditation status for the applicable school year or years must be given to each district by the superintendent of public instruction.

(2) A school may be accredited for a period consisting of 1, 2, 3, 4, or 5 school years, except that multiyear accreditation may be granted only to schools that are in compliance with 20-4-101.

(3) A nonpublic school may, through its governing body, request that the board of public education accredit the school. Nonpublic schools may be accredited in the same manner as provided in subsection (1).

(4) As used in this section, "7th and 8th grades funded at high school rates" means an elementary school district or K-12 district elementary program whose 7th and 8th grades are funded as provided in ~~20-9-306(14)(c)(ii)~~ *20-9-306(15)(c)(ii)*."

**Section 4.** Section 20-7-104, MCA, is amended to read:

**"20-7-104. Transparency and public availability of public school performance data — reporting — *availability for timely use to improve instruction*.** (1) The office of public ~~instruction shall develop a publicly available~~ *instruction's statewide* data system ~~that~~ *must, at a minimum:*

*(a) include data entry and intuitive reporting options that school districts can use to make timely decisions that improve instruction and impact student performance while creating a collaborative environment for parents, teachers, and students to work together in improving student performance. Options that the office of public instruction shall incorporate and make available for each school district must include data linkages to provide for automated conversion of data from systems already in use by school districts or by the office of public instruction that allow districts to collect, manage, and present local classroom assessment scores, grades, attendance, and other data to assist in instructional intervention alongside the existing school accountability and statewide student achievement results. The office of public instruction shall ensure that the design of the system is enhanced to prioritize collaborative support of each student's needs by classroom educators, administrators, and parents.*

*(b)* ~~displays an~~ *display a publicly available* educational data profile for each school district *that protects each student's education records in compliance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, as amended, and its implementing regulations at 34 CFR, part 99*.

(2) ~~Each~~ *Subject to subsection (1)(b), each* school district's educational profile must include, at a minimum, the following elements:

(a) school district contact information and links to district websites, when available;

(b) state criterion-referenced testing results;

(c) program and course offerings;

(d) student enrollment and demographics by grade level; and

(e) graduation rates.

(3) Each school district shall annually report to the office of public instruction and publish and post on the school district's internet website the following district data for the preceding school year:

(a) the number and type of employee positions, including administrators;

(b) for the current employee in each position:

(i) the total amount of compensation paid to the employee by the district. The total amount of compensation includes but is not limited to the employee's base wage or salary, overtime pay, and other income from school-sanctioned extracurricular activities, including coaching and similar activities; and

(ii) the certification held by and required of the employee;

(c) the student-teacher ratio by grade;

(d) (i) the amount, by category, spent by the district for operation and maintenance, stated in total cost and cost per square foot; and

(ii) the amount of principal and interest paid on bonds;

(e) the total district expenditures per student;

(f) the total budget for all funds;

(g) the total number of students enrolled and the average daily attendance;

(h) the total amount spent by the district on extracurricular activities and the total number of students that participated in extracurricular activities; and

(i) the number of students that entered the 9th grade in the school district but did not graduate from a high school in that district and for which the school district did not receive a transfer request. For reporting purposes, the students identified under this subsection (3)(i) are considered to have dropped out of school.

(4) Each school district shall also post on the school district's internet website a copy of every working agreement the district has with any organized labor organization and the district's costs, if any, associated with employee union representation, collective bargaining, and union grievance procedures and litigation resulting from union employee grievances.

(5) If a school district does not have an internet website, the school district shall publish the information required under subsections (2) and (3) in printed form and provide a copy of the information upon request at the cost incurred by the school district for printing only.

(6) The superintendent of public instruction shall continually *work in consultation with the K-12 data task force provided for in [section 1] to analyze the best options for a statewide data system that will best enhance the ability of school districts to use data for the purposes identified in this section. Emphasis must be placed on developing or purchasing and customizing a statewide data system that promotes and preserves community ownership and local control and that incorporates innovative technologies available in the marketplace that may be in use and that are successfully working in other states. The office of public instruction and the K-12 data task force shall collaborate to* enhance the statewide data system to support*:*

*(a) the needs of school districts in using data to improve instruction and student performance;*

*(b)* the collection of data from schools *through a process that provides for automated conversion of data from systems already in use by school districts or the office of public instruction and that resolves the repetition of data entry and redundancy of data requested that has been characteristic of the data system in the past and that otherwise reduces the diversion of district staff time away from instruction and supervision;*~~, implement a data collection plan to reduce redundant data requests,~~

*(c)* ~~increase~~ *increased use of* data ~~use~~ from the centralized system by various functions within the office of public instruction*;* and

*(d)* ~~promote~~ transparency in reporting to schools, school districts, communities, and the public. ~~Actionable data analysis must be produced to promote academic improvement.~~

(7) The superintendent of public instruction shall gather, maintain, and distribute longitudinal, actionable data in the following areas:

(a) statewide student identifier;

(b) student-level enrollment data, including average daily attendance;

(c) student-level statewide assessment data;

(d) information on untested students;

(e) student-level graduation and dropout data;

(f) ability to match student-level K-12 and higher education data;

(g) a statewide data audit system;

(h) a system to track student achievement with a direct teacher-to-student match to help track, report, and create opportunities for improved individual student performance;

(i) student-level course completion data, including transcripts, to assess career and college readiness; and

(j) student-level ACT results, scholastic achievement test results, and advanced placement exam data.

(8) The superintendent of public instruction shall emphasize the creation of and distribution of individual diagnostic data for each student in a manner that is timely and protects the privacy rights of students and families as they relate to education so that school districts may use the data to support timely academic intervention as needed and to otherwise improve the academic achievement of the students of each school district.

*(9) In addition to the data privacy protections in subsection (1)(b), the superintendent of public instruction may provide personally identifiable information gathered, maintained, and distributed pursuant to subsection (7) and any other personally identifiable data only to the office of public instruction, the school district where the student is or has been enrolled, the parent, and the student. The superintendent of public instruction may not share, sell, or otherwise release personally identifiable information to any for-profit business, nonprofit organization, public-private partnership, governmental unit, or other entity unless the student's parent has provided written consent specifying the data to be released, the reason for the release, and the recipient to whom the data may be released.*

~~(9)~~*(10)* On or before June 30, 2013, the superintendent of public instruction shall begin presenting longitudinal data on academic achievement and shall develop plans for a measurement of growth for the statewide student assessment required by the board of public education."

**Section 5.** Section 20-9-141, MCA, is amended to read:

**"20-9-141. Computation of general fund net levy requirement by county superintendent.** (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid, *the natural resource development K-12 funding payment,* and the special education allowable cost payment for the district by totaling:

(i) the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

(ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) the general fund balance reappropriated, as established under the provisions of 20-9-104;

(ii) amounts received in the last fiscal year for which revenue reporting was required for each of the following:

(A) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4); and

(B) any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid;

(iii) anticipated oil and natural gas production taxes;

(iv) pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703; and

(v) school district block grants distributed under 20-9-630.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any general fund budget amount adopted by the trustees of the district, up to the BASE budget amount, to determine the general fund BASE budget levy requirement.

(d) Determine the sum of any amount remaining after the determination in subsection (1)(c) and any tuition payments for out-of-district pupils to be received under the provisions of 20-5-320 through 20-5-324, except the amount of tuition received for a pupil who is a child with a disability in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2).

(e) Subtract the amount determined in subsection (1)(d) from any additional funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for the district by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the current total taxable valuation of the district, as certified by the department of revenue under 15-10-202, divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values by the county superintendent as the general fund net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) For each school district, the department of revenue shall calculate and report to the county superintendent the amount of revenue anticipated for the ensuing fiscal year from revenue from coal gross proceeds under 15-23-703."

**Section 6.** Section 20-9-306, MCA, is amended to read:

**"20-9-306. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district;

*(b) starting in fiscal year 2015, the natural resource development K-12 funding payment for a variable percentage of the basic and per-ANB*

*entitlements above the direct state aid for the general fund budget of a district, as referenced in subsection (10);*

~~(b)~~*(c)* guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and 40% of the special education allowable cost payment;

~~(c)~~*(d)* the total quality educator payment;

~~(d)~~*(e)* the total at-risk student payment;

~~(e)~~*(f)* the total Indian education for all payment; ~~and~~

~~(f)~~*(g)* the total American Indian achievement gap payment*; and*

*(h) the total data-for-achievement payment*.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, 100% of the total quality educator payment, 100% of the total at-risk student payment, 100% of the total Indian education for all payment, 100% of the total American Indian achievement gap payment, *100% of the total data-for-achievement payment,* and 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) for each high school district~~:~~*:*

~~(i) $256,003 for fiscal year 2012; and~~

~~(ii) $260,099 for each succeeding fiscal year;~~

*(i) $290,000 for fiscal years 2014 and 2015 and $300,000 for each succeeding fiscal year for school districts with an ANB of 800 or fewer; and*

*(ii) $290,000 for fiscal years 2014 and 2015 and $300,000 for each succeeding fiscal year for school districts with an ANB of more than 800, plus $12,000 for fiscal years 2014 and 2015 and $15,000 for each succeeding fiscal year for each additional 80 ANB over 800;*

(b) for each elementary school district or K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school~~:~~*:*

~~(i) $23,033 for fiscal year 2012;~~

~~(ii) $23,402 for each succeeding fiscal year; and~~

*(i) $40,000 for fiscal years 2014 and 2015 and $50,000 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of 250 or fewer; and*

*(ii) $40,000 for fiscal years 2014 and 2015 and $50,000 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of more than 250, plus $2,000 for fiscal years 2014 and 2015 and $2,500 for each succeeding fiscal year for each additional 25 ANB over 250;*

(c) for each elementary school district or K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school:

(i) for *the district's* kindergarten through grade 6 elementary program~~:~~*:*

~~(A) $23,033 for fiscal year 2012; and~~

~~(B) $23,402 for each succeeding fiscal year; plus~~

*(A) $40,000 for fiscal years 2014 and 2015 and $50,000 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of 250 or fewer; and*

*(B) $40,000 for fiscal years 2014 and 2015 and $50,000 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of more than 250, plus $2,000 for fiscal years 2014 and 2015 and $2,500 for each succeeding fiscal year for each additional 25 ANB over 250; and*

(ii) for ~~an~~ *the district's* approved and accredited junior high school ~~program~~, 7th and 8th grade ~~program~~ *programs*, or middle school~~:~~*:*

~~(A) $65,231 for fiscal year 2012; and~~

~~(B) $66,275 for each succeeding fiscal year.~~

*(A) $80,000 for fiscal years 2014 and 2015 and $100,000 for each succeeding fiscal year for the school districts or K-12 district elementary programs with combined grades 7 and 8 with an ANB of 450 or fewer; and*

*(B) $80,000 for fiscal years 2014 and 2015 and $100,000 for each succeeding fiscal year for school districts or K-12 district elementary programs with combined grades 7 and 8 with an ANB of more than 450, plus $4,000 for fiscal years 2014 and 2015 and $5,000 for each succeeding fiscal year for each additional 45 ANB over 450.*

(7) "Budget unit" means the unit for which the ANB of a district is calculated separately pursuant to 20-9-311.

(8) "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(9) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, the total quality educator payment, the total at-risk student payment, the total Indian education for all payment, the total American Indian achievement gap payment, *the total data-for-achievement payment,* and the greater of:

(a) 175% of special education allowable cost payments; or

(b) the ratio, expressed as a percentage, of the district's special education allowable cost expenditures to the district's special education allowable cost payment for the fiscal year that is 2 years previous, with a maximum allowable ratio of 200%.

*(10) "Natural resource development K-12 funding payment" means the payment, starting in fiscal year 2015, of a variable percentage of the basic and per-ANB entitlements above the direct state aid for the general fund budget of a district. The total payment to school districts may not exceed the greater of 50% of the fiscal year 2012 oil and natural gas production taxes deposited into the general fund pursuant to 15-36-331(4) or 50% of the oil and natural gas production taxes deposited into the general fund pursuant to 15-36-331(4) for the fiscal year occurring 2 fiscal years prior to the school fiscal year in which the payment is provided, plus any excess interest and income revenue appropriated*

*by the legislature pursuant to 20-9-622(3)(a). The amount of the natural resource development K-12 funding payment must be determined as follows:*

*(a) for fiscal year 2015, $3 million; and*

*(b) for fiscal year 2016 and each subsequent year, the payment must be, subject to the limitations of this subsection (10), an amount sufficient to offset any estimated increase in statewide revenue from the general fund BASE budget levy provided for in 20-9-141 that is anticipated to result from increases in the basic or per-ANB entitlements plus any excess interest and income revenue appropriated by the legislature pursuant to 20-9-622(3)(a). The superintendent of public instruction shall incorporate a natural resource development K-12 funding payment calculated in compliance with this subsection (10)(b) in preparing and submitting an agency budget pursuant to 17-7-111 and 17-7-112.*

~~(10)~~*(11)* "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

~~(11)~~*(12)* "Total American Indian achievement gap payment" means the payment resulting from multiplying $200 times the number of American Indian students enrolled in the district as provided in 20-9-330.

~~(12)~~*(13)* "Total at-risk student payment" means the payment resulting from the distribution of any funds appropriated for the purposes of 20-9-328.

~~(13)~~*(14)* "Total Indian education for all payment" means the payment resulting from multiplying $20.40 times the ANB of the district or $100 for each district, whichever is greater, as provided for in 20-9-329.

~~(14)~~*(15)* "Total per-ANB entitlement" means the district entitlement resulting from the following calculations and using either the current year ANB or the 3-year ANB provided for in 20-9-311:

(a) for a high school district or a K-12 district high school program, a maximum rate of ~~$6,343~~ *$6,555* for fiscal year ~~2012~~ *2014* and ~~$6,444~~ *$6,691* for each succeeding fiscal year for the first ANB, decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school, a maximum rate of ~~$4,955~~ *$5,120* for fiscal year ~~2012~~ *2014* and ~~$5,034~~ *$5,226* for each succeeding fiscal year for the first ANB, decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school, the sum of:

(i) a maximum rate of ~~$4,955~~ *$5,120* for fiscal year ~~2012~~ *2014* and ~~$5,034~~ *$5,226* for each succeeding fiscal year for the first ANB for kindergarten through grade 6, decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of ~~$6,343~~ *$6,555* for fiscal year ~~2012~~ *2014* and ~~$6,444~~ *$6,691* for each succeeding fiscal year for the first ANB for grades 7 and 8, decreased at the rate of 50 cents per ANB for each additional ANB for grades 7

and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB.

*(16) "Total data-for-achievement payment" means the payment calculated as provided in [section 2].*

~~(15)~~*(17)* "Total quality educator payment" means the payment resulting from multiplying ~~$3,036 for fiscal year 2008 and~~ $3,042 ~~for each succeeding fiscal year times~~ *by* the number of full-time equivalent educators as provided in 20-9-327."

**Section 7.** Section 20-9-308, MCA, is amended to read:

**"20-9-308. BASE budgets and maximum general fund budgets.** (1) (a) The trustees of a district shall adopt a general fund budget that is at least equal to the BASE budget established for the district. The trustees of a district may adopt a general fund budget up to the maximum general fund budget or the previous year's general fund budget, whichever is greater.

(b) For purposes of the budget limitation in subsection (1)(a), the trustees may add any increase in ~~state funding~~ *direct state aid* for the *basic and per-ANB entitlements and any increases in state funding of the data-for-achievement payment under [section 2] and in the* general fund payments in 20-9-327 through 20-9-330 to the district's previous year's general fund budget.

(2) *(a)* ~~Whenever~~ *Except as provided in subsection (2)(b), whenever* the trustees of a district propose to adopt a general fund budget that exceeds the BASE budget for the district and *propose* to increase the over-BASE budget levy over *the highest* revenue previously authorized by the electors of the district or imposed by the district in ~~any of~~ *any of* the previous 5 years to support the general fund budget, the trustees shall submit a proposition to the electors of the district, as provided in 20-9-353.

*(b) The intent of this section is to increase the flexibility and efficiency of elected school boards without increasing school district property taxes. In furtherance of this intent and provided that budget limitations otherwise specified in law are not exceeded, the trustees of a district may increase the district's over-BASE budget levy without a vote if the board of trustees reduces nonvoted property tax levies authorized by law to be imposed by action of the trustees of the district by at least as much as the amount by which the over-BASE budget levy is increased. The ongoing authority for any nonvoted increase in the over-BASE budget levy imposed under this subsection must be decreased in future years to the extent that the trustees of the district impose any increase in other nonvoted property tax levies.*

(3) The BASE budget for the district must be financed by the following sources of revenue:

(a) state equalization aid, as provided in 20-9-343, including any guaranteed tax base aid for which the district may be eligible, as provided in 20-9-366 through 20-9-369;

(b) county equalization aid, as provided in 20-9-331 and 20-9-333;

(c) a district levy for support of a school not approved as an isolated school under the provisions of 20-9-302;

(d) payments in support of special education programs under the provisions of 20-9-321;

(e) nonlevy revenue, as provided in 20-9-141; and

(f) a BASE budget levy on the taxable value of all property within the district.

(4) The over-BASE budget amount of a district must be financed by a levy on the taxable value of all property within the district or other revenue available to the district, as provided in 20-9-141."

**Section 8.** Section 20-9-310, MCA, is amended to read:

**"20-9-310. (Temporary) Oil and natural gas production taxes for school districts — allocation and limits.** (1) *(a)* ~~The~~ *Except as provided in subsections (1)(b) and (8), the* maximum amount of oil and natural gas production taxes that a school district may retain is ~~130%~~ *130%* of the school district's maximum budget, determined in accordance with 20-9-308.

*(b) For fiscal years 2014 through 2017 for a school district with a maximum general fund budget of less than $1.5 million, the maximum amount of oil and gas production taxes that a school district may retain is 150% of the school district's maximum general fund budget.*

(2) Upon receipt of school district budget reports required under 20-9-134, the superintendent of public instruction shall provide the department of revenue with a list reporting the maximum general fund budget for each school district.

(3) The department of revenue shall make the full quarterly distribution of oil and natural gas production taxes as required under 15-36-332(6) until the amount distributed reaches the limitation in subsection (1) of this section. *The department of revenue shall deposit any amount exceeding the limitation in subsection (1) in the state school oil and natural gas distribution account provided for in [section 34].*

(4) *(a)* ~~For fiscal year 2012, any~~ *By the last day of the month immediately following the month in which the quarterly distribution of oil and natural gas production taxes in subsection (3) is made, the office of public instruction shall distribute any* amount of oil and natural gas production taxes exceeding the limitation in subsection (1) ~~must be deposited in the guarantee account as provided in 20-9-622.~~ *based on allocations determined by the department of revenue pursuant to subsection (3) in the following priority:*

*(i) to the other school district within the unified school system from which the oil and natural gas production revenue originates or to any school district having a joint board status with the district, as provided in 20-3-361, from which the oil and natural gas production revenue originates, up to 130% of the maximum budget of the school district receiving a distribution of revenue under this subsection (4)(a)(i) on a prorated basis;*

*(ii) if funds remain to be distributed after distribution to school districts under subsection (4)(a)(i), to all school districts immediately contiguous to the district from which the oil and natural gas production revenue originates, up to 130% of the maximum budget of each school district receiving a distribution of revenue under this subsection (4)(a)(ii) on a prorated basis. If there is more than one school district from which distributable oil and natural gas production revenue originates and is available for a distribution under this subsection (4)(a)(ii) that is immediately contiguous to a school district qualifying for receipt of a distribution of oil and natural gas revenue under this subsection (4)(a)(ii), the distribution of oil and natural gas production revenue must be prorated from the districts from which oil and natural gas production revenue originates in relative proportion to the amount that the oil and natural gas revenue available for distribution from each school district bears to the total oil and natural gas revenue available for distribution from all school districts from which the distributable revenue originates;*

*(iii) if funds remain to be distributed after distribution to school districts under subsection (4)(a)(ii), to all school districts that are located in whole or in part in the same county as the school district from which the oil and natural gas production revenue originates, up to 130% of the maximum budget of each school district receiving a distribution of revenue under this subsection (4)(a)(iii) on a prorated basis. If there is more than one school district from which distributable oil and natural gas production revenue originates and is available for distribution under this subsection (4)(a)(iii), the distribution of oil and natural gas production revenue must be prorated from the districts from which oil and natural gas production revenue originates in relative proportion to the amount that the oil and natural gas revenue available for distribution from each school district bears to the total oil and natural gas revenue available for distribution from all school districts from which the distributable revenue originates; and*

*(iv) if funds remain to be distributed after distribution to school districts under subsection (4)(a)(iii), to all school districts that are located in whole or in part in a county contiguous to a county where a horizontally completed well, as defined in 15-36-303, has been drilled within the last 3 years according to the department of natural resources and conservation, up to 130% of the maximum budget of each school district receiving a distribution under this subsection (4)(a)(iv) on a prorated basis. If there is more than one school district from which distributable oil and natural gas production revenue originates and is available for distribution under this subsection (4)(a)(iv), the distribution of oil and natural gas production revenue must be prorated from the districts from which oil and natural gas production revenue originates in relative proportion to the amount that the oil and natural gas revenue available for distribution from each school district bears to the total oil and natural gas revenue available for distribution from all school districts from which the distributable revenue originates.*

*(b) Any funds remaining after distribution under subsections (4)(a)(i) through (4)(a)(iv) must be deposited as follows:*

*(i) 70% of the retained amount must be deposited in the guarantee account provided for in 20-9-622;*

*(ii) 5% of the retained amount must be deposited in the state school oil and natural gas impact account provided for in 20-9-517; and*

*(iii) 25% of the retained amount must be distributed to the counties for deposit in the county school oil and natural gas impact fund provided for in 20-9-518.*

(5) Subject to the limitation in subsection (1) *and except as provided in subsection (7)*, the trustees shall budget and allocate the oil and natural gas production taxes received by the district as follows:

~~(a) for fiscal year 2012, the trustees shall budget in the general fund an amount of oil and natural gas production taxes equal to the lesser of 25% of the total oil and natural gas production taxes received by the district in the prior year or the general fund levy requirement;~~

~~(b) for fiscal year 2013, the trustees shall budget in the general fund an amount of oil and natural gas production taxes equal to the lesser of 35% of the total oil and natural gas production taxes received by the district in the prior year or the general fund levy requirement;~~

~~(c) for fiscal year 2014, the trustees shall budget in the general fund an amount of oil and natural gas production taxes equal to the lesser of 45% of the~~

~~total oil and natural gas production taxes received by the district in the prior year or the general fund levy requirement;~~

~~(d)~~*(a)* ~~for each succeeding fiscal year,~~ the trustees shall budget in the general fund an amount of oil and natural gas production taxes equal to the lesser of ~~55%~~ *25%* of the total oil and natural gas production taxes received by the district in the prior year or the general fund levy requirement;

~~(e)~~*(b)* oil and natural gas production taxes received by the district must be deposited in the general fund until the ~~budgeted amount~~ *limit under subsection (5)(a)* is reached; and

~~(f)~~*(c)* all remaining oil and natural gas production tax revenue may be deposited in any budgeted fund.

*(6) Except as provided in subsection (7), 50% of the oil and natural gas production taxes deposited in the general fund pursuant to subsection (5)(a) must be applied to the BASE budget levy. Remaining oil and natural gas production taxes deposited in the general fund may be applied to either the BASE budget levy or the over-BASE budget levy at the discretion of the board of trustees.*

*(7) The provisions of subsections (5) and (6) do not apply to the following:*

*(a) a district that has a maximum general fund budget of less than $1 million;*

*(b) a district whose oil and gas revenue combined with its adopted general fund budget total 105% or less of its maximum general fund budget;*

*(c) a district that has a maximum general fund budget of $1 million or more and has had an unusual enrollment increase approved by the superintendent of public instruction as provided in 20-9-314 in the year immediately preceding the fiscal year to which subsections (5) and (6) would otherwise apply;*

*(d) a district that has issued outstanding oil and natural gas revenue bonds. Any funds received pursuant to this section must first be applied by the district to payment of debt service obligations for oil and natural gas revenue bonds for the next 12-month period.*

*(8) The limit on oil and natural gas production taxes that a school district may retain under subsection (1) must be increased for any school district with an unusual enrollment increase approved by the superintendent of public instruction as provided in 20-9-314. The increase in the limit on oil and natural gas productions taxes that a school district may retain under subsection (1) applies in the year immediately following the fiscal year in which the office of public instruction has approved the district's unusual enrollment increase and must be calculated by multiplying $45,000 times each additional ANB approved by the superintendent of public instruction as provided in 20-9-314.*

~~(6)~~*(9)* In any year in which the actual oil and natural gas production taxes received by a school district are less than 50% of the total oil and natural gas production taxes received by the district in the prior year, the district may transfer money from any budgeted fund to its general fund in an amount not to exceed the amount of the shortfall.

~~(7) Beginning in fiscal year 2013, for any amount retained by the department of revenue in compliance with the limitation in subsection (1), the amount retained must be allocated as follows:~~

~~(a) 70% of the retained amount must be deposited in the guarantee account provided for in 20-9-622;~~

~~(b) 5% of the retained amount must be deposited in the state school oil and natural gas impact account provided for in 20-9-517; and~~

~~(c) 25% of the retained amount must be distributed to the counties for deposit in the county school oil and natural gas impact fund provided for in 20-9-518.~~ (Terminates June 30, ~~2016~~ *2016—sec. 29, Ch. 418, L. 2011*.)"

**Section 9.** Section 20-9-310, MCA, is amended to read:

**"20-9-310. ~~(Temporary)~~ Oil and natural gas production taxes for school districts — allocation and limits.** (1) ~~The~~ *Except as provided in subsection (8), the* maximum amount of oil and natural gas production taxes that a school district may retain is 130% of the school district's maximum budget, determined in accordance with 20-9-308.

(2) Upon receipt of school district budget reports required under 20-9-134, the superintendent of public instruction shall provide the department of revenue with a list reporting the maximum general fund budget for each school district.

(3) The department of revenue shall make the full quarterly distribution of oil and natural gas production taxes as required under 15-36-332(6) until the amount distributed reaches the limitation in subsection (1) of this section. *The department of revenue shall deposit any amount exceeding the limitation in subsection (1) in the state school oil and natural gas distribution account provided for in [section 34].*

(4) ~~For fiscal year 2012,~~ *By the last day of the month immediately following the month in which the quarterly distribution of oil and natural gas production taxes in subsection (3) is made, the office of public instruction shall distribute* any amount of oil and natural gas production taxes exceeding the limitation in subsection (1) ~~must be deposited in the guarantee account as provided in 20-9-622.~~ *based on allocations determined by the department of revenue pursuant to subsection (3) as follows:*

*(a) 70% of the retained amount must be deposited in the guarantee account provided for in 20-9-622;*

*(b) 5% of the retained amount must be deposited in the state school oil and natural gas impact account provided for in 20-9-517; and*

*(c) 25% of the retained amount must be distributed to the counties for deposit in the county school oil and natural gas impact fund provided for in 20-9-518.*

(5) Subject to the limitation in subsection (1) *and except as provided in subsection (7)*, the trustees shall budget and allocate the oil and natural gas production taxes received by the district as follows:

~~(a) for fiscal year 2012, the trustees shall budget in the general fund an amount of oil and natural gas production taxes equal to the lesser of 25% of the total oil and natural gas production taxes received by the district in the prior year or the general fund levy requirement;~~

~~(b) for fiscal year 2013, the trustees shall budget in the general fund an amount of oil and natural gas production taxes equal to the lesser of 35% of the total oil and natural gas production taxes received by the district in the prior year or the general fund levy requirement;~~

~~(c) for fiscal year 2014, the trustees shall budget in the general fund an amount of oil and natural gas production taxes equal to the lesser of 45% of the total oil and natural gas production taxes received by the district in the prior year or the general fund levy requirement;~~

~~(d)~~*(a)* ~~for each succeeding fiscal year,~~ the trustees shall budget in the general fund an amount of oil and natural gas production taxes equal to the lesser of ~~55%~~ *25%* of the total oil and natural gas production taxes received by the district in the prior year or the general fund levy requirement;

~~(e)~~*(b)* oil and natural gas production taxes received by the district must be deposited in the general fund until the ~~budgeted amount~~ *limit under subsection (5)(a)* is reached; and

~~(f)~~*(c)* all remaining oil and natural gas production tax revenue may be deposited in any budgeted fund.

*(6) Except as provided in subsection (7), 50% of the oil and natural gas production taxes deposited in the general fund pursuant to subsection (5)(a) must be applied to the BASE budget levy. Remaining oil and natural gas production taxes deposited in the general fund may be applied to either the BASE budget levy or the over-BASE budget levy at the discretion of the board of trustees.*

*(7) The provisions of subsections (5) and (6) do not apply to the following:*

*(a) a district that has a maximum general fund budget of less than $1 million;*

*(b) a district whose oil and gas revenue combined with its adopted general fund budget total 105% or less of its maximum general fund budget;*

*(c) a district that has a maximum general fund budget of $1 million or more and has had an unusual enrollment increase approved by the superintendent of public instruction as provided in 20-9-314 in the year immediately preceding the fiscal year to which subsections (5) and (6) would otherwise apply; or*

*(d) a district that has issued outstanding oil and natural gas revenue bonds. Any funds received pursuant to this subsection (7) must first be applied by the district to payment of debt service obligations for oil and natural gas revenue bonds for the next 12-month period.*

*(8) The limit on oil and natural gas production taxes that a school district may retain under subsection (1) must be increased for any school district with an unusual enrollment increase approved by the superintendent of public instruction as provided in 20-9-314. The increase in the limit on oil and natural gas production taxes that a school district may retain under subsection (1) applies in the year immediately following the fiscal year in which the office of public instruction has approved the district's unusual enrollment increase and must be calculated by multiplying $45,000 times each additional ANB approved by the superintendent of public instruction as provided in 20-9-314.*

~~(6)~~*(9)* In any year in which the actual oil and natural gas production taxes received by a school district are less than 50% of the total oil and natural gas production taxes received by the district in the prior year, the district may transfer money from any budgeted fund to its general fund in an amount not to exceed the amount of the shortfall.

~~(7) Beginning in fiscal year 2013, for any amount retained by the department of revenue in compliance with the limitation in subsection (1), the amount retained must be allocated as follows:~~

~~(a) 70% of the retained amount must be deposited in the guarantee account provided for in 20-9-622;~~

~~(b) 5% of the retained amount must be deposited in the state school oil and natural gas impact account provided for in 20-9-517; and~~

~~(c) 25% of the retained amount must be distributed to the counties for deposit in the county school oil and natural gas impact fund provided for in 20-9-518. (Terminates June 30, 2016—sec. 29, Ch. 418, L. 2011.)~~"

**Section 10.** Section 20-9-311, MCA, is amended to read:

**"20-9-311. Calculation of average number belonging (ANB) — ~~three-year~~ *3-year* averaging.** (1) Average number belonging (ANB) must be computed for each budget unit as follows:

(a) compute an average enrollment by adding a count of regularly enrolled full-time pupils who were enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on ~~February 1~~ *the first Monday in December* of the prior school fiscal year *and to a count of regularly enrolled pupils on the first Monday in February of the prior school fiscal year*~~,~~ or the next school day if those dates do not fall on a school day, and divide the sum by ~~two~~ *three*; and

(b) multiply the average enrollment calculated in subsection (1)(a) by the sum of 180 and the approved pupil-instruction-related days for the current school fiscal year and divide by 180.

(2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related days may be included in the calculation.

(3) When a school district has approval to operate less than the minimum aggregate hours under 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) (a) ~~For~~ *Except as provided in subsection (4)(d), for* the purpose of calculating ANB, enrollment in an education program:

(i) from 180 to 359 aggregate hours of pupil instruction per school year is counted as one-quarter-time enrollment;

(ii) from 360 to 539 aggregate hours of pupil instruction per school year is counted as half-time enrollment;

(iii) from 540 to 719 aggregate hours of pupil instruction per school year is counted as three-quarter-time enrollment; and

(iv) 720 or more aggregate hours of pupil instruction per school year is counted as full-time enrollment.

(b) *Except as provided in subsection (4)(d),* ~~Enrollment~~ *enrollment* in a program intended to provide fewer than 180 aggregate hours of pupil instruction per school year may not be included for purposes of ANB.

(c) Enrollment in a self-paced program or course may be converted to an hourly equivalent based on the hours necessary and appropriate to provide the course within a regular classroom schedule.

*(d) A school district may include in its calculation of ANB a pupil who is enrolled in a program providing fewer than the required aggregate hours of pupil instruction required under subsection (4)(a) or (4)(b) if the pupil has demonstrated proficiency in the content ordinarily covered by the instruction as determined by the school board using district assessments. The ANB of a pupil under this subsection (4)(d) must be converted to an hourly equivalent based on the hours of instruction ordinarily provided for the content over which the student has demonstrated proficiency.*

~~(d)~~*(e)* A pupil in kindergarten through grade 12 who is concurrently enrolled in more than one public school, program, or district may not be counted as more than one full-time pupil for ANB purposes.

(5) For a district that is transitioning from a half-time to a full-time kindergarten program, the state superintendent shall count kindergarten enrollment in the previous year as full-time enrollment for the purpose of calculating ANB for the elementary programs offering full-time kindergarten in the current year. For the purposes of calculating the 3-year ANB, the superintendent of public instruction shall count the kindergarten enrollment as one-half enrollment and then add the additional kindergarten ANB to the 3-year average ANB for districts offering full-time kindergarten.

(6) When a pupil has been absent, with or without excuse, for more than 10 consecutive school days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count.

(7) The enrollment of preschool pupils, as provided in 20-7-117, may not be included in the ANB calculations.

(8) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that*:*

*(a)* the ANB is calculated as a separate budget unit when:

~~(a)~~ (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled, full-time pupils of the school must be calculated as a separate budget unit for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and incorporated territory is not involved in the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iv) two or more districts consolidate or annex under the provisions of 20-6-422 or 20-6-423, the ANB and the basic entitlements of the component districts must be calculated separately for a period of 3 years following the consolidation or annexation. Each district shall retain a percentage of its basic entitlement for 3 additional years as follows:

(A) 75% of the basic entitlement for the fourth year;

(B) 50% of the basic entitlement for the fifth year; and

(C) 25% of the basic entitlement for the sixth year.

(b) *when* a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) *when* a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes

and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) *when* a school has ~~not been accredited~~ *been designated as nonaccredited* by the board of public education *because of failure to meet the board of public education's assurance and performance standards*, the regularly enrolled, full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE funding program for the district.

(9) The district shall provide the superintendent of public instruction with semiannual reports of school attendance, absence, and enrollment for regularly enrolled students, using a format determined by the superintendent.

(10) (a) Except as provided in subsections (10)(b) and (10)(c), enrollment in a basic education program provided by the district through any combination of onsite or offsite instruction may be included for ANB purposes only if the pupil is offered access to the complete range of educational services for the basic education program required by the accreditation standards adopted by the board of public education.

(b) Access to school programs and services for a student placed by the trustees in a private program for special education may be limited to the programs and services specified in an approved individual education plan supervised by the district.

(c) Access to school programs and services for a student who is incarcerated in a facility, other than a youth detention center, may be limited to the programs and services provided by the district at district expense under an agreement with the incarcerating facility.

(d) This subsection (10) may not be construed to require a school district to offer access to activities governed by an organization having jurisdiction over interscholastic activities, contests, and tournaments to a pupil who is not otherwise eligible under the rules of the organization.

(11) A district may include only, for ANB purposes, an enrolled pupil who is otherwise eligible under this title and who is:

(a) a resident of the district or a nonresident student admitted by trustees under a student attendance agreement and who is attending a school of the district;

(b) unable to attend school due to a medical reason certified by a medical doctor and receiving individualized educational services supervised by the district, at district expense, at a home or facility that does not offer an educational program;

(c) unable to attend school due to the student's incarceration in a facility, other than a youth detention center, and who is receiving individualized educational services supervised by the district, at district expense, at a home or facility that does not offer an educational program;

(d) receiving special education and related services, other than day treatment, under a placement by the trustees at a private nonsectarian school or private program if the pupil's services are provided at the district's expense under an approved individual education plan supervised by the district;

(e) participating in the running start program at district expense under 20-9-706;

(f) receiving educational services, provided by the district, using appropriately licensed district staff at a private residential program or private

residential facility licensed by the department of public health and human services;

(g) enrolled in an educational program or course provided at district expense using electronic or offsite delivery methods, including but not limited to tutoring, distance learning programs, online programs, and technology delivered learning programs, while attending a school of the district or any other nonsectarian offsite instructional setting with the approval of the trustees of the district. The pupil shall:

(i) meet the residency requirements for that district as provided in 1-1-215;

(ii) live in the district and must be eligible for educational services under the Individuals With Disabilities Education Act or under 29 U.S.C. 794; or

(iii) attend school in the district under a mandatory attendance agreement as provided in 20-5-321.

(h) a resident of the district attending the Montana youth challenge program or a Montana job corps program under an interlocal agreement with the district under 20-9-707.

(12) A district shall, for ANB purposes, calculate the enrollment of an eligible Montana youth challenge program participant as half-time enrollment.

(13) (a) For an elementary or high school district that has been in existence for 3 years or more, the district's maximum general fund budget and BASE budget for the ensuing school fiscal year must be calculated using the current year ANB for all budget units or the 3-year average ANB for all budget units, whichever generates the greatest maximum general fund budget.

(b) For a K-12 district that has been in existence for 3 years or more, the district's maximum general fund budget and BASE budget for the ensuing school fiscal year must be calculated separately for the elementary and high school programs pursuant to subsection (13)(a) and then combined.

(14) The term "3-year ANB" means an average ANB over the most recent 3-year period, calculated by:

(a) adding the ANB for the budget unit for the ensuing school fiscal year to the ANB for each of the previous 2 school fiscal years; and

(b) dividing the sum calculated under subsection (14)(a) by three."

**Section 11.** Section 20-9-314, MCA, is amended to read:

**"20-9-314. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase.** A district that anticipates an unusual increase in enrollment in the ensuing school fiscal year, as provided for in 20-9-313(1)(d), may increase its basic entitlement and total per-ANB entitlement for the ensuing school fiscal year in accordance with the following provisions:

(1) Prior to June 1, the district shall estimate the elementary or high school enrollment to be realized during the ensuing school fiscal year, based on as much factual information as may be available to the district.

(2) No later than June 1, the district shall submit its application for an *anticipated* unusual enrollment increase by elementary or high school level to the superintendent of public instruction. The application must include:

(a) the enrollment for the current school fiscal year;

(b) the average number belonging used to calculate the basic entitlement and total per-ANB entitlement for the current school fiscal year;

(c) the average number belonging that will be used to calculate the basic entitlement and total per-ANB entitlement for the ensuing school fiscal year;

(d) the ~~estimated~~ *anticipated* enrollment, including the factual information on which the estimate is based, as provided in subsection (1); and

(e) any other information or data that may be requested by the superintendent of public instruction.

(3) The superintendent of public instruction shall immediately review all the factors of the application and shall approve or disapprove the application or adjust the ~~estimated~~ *enrollment used to calculate the budgeted* average number belonging for the ensuing ~~ANB calculation period~~ *school fiscal year*. After approving an estimate, with or without adjustment, the superintendent of public instruction shall:

(a) determine the percentage by which the ~~estimated~~ *adjusted* enrollment exceeds the enrollment used for the budgeted ~~ANB~~ *average number belonging*; and

(b) approve an increase of the average number belonging used to establish the ensuing year's basic entitlement and total per-ANB entitlement in accordance with subsection (5) if the increase in subsection (3)(a) is at least ~~6%~~ *4% or 40 students, whichever is less*.

(4) The superintendent of public instruction shall notify the district of the decision by the fourth Monday in June.

(5) Whenever an unusual enrollment increase is approved by the superintendent of public instruction, ~~the increase of the average number belonging used to establish the basic entitlement and total per-ANB entitlement for the ensuing ANB calculation period is determined using the difference between the enrollment for the ensuing school fiscal year and 106% of the enrollment used to calculate the budgeted ANB. The amount determined is the maximum allowable increase added to the average number belonging for the purpose of establishing the ensuing year's basic entitlement and total per-ANB entitlement~~ *the maximum allowable increase to the average number belonging is equal to the adjusted enrollment as determined by the superintendent of public instruction in subsection (3) minus the sum of:*

*(a) the enrollment used to calculate the budgeted average number belonging for the ensuing school fiscal year; and*

*(b) the lesser of 40 students or 4% of the enrollment used to calculate the budgeted average number belonging for the ensuing school fiscal year*.

(6) (a) Any entitlement increases resulting from provisions of this section must be reviewed at the end of the ensuing school fiscal year.

(b) If the actual enrollment is less than the enrollment used to determine the budgeted ANB, the superintendent of public instruction shall revise the total per-ANB entitlement and basic entitlement calculations, as provided in subsection (5), using the actual enrollment in place of the ~~estimated~~ *adjusted* enrollment. All total per-ANB entitlements received by the district in excess of the revised entitlements are overpayments subject to the refund provisions of 20-9-344(4)."

**Section 12.** Section 20-9-323, MCA, is amended to read:

**"20-9-323. Ending fund balance limits.** (1) Beginning July 1, ~~2016~~ *2020*, the combined ending fund balance for all budgeted funds of a school district may not exceed 300% of the maximum general fund budget. The 300% limit is not applicable to the building reserve fund, the debt service fund, or the bus depreciation reserve fund.

(2) The county superintendent shall, upon completion of a school fiscal year, redistribute any amounts in excess of the 300% limit among any other school

districts in the same county whose combined ending fund balance for all budgeted funds included in subsection (1) has not exceeded the 300% limit. The county superintendent shall redistribute funds equally to the school districts qualifying for redistribution on a per-quality-educator basis, calculated by dividing the total funds by the total number of quality educators, as defined in 20-4-502, employed by the qualifying school districts in the county in the immediately preceding school fiscal year. School districts receiving the funds may place the funds in any budgeted fund of the district at the discretion of the board of trustees of each district.

(3) Unless an exception is granted under subsection (5), upon completion of a school fiscal year, a school district with combined ending fund balances in excess of the 300% limit shall cooperate with the county superintendent in effectuating the redistribution of excess funds as provided in subsection (2). A school district may make the payment required under this subsection from any fund or funds of the district other than the debt service fund, the building reserve fund, and the bus depreciation reserve fund.

(4) Any funds that cannot be redistributed within a county without causing a school district in the county to exceed the 300% limit must be remitted by the county treasurer to the state for deposit in the guarantee account *and distribution* ~~provided for in~~ *in the same manner as provided in* ~~20-9-622~~ *20-9-622(3)*.

(5) In accordance with 20-9-161, a school district shall report to the education and local government interim committee for any exception taken to the limits prescribed by subsection (1) of this section.

(6) This section does not apply to school districts that are in a nonoperating status under 20-9-505 or that are in the first year of operation after reopening under 20-6-502 or 20-6-503.

(7) Beginning July 1, ~~2013~~ *2020*, the balance of a school district's flexibility fund may not exceed 150% of the school district's maximum general fund budget."

**Section 13.** Section 20-9-326, MCA, is amended to read:

**"20-9-326. Annual inflation-related adjustments to basic entitlements and per-ANB entitlements.** (1) In preparing and submitting an agency budget pursuant to 17-7-111 and 17-7-112, the superintendent of public instruction shall determine the inflation factor for the basic and per-ANB entitlements*, the data-for-achievement payment, and the general fund payments in 20-9-327 through 20-9-330* in each fiscal year of the ensuing biennium. The inflation factor is calculated as follows:

(a) for the first year of the biennium, divide the consumer price index for July 1 of the prior calendar year by the consumer price index for July 1 of the calendar year 3 years prior to the prior calendar year and raise the resulting ratio to the power of one-third; and

(b) for the second year of the biennium, divide the consumer price index for July 1 of the current calendar year by the consumer price index for July 1 of the calendar year 3 years prior to the current calendar year and raise the resulting ratio to the power of one-third.

(2) The present law base for the ~~basic and per-ANB~~ entitlements *referenced in subsection (1)*, calculated under Title 17, chapter 7, part 1, must consist of any enrollment increases or decreases plus the inflation factor calculated pursuant to this section, not to exceed 3% in each year, applied to both years of the biennium.

(3) For the purposes of this section, "consumer price index" means the consumer price index, U.S. city average, all urban consumers, for all items, using the 1982-84 base of 100, as published by the bureau of labor statistics of the U.S. department of labor."

**Section 14.** Section 20-9-342, MCA, is amended to read:

**"20-9-342. Deposit of interest and income money by state board of land commissioners.** *(1)* Except as provided in 20-9-516, the state board of land commissioners shall deposit the interest and income money for each fiscal year into the guarantee account, provided for in 20-9-622, ~~for state equalization aid~~ by the last business day of February and June before the close of the fiscal year in which the money was received. *Except as provided in subsection (2), money in the guarantee account must be used for state equalization aid.*

*(2) Subject to subsection (3), any excess interest and income revenue deposited in the guarantee account in each fiscal year must be distributed in accordance with 20-9-622(3).*

*(3) The excess interest and income revenue must equal at least $1 million in order to be distributed pursuant to subsection (2). Excess interest and income revenue of $1 million or less must be carried forward and added to the excess interest and income revenue in the next ensuing school fiscal year and distributed in accordance with 20-9-622(3).*

*(4) For purposes of this section, "excess interest and income revenue" means an annual amount in excess of $56 million.*"

**Section 15.** Section 20-9-344, MCA, is amended to read:

**"20-9-344. Duties of board of public education for distribution of BASE aid.** (1) The board of public education shall administer and distribute the BASE aid and state advances for county equalization in the manner and with the powers and duties provided by law. The board of public education:

(a) shall adopt policies for regulating the distribution of BASE aid and state advances for county equalization in accordance with the provisions of law;

(b) may require reports from the county superintendents, county treasurers, and trustees that it considers necessary; and

(c) shall order the superintendent of public instruction to distribute the BASE aid on the basis of each district's annual entitlement to the aid as established by the superintendent of public instruction. In ordering the distribution of BASE aid, the board of public education may not increase or decrease the BASE aid distribution to any district on account of any difference that may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

(2) The board of public education may order the superintendent of public instruction to withhold distribution of BASE aid from a district when the district fails to:

(a) submit reports or budgets as required by law or rules adopted by the board of public education; or

(b) maintain accredited status *because of failure to meet the board of public education's assurance and performance standards*.

(3) Prior to any proposed order by the board of public education to withhold distribution of BASE aid or county equalization money, the district is entitled to a contested case hearing before the board of public education, as provided under the Montana Administrative Procedure Act.

(4) If a district or county receives more BASE aid than it is entitled to, the county treasurer shall return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the superintendent of public instruction.

(5) Except as provided in 20-9-347(2), the BASE aid payment must be distributed according to the following schedule:

(a) from August to October of the school fiscal year, to each district 10% of:

(i) direct state aid;

(ii) the total quality educator payment;

(iii) the total at-risk student payment;

(iv) the total Indian education for all payment; ~~and~~

(v) the total American Indian achievement gap payment;

*(vi) the total data-for-achievement payment; and*

*(vii) the total natural resource development K-12 funding payment;*

(b) from December to April of the school fiscal year, to each district 10% of:

(i) direct state aid;

(ii) the total quality educator payment;

(iii) the total at-risk student payment;

(iv) the total Indian education for all payment; ~~and~~

(v) the total American Indian achievement gap payment;

*(vi) the total data-for-achievement payment;*

*and*

*(vii) the total natural resource development K-12 funding payment;*

(c) in November of the school fiscal year, one-half of the guaranteed tax base aid payment to each district or county that has submitted a final budget to the superintendent of public instruction in accordance with the provisions of 20-9-134;

(d) in May of the school fiscal year, the remainder of the guaranteed tax base aid payment to each district or county; and

(e) in June of the school fiscal year, the remaining payment to each district of direct state aid, the total quality educator payment, the total at-risk student payment, the total Indian education for all payment, ~~and~~ the total American Indian achievement gap payment*, the total data-for-achievement payment, and the total natural resource development K-12 funding payment*.

(6) The distribution provided for in subsection (5) must occur by the last working day of each month."

**Section 16.** Section 20-9-403, MCA, is amended to read:

**"20-9-403. Bond issues for certain purposes.** (1) The trustees of a school district may issue and negotiate general obligation bonds*, oil and natural gas revenue bonds,* or impact aid bonds of the school district for the purpose of:

(a) building, altering, repairing, buying, furnishing, equipping, purchasing lands for, or obtaining a water supply for a school, teacherage, dormitory, gymnasium, other building, or combination of buildings for school purposes;

(b) buying a school bus or buses;

(c) providing the necessary money to redeem matured bonds, maturing bonds, or coupons appurtenant to bonds when there is not sufficient money to redeem them;

(d) providing the necessary money to redeem optional or redeemable bonds when it is for the best interest of the school district to issue refunding bonds;

(e) funding a judgment against the district, including the repayment of tax protests lost by the district; or

(f) funding a debt service reserve account that may be required for *oil and natural gas revenue bonds or* impact aid revenue bonds.

(2) Money realized from the sale of bonds issued on the credit of a high school district may not be used for any of the purposes listed in subsection (1) in an elementary school district, and the money may be used for any of the purposes listed in subsection (1) for a junior high school but only to the extent that the 9th grade of the high school is served.

(3) If applicable, the trustees shall specify whether the bonds are qualified school construction bonds as described in 17-5-116(1) or tax credit bonds as provided in 17-5-117."

**Section 17.** Section 20-9-406, MCA, is amended to read:

**"20-9-406. Limitations on amount of bond issue — definition of federal impact aid basic support payment — *oil and natural gas payment*.** (1) (a) Except as provided in subsection (1)(c), the maximum amount for which an elementary district or a high school district may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, registered warrants, outstanding obligations under 20-9-471, *oil and natural gas revenue bonds to which a deficiency tax levy is pledged,* and any other loans or notes payable that are held as general obligations of the district, is 50% of the taxable value of the property subject to taxation, as ascertained by the last assessment for state, county, and school taxes previous to the incurring of the indebtedness.

(b) Except as provided in subsection (1)(c), the maximum amount for which a K-12 school district, as formed pursuant to 20-6-701, may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, registered warrants, outstanding obligations under 20-9-471, *oil and natural gas revenue bonds to which a deficiency tax levy is pledged,* and any other loans or notes payable that are held as general obligations of the district, is up to 100% of the taxable value of the property subject to taxation, as ascertained by the last assessment for state, county, and school taxes previous to the incurring of the indebtedness.

(c) (i) The maximum amount for which an elementary district or a high school district with a district mill value per elementary ANB or per high school ANB that is less than the facility guaranteed mill value per elementary ANB or high school ANB under 20-9-366 may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, registered warrants, outstanding obligations under 20-9-471, *oil and natural gas revenue bonds to which a deficiency tax levy is pledged,* and any other loans or notes payable that are held as general obligations of the district, is 50% of the corresponding facility guaranteed mill value per ANB times 1,000 times the ANB of the district. For a K-12 district, the maximum amount for which the district may become indebted is 50% of the sum of the facility guaranteed mill value per elementary ANB times 1,000 times the elementary ANB of the district and the facility guaranteed mill value per high school ANB times 1,000 times the high school ANB of the district. For the purpose of calculating ANB under this subsection, a district

may use the greater of the current year ANB or the 3-year ANB calculated under 20-9-311.

(ii) If mutually agreed upon by the affected districts, for the purpose of calculating its maximum bonded indebtedness under this subsection (1)(c), a district may include the ANB of the district plus the number of students residing within the district for which the district or county pays tuition for attendance at a school in an adjacent district. The receiving district may not use out-of-district ANB for the purpose of calculating its maximum indebtedness if the out-of-district ANB has been included in the ANB of the sending district pursuant to the mutual agreement. For the purpose of calculating ANB under this subsection, a district may use the greater of the current year ANB or the 3-year ANB calculated under 20-9-311.

(2) The maximum amounts determined in subsection (1) do not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district or to general obligation bonds issued for the repayment of tax protests lost by the district. All general obligation bonds issued in excess of the amount are void, except as provided in this section.

(3) The maximum amount of impact aid revenue bonds that an elementary district, high school district, or K-12 school district may issue may not exceed a total aggregate amount equal to three times the average of the school district's annual federal impact aid basic support payments for the 5 years immediately preceding the issuance of the bonds. However, at the time of issuance of the bonds, the average annual payment of principal *of* and interest on the impact aid bonds each year may not exceed 35% of the total federal impact aid basic support payments of the school district for the current year.

*(4) The maximum amount of oil and natural gas revenue bonds that an elementary district, high school district, or K-12 school district may issue may not exceed a total aggregate amount equal to three times the average of the school district's annual oil and natural gas production taxes received pursuant to 15-36-331, 15-36-332, and 20-9-310 for the 2 fiscal years immediately preceding the issuance of the bonds. At the time of the issuance of the bonds, the average annual payment of principal of and interest on the oil and natural gas revenue bonds each year may not exceed 35% of the total oil and natural gas production taxes received by the school district under the limitations in 20-9-310 for the immediately preceding fiscal year. If the oil and natural gas revenue bonds are also secured by a deficiency tax levy as provided in 20-9-437, the debt limitation provided in subsection (1) of this section applies to the bonds.*

~~(4)~~*(5)* When the total indebtedness of a school district has reached the limitations prescribed in this section, the school district may pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.

~~(5)~~*(6)* Whenever bonds are issued for the purpose of refunding bonds, any money to the credit of the debt service fund for the payment of the bonds to be refunded is applied toward the payment of the bonds and the refunding bond issue is decreased accordingly.

~~(6)~~*(7)* As used in this part, "federal impact aid basic support payment" means the annual impact aid revenue received by a district under 20 U.S.C. 7703(b) but excludes revenue received for impact aid special education under 20 U.S.C. 7703(d) and impact aid construction under 20 U.S.C. 7707."

**Section 18.** Section 20-9-408, MCA, is amended to read:

**"20-9-408. Definition of forms of bonds.** As used in this part, the following definitions apply:

(1) "Amortization bond" means that form of bond on which a part of the principal is required to be paid each time that interest becomes due and payable. The part payment of principal increases with each following installment in the same amount that the interest payment decreases, so that the combined amount payable on principal and interest is the same on each payment date. However, the payment on the initial interest payment date may be less or greater than the amount of other payments on the bond, reflecting the payment of interest only or the payment of interest for a period different from that between other interest payment dates. The final payment may vary from prior payments in amount as a result of rounding prior payments.

(2) "General obligation bonds" means bonds that pledge the full faith and credit and the taxing power of a school district.

(3) "Impact aid revenue bonds" means bonds that pledge and are payable solely from federal impact aid basic support payments received and deposited to the credit of the fund established in 20-9-514.

*(4) "Oil and natural gas revenue bonds" means bonds that pledge and are payable from a first lien on oil and natural gas production taxes received by a school district pursuant to 20-9-310. Oil and natural gas revenue bonds to which a tax deficiency is pledged are not considered general obligation bonds that are eligible to receive guaranteed tax base aid pursuant to 20-9-367 but are to be considered in determining the debt limit of a school district for the purposes of 20-9-406.*

~~(4)~~*(5)* "Serial bonds" means a bond issue payable in annual installments of principal commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing or subject to mandatory sinking fund redemption in each installment, commencing with the installment payable in the fourth year after the date of issue, not exceeding three times the principal amount of the bonds payable in the immediately preceding installment."

**Section 19.** Section 20-9-422, MCA, is amended to read:

**"20-9-422. Additional requirements for trustees' resolution calling bond election.** (1) In addition to the requirements for calling an election that are prescribed in 20-20-201 and 20-20-203, the trustees' resolution calling a school district bond election must:

(a) specify whether the bonds will be general obligation bonds*, oil and natural gas revenue bonds,* or impact aid revenue bonds *and, if oil and natural gas revenue bonds, whether a tax deficiency is pledged to the repayment of the bonds*;

(b) fix the exact amount of the bonds proposed to be issued, which may be more or less than the amounts estimated in a petition;

(c) fix the maximum number of years in which the proposed bonds would be paid;

(d) in the case of initiation by a petition, state the essential facts about the petition and its presentation; and

(e) state the amount of the state advance for school facilities estimated, pursuant to subsection (2), to be received by the district in the first school fiscal year in which a debt service payment would be due on the proposed bonds.

(2) Prior to the adoption of the resolution calling for a school bond election for a general obligation bond, the trustees of a district may request from the superintendent of public instruction a statement of the estimated amount of state advance for school facilities that the district will receive for debt service payments on the proposed general obligation bonds in the first school fiscal year in which a debt service payment is due. The district shall provide the superintendent with an estimate of the debt service payment due in the first school fiscal year. The superintendent shall estimate the state advance for the general obligation bond issue pursuant to 20-9-371(2)."

**Section 20.** Section 20-9-423, MCA, is amended to read:

**"20-9-423. Form, contents, and circularization of petition proposing school district bond election.** Any petition for the calling of an election on the proposition of issuing school district bonds must:

(1) specify whether the bonds will be general obligation bonds*, oil and natural gas revenue bonds,* or impact aid revenue bonds *and, if oil and natural gas revenue bonds, whether a tax deficiency is pledged to the repayment of the bonds*;

(2) plainly state each purpose of the proposed bond issue and the estimated amount of the bonds that would be issued for each purpose;

(3) be signed by not less than 20% of the school district electors qualified to vote under the provisions of 20-20-301 in order to constitute a valid petition;

(4) be a single petition or it may be composed of more than one petition, all being identical in form, and after being circulated and signed, they must be fastened together to form a single petition when submitted to the county registrar;

(5) be circulated by any one or more qualified electors of the school district; and

(6) contain an affidavit of each registered elector circulating a petition attached to the portion of the petition circulated. The affidavit must attest to the authenticity of the signatures and that the signers knew the contents of the petition at the time of signing it."

**Section 21.** Section 20-9-426, MCA, is amended to read:

**"20-9-426. Preparation and form of ballots for bond election.** (1) The school district shall cause ballots to be prepared for all bond elections, and whenever bonds for more than one purpose are to be voted upon at the same election, separate ballots must be prepared for each purpose.

(2) For bond elections that are not held in conjunction with a school election, the ballots for absentee voting must be printed and made available at least 30 days before the bond election.

(3) All ballots must be substantially in the following form:

OFFICIAL BALLOT
SCHOOL DISTRICT BOND ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words "BONDS—YES" if you wish to vote for the bond issue; if you are opposed to the bond issue, make an X or similar mark in the square before the words "BONDS—NO".

Shall the board of trustees be authorized to issue and sell (state type of bonds here: general obligation*, oil and natural gas revenue, oil and natural gas revenue for which a tax deficiency is pledged,* or impact aid revenue) bonds of this school district in the amount of ..... dollars ($ .....), payable semiannually,

during a period not more than ..... years, for the purpose ..... (here state the purpose the same way as in the notice of election)?

☐ BONDS — YES.

☐ BONDS — NO."

**Section 22.** Section 20-9-427, MCA, is amended to read:

**"20-9-427. Notice of bond election by separate purpose.** (1) A school district bond election must be conducted in accordance with the school election provisions of this title, except that the election notice must be in substantially the following form:

NOTICE OF SCHOOL DISTRICT BOND ELECTION

Notice is hereby given by the trustees of School District No. ..... of..... County, state of Montana, that pursuant to a certain resolution adopted at a meeting of the board of trustees of the school district held on the..... day of....., an election of the registered electors of School District No..... of..... County, state of Montana, will be held on the..... day of....., at..... for the purpose of voting upon the question of whether or not the trustees may issue and sell (state here: general obligation*, oil and natural gas revenue, oil and natural gas revenue for which a tax deficiency is pledged,* or impact aid revenue) bonds of the school district in the amount of..... dollars ($.....), payable semiannually, for the purpose of..... (here state purpose). The bonds to be issued will be payable in installments over a period not exceeding..... (state number) years.

The polls will be open from..... o'clock .....m. and until..... o'clock .....m. of the election day.

Dated and posted this..... day of.....

.....

Presiding officer, School District No.....

of..... County

Address.....

(2) If the bonds proposed to be issued are for more than one purpose, then each purpose must be separately stated in the notice, together with the proposed amount of bonds for each purpose.

(3) The notice must specify whether the bonds will be general obligation bonds*, oil and natural gas revenue bonds,* or impact aid revenue bonds."

**Section 23.** Section 20-9-430, MCA, is amended to read:

**"20-9-430. Sale of school district bonds and notice of public sale.** The trustees may sell school district bonds at public or private sale pursuant to 17-5-107. If the trustees conduct a public sale, the trustees shall give notice of the sale of school district bonds. The notice must state the purpose for which the bonds are to be issued and the amount proposed to be issued and must be substantially in the following form:

NOTICE OF SALE OF SCHOOL DISTRICT BONDS

Notice is hereby given by the trustees of School District No. ..... of ..... County, state of Montana, that the trustees will on the ..... day of ....., ....., at the hour of ..... o'clock .....m. at ....., in the school district, sell to the highest and best bidder for cash (state here: general obligation*, oil and natural gas revenue,* or impact aid revenue) bonds of the school district in the total amount of ..... dollars ($ .....), for the purpose of .....

The bonds will be issued and sold in the aggregate principal amount of ..... dollars ($ .....) each and will become payable according to the maturity schedule set forth below (set forth maturity schedule adopted by the school district). (If the bonds are to be issued as amortization bonds, indicate that here.)

The bonds will bear an original issue date of ....., ....., will pay interest commencing on the ..... day of ..... (month), ....., will be payable semiannually on the ..... day of ..... (month) and ..... (month) in each year thereafter, and will be redeemable in full. (Here insert optional provisions, if any, to be recited on the bonds.)

The bonds will be sold for not less than $ ....., with accrued interest on the principal amount of the bonds to the date of their delivery, and all bidders shall state the lowest rate of interest at which they will purchase the bonds at the price specified for the bonds. The trustees reserve the right to reject any bids and to sell the bonds at private sale.

All bids must be accompanied by (insert appropriate bid security as permitted by 18-1-202) in the sum of ..... dollars ($ .....) payable to the order of the district, which will be forfeited by the successful bidder in the event that the bidder refuses to purchase the bonds.

All bids should be addressed to the undersigned district.

.....
Presiding officer, School District No.....
of..... County
Address: .....

ATTEST:

Subscribed and sworn to before me this ..... day of ....., .....; ..... Notary Public for the State residing at ....., Montana. My commission expires .....”

**Section 24.** Section 20-9-437, MCA, is amended to read:

**“20-9-437. School district liable on bonds.** (1) The full faith, credit, and taxable resources of a school district issuing general obligation bonds under the provisions of this title are pledged for the repayment of the bonds with interest according to the terms of the bonds. For the purpose of making the provisions of this part enforceable, each school district is a body corporate that may sue and be sued by or in the name of the trustees of the school district.

(2) A school district may use up to 25% of its federal impact aid funds received pursuant to 20-9-514 for repayment of general obligation bonds.

(3) Impact aid revenue bonds must be payable solely from the federal impact aid basic support payment received by the school district and deposited to the credit of the impact aid fund established in 20-9-514 and do not constitute a general obligation of the school district. The school district’s taxing power is not pledged for the repayment of impact aid revenue bonds.

*(4) (a) Oil and natural gas revenue bonds must be payable from the oil and natural gas production taxes received by the school district under the limitations in 20-9-310 and deposited to the debt service fund.*

*(b) A school district, as long as it has specified that its oil and natural gas revenue bonds are further secured by a deficiency tax levy in the bond election question and notice under 20-9-426 and 20-9-427, may additionally provide that if for any reason the oil and natural gas production taxes received by the school district and the amounts in the debt service reserve account are inadequate to pay*

*the principal of or interest on the bonds as they become due, payment will be made from a deficiency tax levy.*

*(5) If for any reason the oil and natural gas taxes or the amounts in the debt service reserve account are inadequate to pay the principal of or interest on any oil and natural gas revenue bonds as to which the school district has pledged a deficiency tax levy in accordance with subsection (4) as it becomes due, the school district shall, at least 15 days before the first day of the month in which the board of county commissioners of the county or counties in which the school district is located levies the amount of taxes required, furnish to the county treasurer an estimate in writing of the amount of money required:*

*(a) by the school district for the payment of the principal of or interest on the bonded debt as it becomes due and to replenish the debt service reserve account;*

*(b) to establish reasonable reserve funds for either purpose; and*

*(c) by the school district for any other purpose set forth in this section.*

*(6) Annually and at the time and in the manner of levying other county or city and county taxes, the county treasurer shall, as instructed by the school district, to the extent of any deficiency resulting from oil and natural gas taxes to pay or secure oil and natural gas revenue bonds to which a deficiency tax is pledged and for any other purpose set forth in this section:*

*(a) until the bonded debt is fully paid, levy upon the taxable property located in the school district and collect a school district oil and natural gas revenue bond deficiency tax sufficient for the payment or reimbursement of the payment of the bonded debt in the current or ensuing fiscal year, or both; and*

*(b) until the bonded debt is fully paid, levy upon all of the taxable property located in the school district and collect a school district oil and natural gas revenue bond deficiency tax sufficient for replenishing amounts in the debt service reserve account.*

*(7) Taxes for the payment of any oil and natural gas revenue bonds to which the school district has pledged a deficiency tax must be levied on the taxable property located in the school district as stated in the resolution fixing the terms and conditions of the bonds, and all taxes for other purposes must be levied on all property located within the school district.*"

**Section 25.** Section 20-9-438, MCA, is amended to read:

**"20-9-438. Preparation of general obligation debt service fund budget — operating reserve.** (1) The trustees of each school district having outstanding general obligation bonds shall include in the debt service fund of the final budget adopted in accordance with 20-9-133 an amount of money that is necessary to pay the interest and the principal amount becoming due during the ensuing school fiscal year for each series or installment of bonds, according to the terms and conditions of the bonds and the redemption plans of the trustees.

(2) The trustees shall also include in the debt service fund of the final budget:

(a) the amount of money necessary to pay the special improvement district assessments levied against the school district that become due during the ensuing school fiscal year; ~~and~~

(b) a limited operating reserve for the school fiscal year following the ensuing school fiscal year as provided in subsection ~~(3)~~ *(4); and*

*(c) an amount to satisfy the reserve requirement for oil and natural gas revenue bonds.*

*(3) The trustees of a school district having outstanding oil and natural gas bonds shall include in the debt service reserve account of the final budget adopted in accordance with 20-9-133 oil and natural gas production taxes received by a school district or other legally available funds sufficient to satisfy the reserve requirement. Funds remaining in the debt service reserve account may not be reappropriated or reverted and must be used for the purposes set forth in [section 28].*

~~(3)~~*(4)* At the end of each school fiscal year, the trustees of a school district may designate a portion of the end-of-the-year fund balance of the debt service fund to be earmarked as a limited operating reserve for the purpose of paying, whenever a cash flow shortage occurs, debt service fund warrants and bond obligations that must be paid from July 1 through November 30 of the school fiscal year following the ensuing school fiscal year. Any portion of the debt service fund end-of-the-year fund balance not earmarked for limited operating reserve purposes must be reappropriated to be used for property tax reduction as provided in 20-9-439.

~~(4)~~*(5)* The county superintendent shall compare the final budgeted amount for the debt service fund with the bond retirement and interest requirement and the special improvement district assessments for the school fiscal year just beginning as reported by the county treasurer in the statement supplied under the provisions of 20-9-121. If the county superintendent finds that the requirement stated by the county treasurer is more than the final budget amount, the county superintendent shall increase the budgeted amount for interest or principal in the debt service fund of the final budget. The amount confirmed or revised by the county superintendent is the final budget expenditure amount for the debt service fund of the school district."

**Section 26.** Section 20-9-440, MCA, is amended to read:

**"20-9-440. Payment of debt service obligations — termination of interest.** (1) The school district shall provide the county treasurer with a general obligation bond*, oil and natural gas revenue bond,* or impact aid revenue bond debt services schedule. The county treasurer shall maintain a separate debt service fund for each school district and, if bonds are to be issued as *either* impact aid revenue bonds *or oil and natural gas revenue bonds*, *shall maintain* a separate impact aid revenue bond debt service fund *or oil and natural gas revenue bond debt service fund, as applicable,* and an impact aid revenue bond debt service reserve account *or oil and natural gas revenue bond debt service reserve account*, if required~~, and~~. *The school district* shall credit all tax money*, oil and natural gas revenue,* or impact aid revenue collected for debt service to the appropriate fund and use the money credited to the fund for the payment of debt service obligations in accordance with the school financial administration provisions of this title.

(2) The county treasurer shall pay from the debt service fund all amounts of interest and principal on school district bonds as the interest or principal becomes due when the coupons or bonds are presented and surrendered for payment and shall pay all special improvement district assessments as they become due. If the bonds are held by the state of Montana, then all payments must be remitted to the state treasurer who shall cancel the coupons or bonds and return the coupons or bonds to the county treasurer with the state treasurer's receipt. If the bonds are not held by the state of Montana and the interest or principal is made payable at some designated bank or financial institution, the county treasurer shall remit the amount due for interest or principal to the bank or financial institution for payment against the surrender of the canceled coupons or bonds.

(3) Whenever any school district bond or installment on school district bonds becomes due and payable, interest ceases on that date unless sufficient funds are available to pay the bond when it is presented for payment or when payment of an installment is demanded. In either case, interest on the bond or installment continues until payment is made.

(4) Any installment on interest and principal on bonds held by the state that is not promptly paid when due draws interest at an annual rate of 6% from the date due until actual payment, irrespective of the rate of interest on the bonds."

**Section 27. Security for oil and natural gas revenue bonds.** (1) To secure the payment of principal of and interest on oil and natural gas revenue bonds, the trustees of a school district, by resolution or indenture of trust, may provide that oil and natural gas revenue bonds are secured by a first lien on the oil and natural gas production revenue received pursuant to 20-9-310 and pledge to the holders of the oil and natural gas revenue bonds all of the oil and natural gas revenue deposited in the district's debt service fund.

(2) Upon receipt of oil and natural gas revenue, the county treasurer shall deposit in the district's debt service fund the amount that is required to pay the principal of and interest on the oil and natural gas revenue bonds due in the next 12-month period and to restore any deficiency in the oil and natural gas revenue debt service reserve account up to reserve requirements. Any remaining oil and natural gas revenue must be deposited as directed by the board of trustees as provided in 20-9-310. The school district and county treasurer may designate a trustee for holders of the bonds to receive the school district's oil and natural gas revenue for purposes of making the annual debt service payments on oil and natural gas revenue bonds and may authorize the trustee to establish and maintain the oil and natural gas revenue bond debt service fund and oil and natural gas revenue bond debt service reserve account.

(3) Any pledge made pursuant to this section is valid and binding from the time the pledge is made, and the money pledged and received by the county treasurer on behalf of the school district to be placed in the debt service fund is immediately subject to the lien of the pledge without any future physical delivery or further act. A lien of any pledge is valid and binding against all parties that have claims of any kind against the school district regardless of whether the parties have notice of the lien. The bond resolution or indenture of trust that creates the pledge, when adopted by the trustees of any district, is notice of the creation of the pledge, and those instruments are not required to be recorded in any other place to perfect the pledge.

(4) The state may not limit, alter, or impair the ability of a school district to qualify for oil and natural gas revenue or in any way impair the rights and remedies of the bondholders until all bonds issued under this section, together with interest on the bonds, interest on any unpaid installments of principal or interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully met and discharged. The trustees of any district, as agents for the state, may include a pledge and undertaking in resolutions and indentures authorizing and securing the bonds as described in this subsection.

**Section 28. Debt service reserve account.** (1) If a school district issues oil and natural gas revenue bonds, the school district shall establish and maintain an oil and natural gas revenue bond debt service reserve account, to which there must be deposited or transferred an amount from bond proceeds or oil and natural gas production taxes received by a school district or other legally available funds sufficient to satisfy the reserve requirement.

(2) All money held in the oil and natural gas revenue bond debt service reserve account must be used solely for the payment of the principal of or interest on the bonds secured in whole or in part by the account or the debt service fund payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds, or the payment of any redemption premium required to be paid when the bonds are redeemed prior to maturity.

**Section 29.** Section 20-9-517, MCA, is amended to read:

**"20-9-517. (Effective July 1, 2013) State school oil and natural gas impact account.** (1) There is a state school oil and natural gas impact account in the state special revenue fund provided for in 17-2-102. The purpose of the account is to provide money to schools that are ~~not~~ receiving oil and natural gas production taxes under 15-36-331 *in an amount less than 20% of the district's maximum general fund budget* but *that* are impacted by ~~contiguous counties that are benefiting from receipt of~~ oil and natural gas ~~production taxes~~ *development*.

(2) There must be deposited in the account oil and natural gas production taxes, if any, pursuant to ~~20-9-310(7)~~ *20-9-310(4)(b)* and any amounts pursuant to 20-9-104(6).

(3) A school district may apply to the superintendent of public instruction for funds from the account for circumstances that are directly related to impacts resulting from the development or cessation of development of oil and natural gas as follows:

(a) an unusual enrollment increase as determined pursuant to 20-9-314;

(b) a district's need to hire new teachers or staff as a result of increased enrollment;

(c) the opening or reopening of an elementary or high school approved by the superintendent of public instruction pursuant to 20-6-502 or 20-6-503; or

(d) major maintenance for a school or district.

(4) In reviewing an applicant's request for funding, the superintendent of public instruction shall consider the following:

(a) the local district's or school's need;

(b) the severity of the energy development impacts;

(c) availability of funds in the account; and

(d) the applicant district's ability to meet the needs identified in subsection (3).

(5) The superintendent of public instruction shall adopt rules necessary to implement the application and distribution process.

(6) The amount in the account may not exceed $7.5 million. Any amount over $7.5 million must be deposited in the state ~~general fund~~ *guarantee account and distributed in the same manner as provided in 20-9-622(3)*."

**Section 30.** Section 20-9-517, MCA, is amended to read:

**"20-9-517. (Effective July 1, ~~2013~~ *2016*) State school oil and natural gas impact account.** (1) There is a state school oil and natural gas impact account in the state special revenue fund provided for in 17-2-102. The purpose of the account is to provide money to schools that are not receiving oil and natural gas production taxes under 15-36-331 ~~but are impacted by contiguous counties that are benefiting from receipt of oil and natural gas production taxes~~ *in an amount sufficient to address oil and gas development impacts*.

(2) There must be deposited in the account oil and natural gas production taxes, if any, pursuant to ~~20-9-310(7)~~ *20-9-310(4)(b)* and any amounts pursuant to 20-9-104(6).

(3) A school district may apply to the superintendent of public instruction for funds from the account for circumstances that are directly related to impacts resulting from the development or cessation of development of oil and natural gas as follows:

(a) an unusual enrollment increase as determined pursuant to 20-9-314;

(b) a district's need to hire new teachers or staff as a result of increased enrollment;

(c) the opening or reopening of an elementary or high school approved by the superintendent of public instruction pursuant to 20-6-502 or 20-6-503; or

(d) major maintenance for a school or district.

(4) In reviewing an applicant's request for funding, the superintendent of public instruction shall consider the following:

(a) the local district's or school's need;

(b) the severity of the energy development impacts;

(c) availability of funds in the account; and

(d) the applicant district's ability to meet the needs identified in subsection (3).

(5) The superintendent of public instruction shall adopt rules necessary to implement the application and distribution process.

(6) The amount in the account may not exceed $7.5 million. Any amount over $7.5 million must be deposited in the ~~state general fund~~ *guarantee account and distributed in the same manner as provided in 20-9-622(3)*."

**Section 31.** Section 20-9-518, MCA, is amended to read:

**"20-9-518. (Effective July 1, 2013) County school oil and natural gas impact fund.** (1) The governing body of a county receiving an allocation under 20-9-104(6) and ~~20-9-310(7)~~ *20-9-310(4)(b)* shall establish a county school oil and natural gas impact fund.

(2) Money received by a county pursuant to 20-9-104(6) and ~~20-9-310(7)~~ *20-9-310(4)(b)* must remain in the fund and may not be appropriated by the governing body until:

(a) the amount of oil and natural gas production taxes received by a school district for the fiscal year is 30% or less of the amount of the average received by the district in the previous 4 fiscal years;

(b) the average price of oil is $50 a barrel or less for the fiscal year; or

(c) the production of oil in the county drops 50% or more below the average oil production in the county during the immediately preceding 5-year period.

(3) Within 30 days of any of the circumstances described in subsections (2)(a) through (2)(c) occurring, the governing body of the county shall allocate 80% of the money proportionally to affected high school districts and elementary school districts in the county*, which must be calculated by dividing the total funds available for distribution by the total number of quality educators, as defined in 20-4-502, employed by the qualifying school districts in the county in the immediately preceding school fiscal year. School districts receiving the funds may place the funds in any budgeted fund of the district at the discretion of the board of trustees*.

(4) The governing body of the county may use 20% of the money in the fund to:

(a) pay for outstanding capital project bonds or other expenses incurred prior to the reduction in the price of oil described in subsection (2)(b);

(b) offset property tax levy increases that are directly caused by the cessation or reduction of oil and natural gas activity;

(c) promote diversification and development of the economic base within the jurisdiction;

(d) attract new industry to the area impacted by the changes in oil and natural gas activity described in subsection (2); or

(e) provide cash incentives for expanding the employment base of the area impacted by the changes in oil and natural gas activity described in subsection (2).

(5) Except as provided in subsection (4)(b), money held in the fund may not be considered as fund balance for the purpose of reducing mill levies.

(6) Money in the fund must be invested as provided by law. Interest and income from the investment of money in the fund must be credited to the fund."

**Section 32.** Section 20-9-622, MCA, is amended to read:

**"20-9-622. Guarantee account.** (1) There is a guarantee account in the state special revenue fund. The guarantee account is intended to:

(a) stabilize the long-term growth of the permanent fund; and

(b) maintain a constant and increasing distributable revenue stream. All realized capital gains and all distributable revenue must be deposited in the guarantee account. Except as provided in subsection (2), the guarantee account is statutorily appropriated, as provided in 17-7-502, for distribution to school districts through school equalization aid as provided in 20-9-343.

(2) As long as a portion of the coal severance tax loan authorized in section 8, Chapter 418, Laws of 2001, is outstanding, the department of natural resources and conservation shall monthly transfer from the guarantee account to the general fund an amount that represents the amount of interest income that would be earned from the investment of the amount of the loan that is currently outstanding. When the loan is fully paid, all mineral royalties deposited in the guarantee account must be transferred to the school facility and technology account pursuant to 17-6-340.

*(3) Any excess interest and income revenue deposited in the guarantee account for distribution under this section must be allocated as follows:*

*(a) 50% of the excess interest and income revenue must be reserved for an appropriation in the next regular session of the legislature as part of the natural resource development K-12 funding payment referred to in 20-9-306; and*

*(b) 50% of the excess interest and income revenue must be distributed to schools on a per-quality-educator basis, with the amount to be distributed to each district calculated by dividing the total funds available for distribution under this subsection (3)(b) by the total number of quality educators, as defined in 20-4-502, employed by each school district in the state in the immediately preceding school fiscal year. A school district receiving funds under this section shall deposit the funds in its miscellaneous programs fund provided for in 20-9-507 and shall use the funds in the following order:*

*(i) to address any repairs categorized as "safety", "damage/wear out", or "codes and standards" in the facilities condition inventory for buildings of the school district as referenced in the K-12 public schools facility condition and*

*needs assessment prepared by the Montana department of administration pursuant to section 1, Chapter 1, Special Laws of December 2005; and*

*(ii) if repairs under subsection (3)(b)(i) have been completed, to any other purpose authorized by 20-9-543.*"

**Section 33. Purpose of increased funding beyond inflation.** The purpose of increases in state funding of BASE aid, as defined in 20-9-306, that a school district uses to increase its previous year's adopted general fund budget by an amount in excess of the inflation calculated in compliance with 20-9-326 are for the purpose of assisting school districts in meeting costs of implementing the changes to the Administrative Rules of Montana adopted by the Montana board of public education during fiscal years 2012 and 2013 and to continue to enhance efforts at improving academic achievement for students enrolled in Montana's public schools.

**Section 34. State school oil and natural gas distribution account.** (1) There is a state school oil and natural gas distribution account in the state special revenue fund provided for in 17-2-102. The purpose of the account is for distribution of the oil and natural gas production revenue exceeding the limitation in 20-9-310(1) to school districts in accordance with 20-9-310(4).

(2) The department of revenue shall deposit in the account oil and natural gas production taxes that exceeds 130% of a school district's maximum budget.

(3) The superintendent of public instruction shall distribute the money from the account in accordance with 20-9-310(4) as long as funds remain in the account.

(4) If funds remain after all of the provisions of 20-9-310(4)(a)(i) through (4)(a)(iv) have occurred, the superintendent of public instruction will deposit the remaining funds in accordance with 20-9-310(4)(b).

**Section 35. Montana support for schools special revenue account.** (1) There is a Montana support for schools special revenue account within the state special revenue fund established in 17-2-102.

(2) Money must be transferred into the Montana support for schools special revenue account pursuant to [section 36].

(3) Money in the account must be transferred to the guarantee account pursuant to and for the purposes described in [section 36].

**Section 36. Transfers of funds.** (1) Prior to June 30, 2013, there is transferred $22,950,178 from the state general fund to the Montana support for schools special revenue account, provided for in [section 35], for purposes of funding the costs of restructuring the basic entitlement for fiscal years 2014 and 2015 under the provisions of [this act].

(2) After July 1, 2013, and prior to July 30, 2013, there is transferred from the Montana support for schools special revenue account to the guarantee account, provided for in 20-9-622, $11,475,089 for state equalization aid in fiscal year 2014.

(3) After July 1, 2014, and prior to July 30, 2014, there is transferred from the Montana support for schools special revenue account to the guarantee account, provided for in 20-9-622, $11,475,089 for state equalization aid in fiscal year 2015.

(4) The amounts transferred to the guarantee account under this section must be excluded from the calculation of excess interest and income revenue under 20-9-342.

**Section 37. Appropriation.** For the biennium beginning July 1, 2013, there is appropriated:

(1) $25.8 million from the state general fund to the office of public instruction for school district BASE aid;

(2) $22.3 million from the state school oil and natural gas distribution account for the purposes specified in [section 34]; and

(3) $13,522 from the state general fund to the office of public instruction for costs associated with the K-12 data task force under [section 1].

**Section 38.** Section 29, Chapter 418, Laws of 2011, is amended to read:

**"Section 29. Termination.** ~~[Sections 1, 7, and 8]~~ *[Sections 1 and 7]* terminate June 30, ~~2016~~ *2020*."

**Section 39. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

**Section 40. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 20, chapter 7, part 1, and the provisions of Title 20, chapter 7, part 1, apply to [section 1].

(2) [Sections 2, 28, 33, 34, and 35] are intended to be codified as an integral part of Title 20, chapter 9, part 3, and the provisions of Title 20, chapter 9, part 3, apply to [sections 2, 28, 33, 34, and 35].

(3) [Section 27] is intended to be codified as an integral part of Title 20, chapter 9, part 4, and the provisions of Title 20, chapter 9, part 4, apply to [section 27].

**Section 41. Coordination instruction.** If both House Bill No. 378 and [this act] are passed and approved, then House Bill No. 378 is void.

**Section 42. Effective dates — applicability.** (1) Except as provided in subsections (2) and (3), [this act] is effective on passage and approval and applies to school fiscal year 2014 and subsequent school fiscal years.

(2) [Sections 9 and 30] are effective July 1, 2016.

(3) [Sections 29 and 31] are effective July 1, 2013.

**Section 43. Termination.** [Sections 8, 29, and 35] terminate June 30, 2016.

Approved May 6, 2013

# CHAPTER NO. 401

[SB 201]

AN ACT GENERALLY REVISING LAWS RELATED TO WILDLAND FIRE; FINDING THAT CATASTROPHIC WILDLAND FIRE HAS THE POTENTIAL TO JEOPARDIZE MONTANANS' CONSTITUTIONAL RIGHT TO A CLEAN AND HEALTHFUL ENVIRONMENT; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ADVOCATE FOR AUTHORITY TO ENGAGE IN FOREST MANAGEMENT ACTIVITIES TO REDUCE FIRE RISK AND INTENSITY ON FEDERALLY MANAGED LAND LOCATED WITHIN THE WILDLAND-URBAN INTERFACE; AUTHORIZING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE ATTORNEY GENERAL TO INTERVENE IN CERTAIN LITIGATION OR APPEALS; AND AMENDING SECTIONS 76-13-104 AND 76-13-115, MCA.

WHEREAS, Article II, section 3, of the Montana Constitution provides that all persons have a constitutional right to a clean and healthful environment; and

WHEREAS, sound forest management activities to reduce fire risk are critical to preventing catastrophic wildland fires that jeopardize the constitutional right to a clean and healthful environment;

WHEREAS, sound forest management activities to reduce fire risk are not occurring on some federally managed lands located within Montana's wildland-urban interface; and

WHEREAS, the state has the inherent power to enact reasonable legislation to protect the health, safety, and welfare of the public, which includes the protection of property in the wildland-urban interface from catastrophic wildland fire and the resulting devastation.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 76-13-104, MCA, is amended to read:

**"76-13-104. Functions of department — rulemaking.** (1) (a) The department has the duty to ensure the protection of land under state and private ownership and to suppress wildfires on land under state and private ownership. Fees may not be collected for this purpose except fees provided for in 76-13-201.

(b) The department may engage in wildfire initial attack on all lands if the fire threatens to move onto state or private land.

(2) (a) The department shall adopt rules to protect the natural resources of the state, especially the natural resources owned by the state, from destruction by fire and for that purpose, in declared emergencies, may employ personnel and incur other expenses when necessary.

(b) The department may adopt and enforce reasonable rules for the purpose of enforcing and accomplishing the provisions and purposes of part 2 and this part.

(3) The duty imposed on the department under this section is not exclusive to the department and does not absolve private property owners or local governmental fire agencies organized under Title 7, chapter 33, from any fire protection or suppression responsibilities.

(4) The department may give technical and practical advice concerning forest, range, water, and soil conservation and the establishment and maintenance of woodlots, windbreaks, shelterbelts, and fire protection.

(5) The department shall cooperate with all public and other agencies in the development, protection, and conservation of the forest, range, and water resources in this state.

(6) The department shall establish and maintain wildland fire control training programs.

(7) The department shall appoint firewardens in the number and localities that it considers necessary, subject to confirmation by the local county government, and shall adopt rules prescribing the qualifications and duties of firewardens that are in addition to those provided in 76-13-116.

(8) The department shall adopt rules addressing development within the wildland-urban interface, including but not limited to:

(a) best practices for development within the wildland-urban interface; and

(b) criteria for providing grant and loan assistance to local government entities to encourage adoption of best practices for development within the wildland-urban interface.

*(9) (a) The department shall advocate for the inclusion of Montana in federal legislation to establish a good neighbor policy that would allow the secretary of the interior or the secretary of agriculture to enter into a cooperating and coordinating agreement or contract that would authorize the state forester to engage in forest management and education activities to reduce wildland fire risk and intensity on federal land designated as wildland-urban interface under 76-13-145.*

*(b) Forest management activities to reduce wildland fire risk and intensity included in the good neighbor policy must include the authority to:*

*(i) treat insect-infested trees;*

*(ii) reduce hazardous fuels; and*

*(iii) any other activities to improve the overall diversity and vigor of forested landscapes.*

*(10) The department has the authority to intervene in litigation or appeals on federal forest management projects that involve reduction of hazardous fuels or other activities to mitigate the risk of wildland fire in the wildland-urban interface.*"

**Section 2. Federal forest management projects — attorney general authority to intervene.** The attorney general has the authority to intervene in litigation or appeals on federal forest management projects.

**Section 3.** Section 76-13-115, MCA, is amended to read:

**"76-13-115. State fire policy.** The legislature finds and declares that:

(1) the safety of the public and of firefighters is paramount in all wildfire suppression activities;

(2) it is a priority to minimize property and resource loss resulting from wildfire and to minimize expense to Montana taxpayers, which is generally accomplished through an aggressive and rapid initial attack effort;

(3) interagency cooperation and coordination among local, state, and federal agencies are intended and encouraged, including cooperation when restricting activity or closing areas to access becomes necessary;

(4) fire prevention, hazard reduction, and loss mitigation are fundamental components of this policy;

(5) all property in Montana has wildfire protection from a recognized fire protection entity;

(6) all private property owners and federal and state public land management agencies have a responsibility to manage resources, mitigate fire hazards, and otherwise prevent fires on their property;

(7) sound forest management activities to reduce fire risk, such as thinning, prescribed burning, and insect and disease treatments, improve the overall diversity and vigor of forested landscapes and improve the condition of related water, wildlife, recreation, and aesthetic resources; ~~and~~

(8) development of fire protection guidelines for the wildland-urban interface is critical to improving public safety and for reducing risk and loss*; and*

*(9) catastrophic wildland fire in wildland-urban interface areas resulting from inadequate federal land management activities to reduce fire risk has the potential to jeopardize Montanans' inalienable right to a clean and healthful environment guaranteed in Article II, section 3, of the Montana constitution*."

**Section 4. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 76, chapter 13, part 1, and the provisions of Title 76, chapter 13, part 1, apply to [section 2].

**Section 5. Coordination instruction.** If both Senate Bill No. 201 and Senate Bill No. 217 are passed and approved and if both contain a section authorizing the attorney general to intervene in litigation on federal forest management projects, then those sections are void and the new [section 2 of Senate Bill No. 201] must read as follows:

"NEW SECTION. **Section 2. Federal forest management projects — attorney general authority to intervene.** (1) The attorney general has the authority to intervene in litigation or appeals on federal forest management projects.

(2) The authority provided in subsection (1) includes the authority to fulfill the purposes of Title 76, chapter 13, to intervene in litigation or appeals on federal forest management projects that could affect watershed protection or restoration."

Approved May 6, 2013

# CHAPTER NO. 402

[SB 215]

AN ACT TRANSFERRING THE ADMINISTRATIVE ATTACHMENT OF THE BOARD OF HORSERACING FROM THE DEPARTMENT OF LIVESTOCK TO THE DEPARTMENT OF COMMERCE; AMENDING SECTION 23-4-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 23-4-101, MCA, is amended to read:

**"23-4-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advance deposit wagering" means a form of parimutuel wagering in which a person deposits money in an account with an advance deposit wagering hub operator licensed by the board to conduct advance deposit wagering. The money is used to pay for parimutuel wagers made in person, by telephone, or through a communication by other electronic means on horse or greyhound races held in or outside this state.

(2) "Advance deposit wagering hub operator" means a simulcast and interactive wagering hub business licensed by the board that, through a subscriber-based service located in this or another state, conducts parimutuel wagering on the races that it simulcasts and on other races that it carries in its wagering menu and that uses a computer that registers bets and divides the total amount bet among those who won.

(3) "Board" means the board of horseracing provided for in ~~2-15-3106~~ *Title 2, chapter 15, part 20.*

(4) "Board of stewards" means a board composed of three stewards who supervise race meets.

(5) "Department" means the department of ~~livestock~~ *commerce* provided for in Title 2, chapter 15, part ~~31~~ *18.*

(6) "Fantasy sports league" has the meaning provided in 23-5-801.

(7) "Immediate family" means the spouse, parents, children, grandchildren, brothers, or sisters of an official or licensee regulated by this chapter who have a permanent or continuous residence in the household of the official or licensee and all other persons who have a permanent or continuous residence in the household of the official or licensee.

(8) "Match bronc ride" means a saddle bronc riding contest consisting of two sections known as a "long go" and a "short go" in which the win, place, and show winners are determined by judges of the rides for each go.

(9) "Minor" means a person under 18 years of age.

(10) "Parimutuel facility" means a facility licensed by the board at which fantasy sports leagues are conducted and wagering on the outcome under a parimutuel system is permitted.

(11) "Parimutuel network" means an association licensed by the board to compile and distribute fantasy sports league rosters and weekly point totals for licensed parimutuel facilities and to manage statewide parimutuel wagering pools on fantasy sports leagues.

(12) "Persons" means individuals, firms, corporations, fair boards, and associations.

(13) (a) "Race meet" means racing of registered horses or mules, match bronc rides, and wild horse rides at which the parimutuel system of wagering is used. The term includes horseraces, mule races, and greyhound races that are simulcast.

(b) The term does not include live greyhound racing.

(14) "Racing" means live racing of registered horses or mules and simulcast racing of horses, mules, and greyhounds.

(15) "Simulcast" means a live broadcast of an actual horserace, mule race, or greyhound race at the time it is run. The term includes races of local or national prominence.

(16) "Simulcast facility" means a facility at which horseraces, mule races, or greyhound races are simulcast and wagering on the outcome is permitted under the parimutuel system.

(17) "Simulcast parimutuel network" means an association that has contracted with the board to receive or originate intrastate and interstate simulcast race signals, relay the race signals to licensed simulcast facilities, and manage statewide parimutuel wagering pools on simulcast races or has been licensed by the board to operate a statewide parimutuel wagering pool for fantasy sports leagues. The board may act as a simulcast parimutuel network provider with respect to simulcast races.

(18) "Source market fee" means the portion of a wager made with a licensed advance deposit wagering hub operator by a Montana resident that is paid to the board.

(19) "Steward" means an official hired by the department and by persons sponsoring a race meet to regulate and control the day-to-day conduct and operation of a sanctioned meet.

(20) "Wild horse ride" means a wild horse riding contest in which three-person teams attempt to saddle a wild horse and ride it completely around a track with the first to do so declared the winner."

**Section 2. Directions to code commissioner.** (1) Section 2-15-3106 is intended to be renumbered and codified as an integral part of Title 2, chapter 15, part 18.

(2) Any enactment of the 2013 legislature that references the board of horseracing as a part of the department of livestock must be changed to reflect assignment of the board of horseracing to the department of commerce.

**Section 3. Effective Date.** [This act] is effective July 1, 2013.

Approved May 6, 2013

# CHAPTER NO. 403

[SB 217]

AN ACT REVISING LAWS RELATED TO WATERSHEDS AND CATASTROPHIC FIRES; FINDING THAT WATERSHEDS AND THE DRINKING WATER SUPPLIES OF MANY MONTANA COMMUNITIES ARE AT RISK FROM CATASTROPHIC FIRES IN FEDERALLY MANAGED WATERSHEDS; DIRECTING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ANALYZE FOREST LAND FOR POTENTIAL ZONES OF INFESTATION AND ADVOCATE FOR AUTHORITY TO CONDUCT WATERSHED RESTORATION AND PROTECTION SERVICES ON FEDERAL LAND; AUTHORIZING THE ATTORNEY GENERAL TO INTERVENE IN LITIGATION OF FEDERAL FOREST MANAGEMENT PROJECTS; AND AMENDING SECTIONS 76-13-301, 76-13-303, 76-13-701, AND 76-13-702, MCA.

WHEREAS, properly functioning watersheds are critical to Montana's economic prosperity, the health of its citizens, and the culture of the state but the management of many of these watersheds has left them impaired or at risk for not functioning properly; and

WHEREAS, the Montana Constitution provides that the waters of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law; and

WHEREAS, all persons have a constitutional right to a clean and healthful environment, which includes the protection and restoration of watersheds; and

WHEREAS, the state has inherent power to enact reasonable legislation for the health, safety, and welfare of the public, which includes the protection of drinking water supplies that originate in watersheds; and

WHEREAS, wildfires in critical watersheds and across Montana degrade the quality of our water by overloading streams with sediment and nutrients and clogging our air with pollutants from smoke, resulting last year in 88 days on which the air quality was poor because of smoke; and

WHEREAS, the 2012 fire season was severe, with suppression costs to the state topping $50 million, and comprehensive watershed restoration and protection could significantly reduce fire season costs by preventing fires.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 76-13-301, MCA, is amended to read:

**"76-13-301. Policy.** *(1)* It is the public policy of the state to*:*

*(a)* protect and preserve forest resources from destruction by forest insect pests and tree diseases~~,~~*;*

*(b)* ~~to~~ protect the forests and watersheds of Montana~~,~~ *and restore those watersheds that are most affected by insect pests and tree diseases and are critical to water supplies;*

*(c)* ~~to~~ enhance the production of forests~~,~~*;*

*(d)* ~~to~~ promote the stability of forest industry~~,~~*; and*

*(e)* ~~to~~ protect the recreational values of the forest~~, and to~~.

*(2) It is further the public policy of the state to* independently and through cooperation with the federal government and private forest landowners adopt measures to control, suppress, and eradicate outbreaks of forest insect pests and tree diseases."

**Section 2.** Section 76-13-303, MCA, is amended to read:

**"76-13-303. Creation of zone of infestation.** *(1)* ~~Whenever the department determines that~~ *The department shall annually produce a list of areas where:*

*(a)* there exists an infestation of forest insect pests or forest tree diseases injurious to the timber or forest growth on forest lands within the state and that the infestation is of such a character as to be a menace to the timber or forest growth of this state*; and*

*(b) an infestation of forest insect pests or forest tree diseases in a watershed makes the watershed at risk for wildfire, places the functionality of the watershed at risk, or creates other conditions that threaten the watershed.* ~~, the~~

*(2) The* department shall~~, with the approval of~~ *present the list annually to* the board of land commissioners~~, declare the existence of~~ *to determine if* a zone of infestation *exists and, if so,* ~~and~~ *shall* fix the boundaries ~~so as~~ to definitely describe and identify ~~the~~ *each* zone."

**Section 3.** Section 76-13-701, MCA, is amended to read:

**"76-13-701. Findings and policy.** (1) The legislature finds that the sustainable management of public forests in Montana is vital to conserving the state's natural resources and their economic and ecological potential for the benefit of all Montanans.

(2) The legislature finds that public forests in Montana should be sustainably managed to maintain biodiversity, productivity, regeneration capacity, vitality, and potential to fulfill relevant ecological, economic, and social functions.

(3) The legislature finds that sustainable forest stewardship and management of Montana's public forests requires a balanced approach that ensures a stable timber supply, active restoration, healthy watersheds and fish and wildlife habitat, areas for natural processes, and allowances for multiple uses.

*(4) The legislature finds that:*

*(a) there is overwhelming evidence that the management, protection, and conservation of watersheds in Montana is critical to the well-being of the state;*

*(b) the water supplies of some of the state's most populous cities and surrounding areas originate in federally managed watersheds that are at risk for catastrophic wildfire, the severity of which could be reduced by proper management;*

*(c) a catastrophic wildfire in any one of those municipal watersheds would result in ash and sediment inundating and degrading the water supply, leaving tens of thousands of residents without drinking water, creating a severe public safety situation, and decimating millions of dollars worth of water infrastructure;*

*(d) a burned-out watershed also affects the timing of snow melt and stream flow, which detrimentally affects irrigation and fisheries; and*

*(e) federal land managers are not giving due consideration to the constitutionally protected water rights of the state and its citizens, the exercise of which would be impaired by a catastrophic wildfire.*

~~(4)~~*(5)* The legislature declares that it is the policy of this state to promote the sustainable use of all public forests within the state through sound management and collaboration with local, state, and federal entities."

**Section 4.** Section 76-13-702, MCA, is amended to read:

**"76-13-702. Duties — authority.** To implement the policy of 76-13-701, the department of natural resources and conservation:

(1) shall support sustainable forest management practices, including forest restoration, on public forests in Montana consistent with all applicable laws and administrative requirements;

(2) shall provide technical information and educational assistance to nonindustrial, private forest landowners;

(3) shall promote forest management activities within and adjacent to the wildland-urban interface and promote the implementation of community wildfire protection plans;

(4) shall promote a viable forest and wood products industry and other businesses and individual activities that rely on public forest lands;

(5) shall represent the state's interest in the federal forest management planning and policy process, including establishing cooperative agency status and coordination with federal agencies;

*(6) shall advocate that Montana be included in federal legislation to establish a good neighbor policy that would allow the secretary of the interior or the secretary of agriculture to enter into a cooperative agreement or contract that would authorize the state forester to provide watershed restoration and protection services on federal land. Watershed restoration and protection services included in the good neighbor policy must include the authority to:*

*(a) treat insect-infested trees;*

*(b) reduce hazardous fuels; and*

*(c) conduct any other activities to restore or improve forest, rangeland, and watershed health, including fish and wildlife habitat.*

~~(6)~~*(7)* may assist local government entities in establishing cooperative agency status and coordination with federal agencies;

~~(7)~~*(8)* shall promote the development of an independent, long-term sustained yield calculation on Montana's federal forests;

~~(8)~~*(9)* has the authority to intervene in litigation or appeals on federal forest management projects that:

(a) comply with the policy in 76-13-701 and in which local and state interests are clearly involved; or

(b) involve fuel-loading conditions that the department considers to be a significant threat to public health and safety *or to hamper watershed restoration and protection*;

~~(9)~~*(10)* has the authority to enter into agreements with federal agencies to participate in forest management activities on federal lands; and

~~(10)~~*(11)* shall participate in and facilitate collaboration between traditional forest interests in reaching consensus-based solutions on federal land management issues."

**Section 5. Federal forest management projects — attorney general authority to intervene**. To fulfill the purposes of Title 76, chapter 13, the attorney general has the authority to intervene in litigation or appeals on federal forest management projects that could affect watershed protection or restoration.

**Section 6. Codification instruction.** [Section 5] is intended to be codified as an integral part of Title 76, chapter 13, part 1, and the provisions of Title 76, chapter 13, part 1, apply to [section 5].

Approved May 6, 2013

# CHAPTER NO. 404

[SB 223]

AN ACT REQUIRING A PLAN FOR TERMINATING THE MONTANA COMPREHENSIVE HEALTH ASSOCIATION AND PLANS; PROVIDING FOR REVIEW OF THE PLAN BY THE INSURANCE COMMISSIONER AND THE LEGISLATURE; PROVIDING FOR TERMINATION OF THE ASSOCIATION BOARD OF DIRECTORS; AMENDING SECTIONS 33-22-1501, 33-22-1502, AND 33-22-1504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 33-22-1501, MCA, is amended to read:

**"33-22-1501. Definitions.** As used in this part, the following definitions apply:

(1) "Association" means the comprehensive health association created by 33-22-1503.

(2) "Association plan" means a policy of insurance coverage that is offered by the association and that is certified by the association as required by 33-22-1521.

(3) "Association plan premium" means the charge determined pursuant to 33-22-1512 for membership in the association plan based on the benefits provided in 33-22-1521.

(4) "Association portability plan" means a policy of insurance coverage that is offered by the association to a federally defined eligible individual.

(5) "Association portability plan premium" means the charge determined by the association and approved by the commissioner for an association portability plan.

(6) "Block of business" means a separate risk pool grouping of covered individuals, enrollees, and dependents as defined by rules of the commissioner.

(7) (a) "Eligible person" means an individual who:

(i) is a resident of this state and applies for coverage under the association plan;

(ii) is not eligible for any other form of health insurance coverage or health service benefits, except:

(A) for coverage consisting solely of excepted benefits, as defined in 33-22-140; or

(B) subject to eligibility limitations adopted pursuant to 33-22-1502(2), if the individual has coverage comparable to the association plan but is paying a premium or has received a renewal notice to pay a premium that is more than 150% of the average premium rate used to calculate the association plan premium rate pursuant to 33-22-1512(1); and

(iii) meets one or more of the following criteria:

(A) has, within 6 months prior to the date of application, been rejected for disability insurance or health service benefits by at least one insurer, society, or health service corporation, unless the association waives this requirement; or

(B) has had a restrictive rider or preexisting conditions limitation required by at least one insurer, society, or health service corporation that has the effect of substantially reducing coverage from that received by a person considered a standard risk.

(b) The term does not apply to an individual who is certified as eligible for federal trade adjustment assistance or for pension benefit guaranty corporation assistance, as provided by the federal Trade Adjustment Assistance Reform Act of 2002, and is eligible for the association portability plan.

(8) "Federally defined eligible individual" means a person who is an individual enrolling in the association portability plan:

(a) for whom, as of the date on which the individual seeks coverage under the association portability plan, the aggregate of the periods of creditable coverage is 18 months or more and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan;

(b) who does not have other health insurance coverage;

(c) who is not eligible for coverage under:

(i) a group health plan;

(ii) Title XVIII, part A or B, of the Social Security Act, 42 U.S.C. 1395c through 1395i-4 or 42 U.S.C. 1395j through 1395w-4; or

(iii) a state plan under Title XIX of the Social Security Act, 42 U.S.C. 1396a through 1396u, or a successor program;

(d) for whom the most recent coverage was not terminated for factors relating to nonpayment of premiums or fraud;

(e) who, if offered the option of continuation coverage under a COBRA continuation provision or under a similar state program, elected that coverage; and

(f) who has exhausted continuation coverage under the COBRA continuation provision or program described in subsection (8)(e) if the individual elected the continuation coverage described in subsection (8)(e).

(9) "Health service corporation" means a corporation operating pursuant to Title 33, chapter 30, and offering or selling contracts of disability insurance.

(10) "Insurance arrangement" means any plan, program, contract, or other arrangement to the extent not exempt from inclusion by virtue of the provisions of the federal Employee Retirement Income Security Act of 1974 under which one or more employers, unions, or other organizations provide to their employees or members, either directly or indirectly through a trust of a third-party administrator, health care services or benefits other than through an insurer.

(11) "Insurer" means a company operating pursuant to Title 33, chapter 2 or 3, and offering or selling policies or contracts of disability insurance, as provided in Title 33, chapter 22.

(12) "Lead carrier" means the licensed administrator or insurer selected by the association to administer the association plan.

(13) "Medicare" means coverage under both parts A and B of Title XVIII of the Social Security Act, 42 U.S.C. 1395, et seq., as amended.

(14) "Preexisting condition" means any condition for which an applicant for coverage under the association plan has received medical attention during the 3 years immediately preceding the filing of an application.

(15) "Qualified TAA-eligible individual" means an individual and any dependent of that individual, in addition to meeting the requirements specified in subsection (18):

(a) who has 3 months of prior creditable coverage;

(b) whose application for association portability plan coverage is made within 63 days following termination of the applicant's most recent prior creditable coverage; and

(c) who, if eligible for COBRA, is not required to elect or exhaust continuation coverage under the COBRA continuation provision or under a similar state program.

(16) "Resident" means an individual who has been legally domiciled in this state for a period of at least 30 days, except that for a federally defined eligible individual there is no 30-day requirement. The criteria for determining residency must be specified in the association's operating rules.

(17) "Society" means a fraternal benefit society operating pursuant to Title 33, chapter 7, and offering or selling certificates of disability insurance.

(18) "TAA-eligible individual" means an individual and any dependent of that individual enrolling in the association portability plan:

(a) who is a resident of this state on the date of application to the pool;

(b) who has been certified as eligible for federal trade adjustment assistance and a health insurance tax credit or for pension benefit guaranty corporation assistance, as provided by the federal Trade Adjustment Assistance Reform Act of 2002;

(c) who does not have other health insurance coverage; and

(d) who is not covered under a group health plan maintained by an employer, including a group health plan available through a spouse, if the employer contributes 50% or more to the total cost of coverage.

*(19) "Termination plan" means a contingency plan developed by the association board of directors that provides conditions for cessation of the block of business in the association plan and the association portability plan.*"

**Section 2.** Section 33-22-1502, MCA, is amended to read:

**"33-22-1502. Duties of commissioner — rules.** (1) The commissioner shall:

(a) supervise the creation of the association within the limits described in 33-22-1503;

(b) approve the selection of the lead carrier by the association and approve the association's contract with the lead carrier, including the association plan coverage and premiums to be charged;

(c) conduct periodic audits to ensure the general accuracy of the financial data submitted by the lead carrier and the association;

(d) undertake, directly or through contracts with other persons, studies or demonstration projects to develop awareness of the benefits of this part so that the residents of this state may best avail themselves of the health care benefits provided by this part; ~~and~~

(e) adopt rules to carry out the provisions and purposes of this part, including rules regarding late payment penalties or rates of interest charged on an unpaid assessment*; and*

*(f) review a termination plan and approve, in conjunction with the approval of the termination plan, the dissolution of the association board of directors and cessation of the association plan and the association portability plan in accordance with state and federal laws*.

(2) The commissioner may adopt rules that limit association plan eligibility under 33-22-1501(7)(a)(ii)(B) according to income level."

**Section 3.** Section 33-22-1504, MCA, is amended to read:

**"33-22-1504. Association board of directors — organization — *duties.*** (1) There is a board of directors of the association, consisting of nine members as follows:

(a) one member from each of the five participating members of the association with the highest annual premium volume of disability insurance contracts, health maintenance organization health care services agreements, or health service corporation contracts, derived from or on behalf of residents in the previous calendar year, as determined by the commissioner;

(b) two members at large who must be participating members of the association, appointed by the commissioner; and

(c) two members at large, appointed by the commissioner to represent the public interest.

(2) The public interest board members provided for in subsection (1)(c) must be enrolled in a Montana comprehensive health association plan at the time of appointment.

(3) The public interest board members are entitled to one board vote each. Each of the seven board members representing the association members is entitled to a weighted average vote, in person or by proxy, based on the association member's annual Montana premium volume. However, a board member may not have more than 50% of the vote.

(4) Members of the board may be reimbursed from the money of the association for expenses incurred by them because of their service as board members but may not otherwise be compensated by the association for their services. The costs of conducting the meetings of the association and reimbursing its board of directors must be borne by participating members of the association in accordance with 33-22-1513.

(5) The commissioner may replace a board member if the commissioner determines that the board member is not actively participating in the affairs of the board or if the participating member does not appoint a board representative within a reasonable time period. A board member appointed under subsection (1)(a) must be replaced by a participating member of the association with the next highest annual Montana premium volume of disability insurance contracts, health maintenance organization health care service agreements, or health service corporation contracts, derived from or on behalf of residents in the previous calendar year, as determined by the commissioner.

(6) The commissioner shall include the applicable premium volume of all affiliates, as defined in 33-2-1101, in making the determination required by subsection (1)(a) or (5).

*(7) (a) The board of directors of the association shall develop a termination plan that specifies a time when the eligibility requirements for an eligible person and a federally defined eligible individual are no longer valid because of changes in the health insurance market. The commissioner shall review the termination plan, which is subject to the commissioner's approval.*

*(b) The termination plan must include:*

*(i) a proposed timeline to allow enrolled members of the association plan and the association portability plan to acquire other health insurance;*

*(ii) financial data showing the general plan for completing all financial transactions within the association plan and the association portability plan as provided in 33-22-1513 and the effect that the plan will have on funding sources, including tobacco settlement funds allocated pursuant to 17-6-606;*

*(iii) documents and related educational materials designed to inform enrolled members of the association plan and the association portability plan of obligations and methods to transfer to other health insurance plans. The plan must include at least a 90-day notice of nonrenewal.*

*(iv) proposed language for the repeal of Title 33, chapter 22, part 15.*

*(8) The commissioner shall present the termination plan to the economic affairs interim committee.*"

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved May 6, 2013

# CHAPTER NO. 405

[SB 231]

AN ACT REVISING THE LIMITATION ON THE NUMBER OF ACRES THAT ARE ELIGIBLE FOR EXEMPTION FROM THE PROPERTY TAX IF OWNED BY AN INDIAN TRIBE AND DESIGNATED AS PARK LAND; PROVIDING THAT EXISTING PROPERTY TAXES DUE ARE NOT EXTINGUISHED; AMENDING SECTION 15-6-201, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-6-201, MCA, is amended to read:

**"15-6-201. Governmental, charitable, and educational categories — exempt property.** (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operated for gain or profit;

(iv) municipal corporations;

(v) public libraries;

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(vii) special districts created pursuant to Title 7, chapter 11, part 10; and

(viii) subject to subsection (2), federally recognized Indian tribes in the state if the property is located entirely within the exterior boundaries of the reservation of the tribe that owns the property and the property is used exclusively by the tribe for essential government services. Essential government services are tribal government administration, fire, police, public

health, education, recreation, sewer, water, pollution control, public transit, and public parks and recreational facilities.

(b) buildings and furnishings in the buildings that are owned by a church and used for actual religious worship or for residences of the clergy, not to exceed one residence for each member of the clergy, together with the land that the buildings occupy and adjacent land reasonably necessary for convenient use of the buildings, which must be identified in the application, and all land and improvements used for educational or youth recreational activities if the facilities are generally available for use by the general public but may not exceed 15 acres for a church or 1 acre for a clergy residence after subtracting any area required by zoning, building codes, or subdivision requirements;

(c) land and improvements upon the land, not to exceed 15 acres, owned by a federally recognized Indian tribe when the land has been set aside by tribal resolution and designated as sacred land to be used exclusively for religious purposes;

(d) property owned and used exclusively for agricultural and horticultural societies not operated for gain or profit;

(e) property, not to exceed 80 acres, which must be legally described in the application for the exemption, used exclusively for educational purposes, including dormitories and food service buildings for the use of students in attendance and other structures necessary for the operation and maintenance of an educational institution that:

(i) is not operated for gain or profit;

(ii) has an attendance policy; and

(iii) has a definable curriculum with systematic instruction;

(f) property, of any acreage, owned by a tribal corporation created for the sole purpose of establishing schools, colleges, and universities if the property meets the requirements of subsection (1)(e);

(g) property used exclusively for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(h) property that is:

(i) (A) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21; or

(B) owned by a federally recognized Indian tribe within the state and set aside by tribal resolution; and

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and not operated for gain or profit;

(i) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(j) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(k) public museums, art galleries, zoos, and observatories that are not operated for gain or profit;

(l) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(m) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(n) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit; and

(o) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(o), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(2) (a) (i) For the purposes of tribal property under subsection (1)(a)(viii), the property subject to exemption may not be:

(A) operated for gain or profit;

(B) held under contract to operate, lease, or sell by a taxable individual;

(C) used or possessed exclusively by a taxable individual or entity; or

(D) held by a tribal corporation except for educational purposes as provided in subsection (1)(f).

(ii) For the purposes of parks and recreational facilities under subsection (1)(a)(viii), the property must be:

(A) set aside by tribal resolution and designated as park land~~, not to exceed 15 acres,~~*, not to exceed 640 acres,* or be designated as a recreational facility; and

(B) open to the general public.

(b) For the purposes of subsection (1)(b), the term "clergy" means, as recognized under the federal Internal Revenue Code:

(i) an ordained minister, priest, or rabbi;

(ii) a commissioned or licensed minister of a church or church denomination that ordains ministers if the person has the authority to perform substantially all the religious duties of the church or denomination;

(iii) a member of a religious order who has taken a vow of poverty; or

(iv) a Christian Science practitioner.

(c) For the purposes of subsection (1)(i):

(i) the term "institutions of purely public charity" includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt

organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(iii) up to 15 acres of property owned by a purely public charity is exempt at the time of its purchase even if the property must be improved before it can directly be used for its intended charitable purpose. If the property is not directly used for the charitable purpose within 8 years of receiving an exemption under this section or if the property is sold or transferred before it entered direct charitable use, the exemption is revoked and the property is taxable. In addition to taxes due for the first year that the property becomes taxable, the owner of the property shall pay an amount equal to the amount of the tax due that year times the number of years that the property was tax-exempt under this section. The amount due is a lien upon the property and when collected must be distributed by the treasurer to funds and accounts in the same ratio as property tax collected on the property is distributed. At the time the exemption is granted, the department shall file a notice with the clerk and recorder in the county in which the property is located. The notice must indicate that an exemption pursuant to this section has been granted. The notice must describe the penalty for default under this section and must specify that a default under this section will create a lien on the property by operation of law. The notice must be on a form prescribed by the department.

(iv) not more than 160 acres may be exempted by a purely public charity under any exemption originally applied for after December 31, 2004. An application for exemption under this section must contain a legal description of the property for which the exemption is requested.

(d) For the purposes of subsection (1)(k), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property owned by the public museum, art gallery, zoo, or observatory that is reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display."

**Section 2. Transition — existing property taxes not extinguished.** [This act] does not extinguish existing property taxes, including but not limited to taxes due and owing, delinquent taxes, tax liens, and tax deeds on property that are in effect on December 31, 2013.

**Section 3. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

**Section 4. Applicability.** [This act] applies to tax years beginning after December 31, 2013.

Approved May 6, 2013

# CHAPTER NO. 406

[SB 264]

AN ACT CREATING THE PORTABLE ELECTRONICS INSURANCE ACT; REQUIRING LICENSURE TO SELL OR OFFER COVERAGE UNDER A POLICY OF PORTABLE ELECTRONICS INSURANCE; REVISING LICENSE APPLICATION REQUIREMENTS FOR NONRESIDENT INSURANCE ADJUSTERS; GRANTING THE COMMISSIONER OF INSURANCE RULEMAKING AUTHORITY; AMENDING SECTION 33-17-301, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 9] may be cited as the "Portable Electronics Insurance Act".

**Section 2. Definitions.** As used in [sections 1 through 9], the following definitions apply:

(1) "Customer" means a person who purchases portable electronics or services related to the use of portable electronics.

(2) "Enrolled customer" means a customer who elects coverage under a portable electronics insurance policy issued to a vendor of portable electronics.

(3) "Location" means any physical location in this state or any website, call center site, or similar location directed to residents of this state.

(4) "Portable electronics" means electronic devices that are portable in nature and their accessories.

(5) (a) "Portable electronics insurance" means insurance providing coverage for the repair or replacement of portable electronics that may provide coverage for portable electronics against loss, theft, inoperability due to mechanical failure, malfunction, damage, or other similar causes of loss. Portable electronics insurance also includes any agreement in which a person or any legal entity, in exchange for consideration paid, agrees to provide for the future repair, replacement, or provision of portable electronics.

(b) The term does not include:

(i) a service contract governed by Title 30, chapter 14, part 13;

(ii) a policy of insurance covering a seller's or a manufacturer's obligations under a warranty; or

(iii) a homeowner's, renter's, private passenger automobile, commercial, or similar policy.

(6) "Portable electronics transaction" means:

(a) the sale or lease of portable electronics by a vendor to a customer; or

(b) the sale of a service related to the use of portable electronics by a vendor to a customer.

(7) "Supervising entity" means a business entity that is a licensed insurer or insurance producer that is authorized by a licensed insurer to supervise the administration of a portable electronics insurance program.

(8) (a) "Vendor" means a person in the business of engaging in portable electronics transactions directly or indirectly.

(b) The term does not include a cooperative organized and transacting business in this state pursuant to Title 35, chapter 18, its subsidiaries, or any other entity affiliated with the cooperative or its subsidiaries through common ownership.

**Section 3. Licensure of vendors — rulemaking.** (1) A vendor must hold a limited lines insurance producer license to sell or offer coverage under a policy of portable electronics insurance.

(2) A license issued under [sections 1 through 9] authorizes any employee or authorized representative of the vendor to sell or offer coverage under a policy of portable electronics insurance to a customer at each location at which the vendor engages in portable electronics transactions.

(3) The supervising entity shall maintain a registry of vendor locations that are authorized to sell or solicit portable electronics insurance coverage in this state. Upon request by the commissioner and with 10 days' notice to the supervising entity, the registry must be open to inspection and examination by the commissioner during regular business hours of the supervising entity.

(4) A license issued under [sections 1 through 9] authorizes the licensee and its employees or authorized representatives to engage in those activities that are permitted in [sections 1 through 9].

(5) The commissioner may adopt rules to implement the provisions of [sections 1 through 9].

**Section 4. Requirements for sale of portable electronics insurance.** (1) At each location where portable electronics insurance is offered to customers, brochures or other written materials must be made available to a prospective customer that:

(a) disclose that portable electronics insurance may provide a duplication of coverage already provided by a customer's homeowner's insurance policy, renter's insurance policy, or other source of coverage;

(b) state that the enrollment by the customer in a portable electronics insurance program is not required in order to purchase or lease portable electronics or services;

(c) summarize the material terms of the insurance coverage, including:

(i) the identity of the insurer;

(ii) the identity of the supervising entity;

(iii) the amount of any applicable deductible and how it is to be paid;

(iv) benefits of the coverage; and

(v) key terms and conditions of coverage such as whether portable electronics may be repaired or replaced with similar make and model reconditioned or nonoriginal manufacturer parts or equipment;

(d) summarize the process for filing a claim, including a description of how to return portable electronics and the maximum fee applicable in the event that the customer fails to comply with any equipment return requirements; and

(e) state that an enrolled customer may cancel enrollment for coverage under a portable electronics insurance policy at any time and that the person paying the premium shall receive a refund of any applicable unearned premium.

(2) The written materials required by this section are not subject to filing with or approval by the commissioner.

(3) Portable electronics insurance may be offered on a month-to-month or other periodic basis as a group or master commercial inland marine policy, subject to 33-1-221 through 33-1-229, issued to a vendor of portable electronics for its enrolled customers.

(4) Eligibility and underwriting standards for customers electing to enroll in coverage must be established by the supervising entity for each portable electronics insurance program.

**Section 5. Authority of vendors of portable electronics.** (1) An employee or authorized representative of a vendor may sell or offer portable electronics insurance to a customer and is not subject to licensure as an insurance producer under this title provided that:

(a) the vendor obtains a limited lines insurance producer license to authorize its employees or authorized representatives to sell or offer portable electronics insurance;

(b) the insurer issuing the portable electronics insurance either directly supervises or appoints a supervising entity to supervise the administration of the program, including development of a training program for employees and authorized representatives of the vendors. The training required by this subsection (1)(b) must comply with the following:

(i) the training must be delivered to employees and authorized representatives of a vendor who is directly engaged in the activity of selling or offering portable electronics insurance;

(ii) the training may be provided in electronic form. If the training is conducted in an electronic form, the supervising entity shall implement a supplemental education program regarding the portable electronics insurance product that is conducted and overseen by licensed insurance producers or adjusters employed by the supervising entity; and

(iii) each employee and authorized representative individually must receive basic instruction about the portable electronics insurance offered to customers and the disclosures required under [section 4].

(c) employees or authorized representatives of a vendor of portable electronics may not advertise, represent, or otherwise represent to the public that they are nonlimited lines licensed insurance producers.

(2) Employees or authorized representatives of a vendor of portable electronics may not be compensated based primarily on the number of customers enrolled for portable electronics insurance coverage but may receive compensation for activities under the limited lines insurance producer license that is incidental to their overall compensation.

(3) (a) The charges for portable electronics insurance coverage may be billed and collected by the vendor of portable electronics. Any charge to the enrolled customer for coverage that is not included in the cost associated with the purchase or lease of portable electronics or related services must be separately itemized on the enrolled customer's bill.

(b) If the portable electronics insurance coverage is included with the purchase or lease of portable electronics or related services, the vendor shall clearly and conspicuously disclose to the enrolled customer that the portable

electronics insurance coverage is included with the portable electronics or related services.

(c) Vendors that are billing and collecting the charges are not required to maintain the funds in a segregated account if the vendor is authorized by the insurer to hold the funds in an alternative manner and remits the amounts to the supervising entity within 60 days of receipt. All funds received by a vendor from an enrolled customer for the sale of portable electronics insurance are considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer. Vendors may receive compensation for billing and collection services.

**Section 6. Application for vendor license — fees.** (1) An applicant for a license under [sections 1 through 9] shall file with the commissioner an application on forms prescribed by the commissioner.

(2) The application must:

(a) provide the name, residence address, and other information required by the commissioner for an employee or officer of the vendor that is designated by the applicant as the person responsible for the vendor's compliance with the requirements of [sections 1 through 9], and if the vendor derives more than 50% of its revenue from the sale of portable electronics insurance, the information required by this subsection (2)(a) must be provided for all officers, directors, and shareholders of record having beneficial ownership of 10% or more of any class of securities registered under federal securities law; and

(b) the location of the applicant's home office.

(3) Any vendor engaging in portable electronics insurance transactions on or before [the effective date of this act] shall apply for licensure within 90 days of the application being made available by the commissioner. Any applicant commencing operations after [the effective date of this act] shall obtain a license prior to offering portable electronics insurance.

(4) Initial licenses issued under [sections 1 through 9] are valid for a period of 24 months.

(5) Each vendor of portable electronics licensed under [sections 1 through 9] shall pay to the commissioner a fee determined by the commissioner as follows:

(a) for a vendor that is engaged in portable electronics transactions at 10 or fewer locations in the state, the fee may not exceed $100 for an initial license or for each renewal; and

(b) for a vendor that is engaged in portable electronics transaction at more than 10 locations in the state, the fee may not exceed $1,000 for an initial license or $500 for each renewal.

**Section 7. Suspension or revocation of vendor license.** If a vendor of portable electronics or its employee or authorized representative violates any provision of [sections 1 through 9], the commissioner may do any of the following after notice and the opportunity for a hearing:

(1) impose fines not to exceed $500 for each violation or $5,000 in the aggregate for violations;

(2) impose other penalties that the commissioner considers reasonable to carry out the purpose of [sections 1 through 9], including:

(a) suspending the privilege of transacting portable electronics insurance under [sections 1 through 9], at specific business locations where violations have occurred; or

(b) suspending or revoking the ability of individual employees or authorized representatives to act under the license.

**Section 8. Termination of portable electronics insurance.** (1) Except as provided in subsections (3) through (5), an insurer may terminate or otherwise change the terms and conditions of a policy of portable electronics insurance upon providing the vendor policyholder and enrolled customers with at least 30 days' notice.

(2) If the insurer changes the terms and conditions of a policy of portable electronics insurance, the insurer shall provide the vendor policyholder with a revised policy or endorsement and each enrolled customer with a revised certificate, endorsement, updated brochure, or other evidence indicating that a change in the terms and conditions has occurred and a summary of material changes.

(3) An insurer may terminate an enrolled customer's enrollment under a portable electronics insurance policy upon 15 days' notice for discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a claim under the coverage.

(4) An insurer may terminate an enrolled customer's enrollment under a portable electronics insurance policy for nonpayment of premium with at least 10 days' notice.

(5) An insurer may immediately terminate an enrolled customer's enrollment under a portable electronics insurance policy without prior notice:

(a) if the enrolled customer ceases to have an active service agreement with the vendor of portable electronics; or

(b) if an enrolled customer exhausts the aggregate limit of liability, if any, under the terms of the portable electronics insurance policy and the insurer sends notice of termination to the enrolled customer within 30 calendar days after exhaustion of the limit. If the notice of exhaustion is not timely sent, the customer's enrollment must continue regardless of the aggregate limit of liability until the insurer sends notice of termination to the enrolled customer.

(6) When a portable electronics insurance policy is terminated by a vendor policyholder, the vendor policyholder shall mail or deliver written notice to each enrolled customer advising the enrolled customer of the termination of the policy and the effective date of termination. The written notice must be mailed or delivered to the enrolled customer at least 30 days prior to the termination.

(7) Any notice or correspondence with respect to a policy of portable electronics insurance required by this section or other applicable law must be in writing and sent within the required notice period. Notices and correspondence may be sent either by mail or by electronic means as set forth in this subsection. If the notice or correspondence is mailed, it must be sent to the vendor of portable electronics at the vendor's mailing address specified for the purpose and to an affected enrolled customer's last-known mailing address on file with the insurer. The insurer or vendor of portable electronics shall maintain proof of mailing in a form authorized or accepted by the United States postal service or other commercial mail delivery service. If the notice or correspondence is sent by electronic means, it must be sent to the vendor of portable electronics at the vendor's electronic mail address specified for the purpose and to an affected enrolled customer's last-known electronic mail address as provided by each enrolled customer to the insurer or vendor of portable electronics. For purposes of this subsection, an enrolled customer's provision of an electronic mail address to the insurer or vendor of portable electronics is considered to be consent to receive notices and correspondence by electronic means. The insurer or vendor

of portable electronics shall maintain proof that the notice or correspondence was sent.

(8) Notices or correspondence required by [sections 1 through 9] or otherwise required by law may be sent on behalf of an insurer or vendor by the supervising entity appointed by the insurer.

**Section 9. Portable electronics insurance claims.** (1) An individual who collects claim information from or furnishes claim information to insureds or claimants and who conducts data entry, including entering data into an automated claims adjudication system, is exempt from licensure under this title if no more than 25 of these individuals are under the supervision of one licensed independent adjuster or licensed insurance producer who is exempt from licensure pursuant to 33-17-102(1)(b)(iii).

(2) For purposes of portable electronics insurance claims, residents of Canada may not be licensed as nonresident adjusters unless they have obtained a resident license in another state or designated another state as their home state.

(3) For purposes of this section, "automated claims adjudication system" means a preprogrammed computer system designed for the collection, data entry, calculation, and final resolution of portable electronics insurance claims that:

(a) may be utilized only by a licensed independent adjuster, licensed insurance producer, or supervised individual operating pursuant to this section;

(b) must comply with all claims payment requirements of this title; and

(c) must be certified as compliant with this section by a licensed independent adjuster that is an officer of the entity that employs the individuals operating pursuant to this section.

**Section 10.** Section 33-17-301, MCA, is amended to read:

**"33-17-301. Adjuster license — qualifications — catastrophe adjustments — public adjuster — *education and examination exemption.*** (1) An individual may not act as or purport to be an adjuster in this state unless licensed as an adjuster under this chapter. An individual shall apply to the commissioner for an adjuster license in a form approved by the commissioner. The commissioner shall issue the adjuster license to individuals qualified to be licensed as an adjuster.

(2) To be licensed as an adjuster, the applicant:

(a) must be an individual 18 years of age or more;

(b) must be a resident of Montana or *a* resident of another state that permits residents of Montana regularly to act as adjusters in the other state~~;~~*;*

(c) *except as provided in subsection (4),* shall pass an adjuster licensing examination as prescribed by the commissioner and pay the fee pursuant to 33-2-708;

(d) must be trustworthy and of good character and reputation; and

(e) must have and shall maintain ~~in this state~~ *in this state* an office accessible to the public and shall keep in the office for not less than 5 years the usual and customary records pertaining to transactions under the license. This provision does not prohibit maintenance of the office in the home of the licensee.

(3) A business entity, whether or not organized under the laws of this state, may be licensed as an adjuster if each individual who is to exercise the adjuster license powers is separately licensed or is named in the business entity adjuster license and is qualified for an individual adjuster license.

*(4) (a) Subject to the provisions of subsection (4)(b), an individual who applies for a nonresident adjuster license in this state and who was previously licensed in another state may not be required to complete any prelicensing education or examination.*

*(b) The exemption in subsection (4)(a) is available only if the individual is currently licensed in the other state or the individual's application is received within 90 days of the cancellation of the individual's previous license and the other state issues a certification or the state's database records indicate that, at the time of the cancellation, the individual was in good standing in that state.*

~~(4)~~*(5)* An adjuster license or qualifications are not required for an adjuster who is sent into this state by and on behalf of an insurer or adjusting business entity for the purpose of investigating or making adjustments of a particular loss under an insurance policy or for the adjustment of a series of losses resulting from a catastrophe common to all losses.

~~(5)~~*(6)* An adjuster license continues in force until lapsed, suspended, revoked, or terminated. The licensee shall renew the license by the biennial renewal date and pay the appropriate fee or the license will lapse. The biennial fee is established pursuant to 33-2-708.

~~(6)~~*(7)* The commissioner may adopt rules providing for the examination, licensure, bonding, and regulation of public adjusters."

**Section 11. Codification instruction.** [Sections 1 through 9] are intended to be codified as an integral part of Title 33, chapter 24, and the provisions of Title 33, chapter 24, apply to [sections 1 through 9].

**Section 12. Effective date.** [This act] is effective August 1, 2013.

Approved May 6, 2013

# CHAPTER NO. 407

[SB 323]

AN ACT PERMITTING A QUERY OF THE PRESCRIPTION DRUG REGISTRY PRIOR TO PRESCRIBING A SCHEDULE II OR SCHEDULE III DRUG FOR TREATMENT OF A WORKERS' COMPENSATION INJURY OR OCCUPATIONAL DISEASE; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Schedule II and III drugs — prescriber obligation.** (1) In order to ensure high-quality health care for an individual with a compensable occupational injury or disease, prescriptions for Schedule II or Schedule III drugs identified in Title 50, chapter 32, part 2, may be carefully monitored for potential abuse, dependence, interaction, and diversion. Ongoing prescriptions for Schedule II and Schedule III drugs may be prescribed only by a treating physician.

(2) (a) A treating physician authorized to prescribe prescription drugs may query the prescription drug registry provided for in Title 37, chapter 7, part 15, prior to the initial prescribing or refilling of a Schedule II or Schedule III drug for treatment of a workers' compensation injury or occupational disease. After consulting the prescription drug registry, a treating physician may decline to prescribe or refill a Schedule II or Schedule III drug if, in the treating physician's judgment, the drug should not be prescribed or refilled.

(b) Prior to the initial prescribing of a Schedule II or Schedule III drug, a treating physician may discuss the risks and benefits of the use of the controlled

substance, including risk of tolerance and drug dependence, with the patient or the patient's legal guardian.

(c) A treating physician shall note in the patient's medical file each query conducted.

(3) This section does not apply to a health care provider administering a Schedule II or Schedule III drug under the following circumstances:

(a) immediately prior to or after surgery;

(b) at the scene of an emergency;

(c) in a licensed ambulance; or

(d) in the emergency department or intensive care unit of a licensed hospital.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 39, chapter 71, part 11, and the provisions of Title 39, chapter 71, part 11, apply to [section 1].

**Section 3. Effective date.** [This act] is effective July 1, 2013.

Approved May 6, 2013

# CHAPTER NO. 408

[SB 335]

AN ACT PROVIDING FOR REMOVAL OF A NATURAL OBSTRUCTION THAT IMPAIRS A PRIOR WATER RIGHT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, inflexible notions of private property rights in the context of real-life situations hamper the common-sense approach that competing uses of property between two interested owners should be accommodated when possible.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Removal of natural obstruction to exercise water right — consent or court ruling required**. (1) A person who owns a water right but cannot exercise the right because a natural obstruction on another person's property prevents the flow of the water shall, in writing, seek consent from the landowner to remove the natural obstruction.

(2) The water right owner may remove the natural obstruction if the landowner consents in writing and the water right owner complies with applicable laws and regulations.

(3) If the landowner does not consent in writing to the removal of the natural obstruction, the water right owner may seek a declaration from district court that the removal of the natural obstruction would not harm the landowner and is necessary for the water right owner to exercise the water right.

(4) In seeking a district court declaration, the water right owner shall:

(a) agree to pay all costs of the removal;

(b) show that the utility of the landowner's property would not be lessened;

(c) show that the landowner would not incur additional, uncompensated burdens from the removal of the natural obstruction; and

(d) agree to comply with applicable laws and regulations.

(5) The landowner may present evidence showing that the removal is not necessary for the water right owner to exercise the right or that the provisions of subsection (4) could not be met if the removal is permitted.

(6) The court shall determine if the removal of the natural obstruction:

(a) is necessary for the water right owner to exercise the right; and

(b) would meet the provisions of subsection (4).

(7) If the court permits the removal, the court may require any conditions to ensure that the provisions of subsection (4) are met.

(8) The court may award court costs and attorney fees.

(9) Removal of a natural obstruction under this section does not impair any existing right of the landowner.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 1, and the provisions of Title 85, chapter 2, part 1, apply to [section 1].

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved May 6, 2013

# CHAPTER NO. 409

[SB 336]

AN ACT CLARIFYING THE DEFINITION OF THE TERM "DEVELOPED SPRING"; AND AMENDING SECTION 85-2-102, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 85-2-102, MCA, is amended to read:

**"85-2-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to change an appropriation right to instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource in accordance with 85-2-436;

(d) in the case of the United States department of agriculture, forest service:

(i) instream flows and in situ use of water created in 85-20-1401, Article V; or

(ii) to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with 85-2-320;

(e) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(f) a use of water for aquifer recharge or mitigation; or

(g) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(2) "Aquifer recharge" means either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water.

(3) "Aquifer storage and recovery project" means a project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or

another department-approved method. The stored water may be either pumped from the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use.

(4) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks through a change in an appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource authorized under 85-2-436;

(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(e) a use of water for aquifer recharge or mitigation; or

(f) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(5) "Certificate" means a certificate of water right issued by the department.

(6) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(7) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(8) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information for the department to begin evaluating the information.

(9) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(10) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

~~(11) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.~~

*(11) "Developed spring" means any point where ground water emerges naturally, that has subsequently been physically altered, and from which ground water flows under natural pressures or is artificially withdrawn.*

(12) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(13) "Ground water" means any water that is beneath the ground surface.

(14) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(15) "Mitigation" means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water.

(16) "Municipality" means an incorporated city or town organized and incorporated under Title 7, chapter 2.

(17) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(18) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(19) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water.

(b) The term does not mean a private corporation, association, or group.

(20) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(21) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(22) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(23) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(24) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(25) "Water division" means a drainage basin as defined in 3-7-102.

(26) "Water judge" means a judge as provided for in Title 3, chapter 7.

(27) "Water master" means a master as provided for in Title 3, chapter 7.

(28) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(29) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

**Section 2. Coordination instruction.** If both Senate Bill No. 19 and [this act] are passed and approved and both contain a section amending 85-2-102, then the definition of "developed spring" in Senate Bill No. 19 must read as follows:

"(12) "Developed spring" means any point where ground water emerges naturally, that has subsequently been physically altered, and from which ground water flows under natural pressures or is artificially withdrawn."

Approved May 6, 2013

# CHAPTER NO. 410

[SB 342]

AN ACT ESTABLISHING THE MONTANA INDIAN LANGUAGE PRESERVATION PILOT PROGRAM; PROVIDING A PROGRAM DESCRIPTION; PROVIDING AN APPROPRIATION; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, Montana is committed in its educational goals to the preservation of American Indian cultural integrity; and

WHEREAS, language in the form of spoken, written, or sign language is foundational to cultural integrity; and

WHEREAS, Montana tribal languages are in a time of crisis through the loss of native speakers, writers, and signers; and

WHEREAS, the tribes and the state have resources, such as the tribal colleges, councils, and historic preservation offices and the state universities, historical society, and library, to preserve and protect Montana tribal languages for this and future generations.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Montana Indian language preservation pilot program.** (1) There is a Montana Indian language pilot preservation program. The program is established to support efforts of Montana tribes to preserve Indian languages in the form of spoken, written, or sign language and to assist in the preservation and curricular goals of Indian education for all pursuant to Article X, section 1(2), of the Montana constitution and Title 20, chapter 1, part 5.

(2) (a) The state-tribal economic development commission established in 90-1-131 shall administer the program and, in collaboration with the Montana historical society, Montana public television organizations, the state director of Indian affairs, and each tribal government located on the seven Montana reservations and the Little Shell Chippewa tribe, shall adopt program rules by July 31, 2013.

(b) The program rules must address performance and output standards, distribution of funds, accounting of funds, and use of funds.

(c) The performance and output standards must include:

(i) development of audio and visual recordings;

(ii) creation of dictionaries and other reference materials, including audio, visual, electronic, or written dictionaries; and

(iii) creation and publication of curricula, which may include electronic curricula.

(d) The performance and output standards may include:

(i) language classes;

(ii) language immersion camps;

(iii) storytelling; and

(iv) publication of literature.

(3) By September 15, 2014, at least two copies of any tangible goods produced under this section, including but not limited to audio or visual recordings, literature, dictionaries, or other publications, must be submitted to the Montana historical society for the benefit of related language preservation efforts and for preservation and archival purposes.

(4) Tribal governments receiving program funds shall form local program advisory boards. Members of a local program advisory board may include but are not limited to representatives from any of the entities listed in subsection (6). Each local program advisory board shall work with college tribal language instructors and individuals who evaluate applicants for licensure as a class 7 American Indian language and culture specialist to develop and adopt measurable and specific outcome requirements for their respective language preservation programs.

(5) (a) Each local program advisory board shall provide reports on expenditures of grant funds, overall program progress, and other criteria determined by the state-tribal economic development commission pursuant to subsection (2)(a) to the state-tribal relations committee at each meeting during the interim.

(b) The state-tribal relations committee shall report any findings, comments, or recommendations regarding each local program and the Montana Indian language preservation pilot program to the 64th legislature.

(6) Tribal governments are encouraged to maximize the impact of grant funds by forming partnerships among state and tribal entities and leveraging existing resources for the preservation of Indian languages and the education of all Montanans in a way that honors the cultural integrity of American Indians. Suggested partner entities include but are not limited to:

(a) the governor's office of Indian affairs;

(b) school districts located on reservations;

(c) tribal colleges;

(d) tribal historic preservation offices;

(e) tribal language and cultural programs;

(f) units of the Montana university system;

(g) the Montana historical society;

(h) the office of public instruction;

(i) Montana public television organizations;

(j) school districts not located on reservations; and

(k) the Montana state library.

(7) State entities that operate film and video studios and equipment shall cooperate with each local tribal preservation program in the production of materials for preservation and archival purposes.

(8) Any cultural and intellectual property rights from program efforts belong to the tribe. Use of the cultural and intellectual property may be negotiated between the tribe and other partnering entities.

**Section 2. Appropriation.** There is appropriated from the state general fund to the state-tribal economic development commission $1 million in each year of the biennium beginning July 1, 2013, for the purposes described in [section 1]. Any remaining funds that are unencumbered as of June 30, 2015, must revert to the general fund.

**Section 3. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 20, chapter 9, and the provisions of Title 20, chapter 9, apply to [section 1].

**Section 5. Coordination instruction.** If both House Bill No. 2 and [this act] are passed and approved and if House Bill No. 2 contains an appropriation for native language preservation, then [section 2 of this act] is void.

**Section 6. Effective date.** [This act] is effective on passage and approval.

**Section 7. Termination.** [This act] terminates June 30, 2015.

Approved May 6, 2013

# CHAPTER NO. 411

[SB 364]

AN ACT AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ADOPT RULES TO REGULATE THE DISPOSAL AND MANAGEMENT OF MATERIALS GENERATED BY THE COMBUSTION OF COAL AT ELECTRIC GENERATING FACILITIES UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 75-10-204 AND 75-10-214, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 75-10-204, MCA, is amended to read:

**"75-10-204. Powers and duties of department.** The department shall, subject to the provisions of 75-10-107, adopt rules governing solid waste management systems that must include but are not limited to:

(1) requirements for the plan of operation and maintenance that must be submitted with an application under this part;

(2) the classification of disposal sites according to the physical capabilities of the site to contain the type of solid waste to be disposed of;

(3) the procedures to be followed in the disposal, treatment, or transport of solid wastes;

(4) the suitability of the site from a public health standpoint when hydrology, geology, and climatology are considered;

(5) requirements relating to ground water monitoring, including but not limited to:

(a) information that owners and operators of municipal solid waste landfills and other disposal sites specified in 75-10-207 are required to submit to the department to enable the department to prepare the priority compliance list authorized by 75-10-207(3);

(b) the content of plans for the design, construction, operation, and maintenance of monitoring wells and monitoring systems; and

(c) recordkeeping and reporting;

(6) the imposition of a quarterly fee based on the justifiable direct and indirect costs to the state of administering Title 75, chapter 10, parts 1 and 2, for solid waste generated outside Montana and disposed of or incinerated within Montana;

(7) requirements to maintain financial assurance payable to the state of Montana with a surety satisfactory to the department in an amount sufficient to provide for waste tire treatment, removal, transportation, and disposal, fire suppression, or other measures necessary to protect the environment and the health, safety, and welfare of the public;

*(8) requirements for coal combustion residues at electrical generation facilities in order to provide for state implementation of federal legislation or*

*federal environmental protection agency regulations that contain legislative or regulatory requirements pertaining to coal combustion residues and that become effective on or after [the effective date of this act]; and*

~~(8)~~*(9)* any other factors relating to the sanitary disposal or management of solid wastes."

**Section 2.** Section 75-10-214, MCA, is amended to read:

**"75-10-214. Exclusions — exceptions to exclusions.** (1) (a) This part may not be construed to prohibit a person from disposing of the person's own solid waste that is generated in reasonable association with the person's household or agricultural operations upon land owned or leased by that person or covered by easement or permit as long as the disposal does not create a nuisance or public health hazard or violate the laws governing the disposal of hazardous or deleterious substances.

(b) ~~This~~ *Except as provided in 75-10-204(8), this* part does not apply to the operation of an electric generating facility, to the drilling, production, or refining of natural gas or petroleum, or to the operation of a mine, mill, smelter, or electrolytic reduction facility.

(2) The exclusions contained in subsection (1) do not apply to a division of land of 5 acres or less made after July 1, 1977, that falls within the definition of subdivision in Title 76, chapter 4, part 1, or the Montana Subdivision and Platting Act in Title 76, chapter 3."

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved May 6, 2013

# CHAPTER NO. 412

[SB 386]

AN ACT REVISING LAWS GOVERNING BENEFITS FOR VOLUNTEER FIREFIGHTERS; ALLOWING CERTAIN LOCAL GOVERNMENTAL FIRE AGENCIES TO PROVIDE WORKERS' COMPENSATION COVERAGE FOR VOLUNTEER FIREFIGHTERS; REVISING PREMIUM AND BENEFIT PROVISIONS FOR VOLUNTEER FIREFIGHTERS AND CERTAIN VOLUNTEER EMERGENCY MEDICAL TECHNICIANS; AMENDING SECTIONS 7-6-621, 39-71-118, 39-71-123, AND 39-71-401, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Workers' compensation for volunteer firefighters — definitions.** (1) An employer may provide workers' compensation coverage as provided in Title 39, chapter 71, to any volunteer firefighter who is listed on a roster of service.

(2) An employer may purchase workers' compensation coverage from any entity authorized to provide workers' compensation coverage under plan No. 1, 2, or 3 as provided in Title 39, chapter 71.

(3) If an employer provides workers' compensation coverage as provided in this section, the employer may, upon payment of the filing fee provided for in 7-4-2631(1)(a), file a roster of service with the clerk and recorder in the county in which the employer is located and update the roster of service monthly if necessary to report changes in the number of volunteers on the roster of service. The clerk and recorder shall file the original and replace it with updates

whenever necessary. The employer shall maintain the roster of service with the effective date of membership for each volunteer firefighter.

(4) For the purposes of this section, the following definitions apply:

(a) (i) "Employer" means the governing body of a fire agency organized under Title 7, chapter 33, including a rural fire district, a fire service area, a volunteer fire department, a volunteer fire company, or a volunteer rural fire control crew.

(ii) The term does not mean a governing body of a city of the first class or second class, including a city to which 7-33-4109 applies, that provides workers' compensation coverage to employees as defined in 39-71-118.

(b) "Roster of service" means the list of volunteer firefighters who have filled out a membership card prior to performing services as a volunteer firefighter.

(c) (i) "Volunteer firefighter" means a volunteer who is on the employer's roster of service. A volunteer firefighter includes a volunteer emergency medical technician as defined in 50-6-202 who is on the roster of service. A volunteer firefighter is not required to be an active member as defined in 19-17-102.

(ii) The term does not mean an individual who is not listed on a roster of service or a member of a volunteer fire department provided for in 7-33-4109.

**Section 2.** Section 7-6-621, MCA, is amended to read:

**"7-6-621. Volunteer firefighters' disability income insurance authorized — voted levy — fund.** (1) Disability income insurance, as defined in 33-1-235, *may be* purchased for volunteer firefighters. ~~must provide that:~~

~~(a) payments or benefits are paid only for an injury received as a volunteer firefighter; and~~

~~(b) the duration of payments or benefits may not exceed the lesser of 1 year or until the treating physician determines that the beneficiary is no longer disabled~~ *Disability income insurance purchased under this section is not the same as workers' compensation coverage provided for under [section 1]*.

(2) If the voters have approved a levy for the purchase of volunteer firefighters' disability income insurance or workers' compensation coverage, the governing body of a local government entity may establish a volunteer firefighters' disability income insurance account. The governing body may hold money in the account for any time period considered appropriate by the governing body. Money held in the account may not be considered as cash balance for the purpose of reducing mill levies.

(3) Money may be expended from the account to purchase disability income insurance coverage ~~meeting the provisions of subsection (1)~~ or for workers' compensation coverage for volunteer firefighters organized or deployed pursuant to any of the provisions of Title 7, chapter 33, parts 21 through 24 or 41.

(4) Money in the account must be invested as provided by law. Interest and income from the investment of money in the account must be credited to the account."

**Section 3.** Section 39-71-118, MCA, is amended to read:

**"39-71-118. Employee, worker, volunteer, volunteer firefighter, and volunteer emergency medical technician defined.** (1) As used in this chapter, the term "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully

employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.

(b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in 39-71-117, and, except as provided in subsection (9), whether or not receiving payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as described in subsection (1)(b), who is performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(f) an inmate working in a federally certified prison industries program authorized under 53-30-132;

(g) a volunteer firefighter as described in 7-33-4109 or a person who provides ambulance services under Title 7, chapter 34, part 1;

(h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for recipients of financial assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's public assistance participants and may be only for the duration of each participant's training while receiving financial assistance or while participating in the food stamp program under a written agreement between the department of public

health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

(i) a member of a religious corporation, religious organization, or religious trust while performing services for the religious corporation, religious organization, or religious trust, as described in 39-71-117(1)(d).

(2) The terms defined in subsection (1) do not include a person who is:

(a) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;

(b) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(b), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

(c) serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(d) performing temporary agricultural work for an employer if the person performing the work is otherwise exempt from the requirement to obtain workers' compensation coverage under 39-71-401(2)(r) with respect to a company that primarily performs agricultural work at a fixed business location or under 39-71-401(2)(d) and is not required to obtain an independent contractor's exemption certificate under 39-71-417 because the person does not regularly perform agricultural work away from the person's own fixed business location. For the purposes of this subsection, the term "agricultural" has the meaning provided in 15-1-101(1)(a).

(3) ~~(a)~~ With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter ~~any~~ *a* volunteer as defined in subsection (2)(b)*, a volunteer emergency medical technician as defined in subsection (10), or a volunteer firefighter as defined in [section 1]*.

~~(b) A fire district, fire service area, or volunteer fire department formed under Title 7, chapter 33, an~~ *An* ambulance service not otherwise covered by subsection (1)(g)~~,~~ or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as an employee under the provisions of this chapter ~~a volunteer firefighter or~~ a volunteer emergency medical technician.

~~(4) (a) The term "volunteer emergency medical technician" means a person who has received a certificate issued by the board of medical examiners as provided in Title 50, chapter 6, part 2, and who serves the public through an ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county.~~

~~(b) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a governmental fire agency organized under Title 7, chapter 33, except 7-33-4109.~~

~~(c) The term "volunteer hours" means all the time spent by a volunteer firefighter or a volunteer emergency medical technician in the service of an employer or as a volunteer for a town, city, or county, including but not limited to training time, response time, and time spent at the employer's premises.~~

~~(5)~~*(4)* (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection ~~(5)(d)~~ *(4)(d)*. A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection ~~(5)(d)~~ *(4)(d)*. For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than $900 a month and not more than 1 1/2 times the state's average weekly wage.

~~(6)~~*(5)* (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection ~~(6)(d)~~ *(5)(d)*. A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) For the purposes of an election under this subsection ~~(6)~~ *(5)*, all weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection ~~(6)(d)~~ *(5)(d)*. For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than $200 a week and not more than 1 1/2 times the state's average weekly wage.

~~(7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.~~

~~(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter, but no more than 60 hours, times the state's average weekly wage divided by 40 hours.~~

~~(c) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer firefighter pursuant to subsection (7)(a), and when injured in the course and scope of employment as a volunteer firefighter may in addition to the benefits described in subsection (7)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may make an election for benefits. If an election is made, payrolls must be reported and premiums must be assessed on the assumed wage.~~

~~(8)~~*(6)* Except as provided in Title 39, chapter 8, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

~~(9)~~*(7)* A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

~~(10)~~*(8)* For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection ~~(10)(b)~~ *(8)(b)* and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

~~(11)~~*(9)* An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection ~~(10)(b)~~ *(8)(b)* or ~~(10)(d)~~ *(8)(d)* as a condition of approving the election under subsection ~~(10)(d)~~ *(8)(d)*.

~~(12)~~*(10)* (a) ~~An~~ *With the approval of the insurer, an* ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as an employee within the provisions of this chapter a volunteer

emergency medical technician who serves public safety through the ambulance service not otherwise covered by subsection (1)(g) or the paid or volunteer nontransporting medical unit.

(b) In the event of an election under subsection ~~(12)(a)~~ *(10)(a)*, the employer shall report payroll for all volunteer emergency medical technicians for premium and weekly benefit purposes based on the number of volunteer hours of each emergency medical technician, but no more than 60 hours, times the state's average weekly wage divided by 40 hours.

(c) ~~A~~ *An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, may make a separate election to provide benefits as described in this subsection (10) to a member who is either a* self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer emergency medical technician pursuant to subsection ~~(12)(a)~~ *(10)(a)*~~, and when~~. *When* injured in the course and scope of employment as a volunteer emergency medical technician*, a member* may ~~in addition to~~ *instead of* the benefits described in subsection ~~(12)(b)~~ *(10)(b)* be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. If ~~an~~ *the separate* election is made as provided in *this* subsection ~~(12)(a), payrolls~~ *(10), payroll information for those self-employed sole proprietors or partners* must be reported and premiums must be assessed on the assumed weekly wage.

(d) A volunteer emergency medical technician who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17, if the individual is also eligible as a volunteer firefighter.

*(e) (i) The term "volunteer emergency medical technician" means a person who has received a certificate issued by the board of medical examiners as provided in Title 50, chapter 6, part 2, and who serves the public through an ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county.*

*(ii) The term does not include a volunteer emergency medical technician who serves an employer as defined in [section 1].*

*(f) The term "volunteer hours" means the time spent by a volunteer emergency medical technician in the service of an employer or as a volunteer for a town, city, or county, including but not limited to training time, response time, and time spent at the employer's premises.*"

**Section 4.** Section 39-71-123, MCA, is amended to read:

**"39-71-123. Wages defined.** (1) "Wages" means all remuneration paid for services performed by an employee for an employer, or income provided for in subsection (1)(d). Wages include the cash value of all remuneration paid in any medium other than cash. The term includes but is not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and periods of sickness;

(b) backpay or any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan;

(c) tips or other gratuities received by the employee, to the extent that tips or gratuities are documented by the employee to the employer for tax purposes;

(d) income or payment in the form of a draw, wage, net profit, or substitute for money received or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed work or provided services for that remuneration;

(e) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and

(f) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement.

(2) The term "wages" does not include any of the following:

(a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other expenses, as set forth in department rules;

(b) the amount of the payment made by the employer for employees, if the payment was made for:

(i) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(ii) sickness or accident disability under a workers' compensation policy;

(iii) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family;

(iv) death, including life insurance for the employee or the employee's immediate family;

(c) vacation or sick leave benefits accrued but not paid;

(d) special rewards for individual invention or discovery; or

(e) monetary and other benefits paid to a person as part of public assistance, as defined in 53-4-201.

(3) (a) Except as provided in subsection (3)(b), for compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except that if the term of employment for the same employer is less than four pay periods, the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work.

(b) For good cause shown, if the use of the last four pay periods does not accurately reflect the claimant's employment history with the employer, the wage may be calculated by dividing the total earnings for an additional period of time, not to exceed 1 year prior to the date of injury, by the number of weeks in that period, including periods of idleness or seasonal fluctuations.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3). As used in this subsection, "concurrent employment" means employment in which the employee was actually employed at the time of the injury and would have continued to be employed without a break in the term of employment if not for the injury.

(b) Except as provided in ~~39-71-118(7)(c) and (12)(c)~~ *39-71-118(10)(c)*, the compensation benefits for a covered volunteer must be based on the average actual wages in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which the volunteer is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of

average actual wages of all employments, except for the wages earned by individuals while engaged in the employments outlined in 39-71-401(3)(a) who elected not to be covered, from which the employee is disabled by the injury incurred.

(5) For the purposes of calculating compensation benefits for an employee working for an employer, as provided in 39-71-117(1)(d), and for calculating premiums to be paid by that employer, the wages must be based upon all hours worked multiplied by the mean hourly wage by area, as published by the department in the edition of Montana Informational Wage Rates by Occupation, adopted annually by the department, that is in effect as of the date of injury or for the period in which the premium is due."

**Section 5.** Section 39-71-401, MCA, is amended to read:

**"39-71-401. Employments covered and exemptions — elections — notice.** (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers and to all employees. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following:

(a) household or domestic employment;

(b) casual employment;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

(e) employment of a real estate, securities, or insurance salesperson paid solely by commission and without a guarantee of minimum earnings;

(f) employment as a direct seller as defined by 26 U.S.C. 3508;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;

(k) employment of a person performing services as a newspaper carrier or freelance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection (2)(k):

(i) "freelance correspondent" means a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier":

(A) means a person who provides a newspaper with the service of delivering newspapers singly or in bundles; and

(B) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as referred to in 39-51-204(1)(e);

(m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) employment of a jockey who is performing under a license issued by the board of horseracing from the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing services under a license issued by the board of horseracing while on the grounds of a licensed race meet;

(p) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(q) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(r) an officer of a quasi-public or a private corporation or, except as provided in subsection (3), a manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager either:

(A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(B) owns less than 20% of the number of shares of stock in the corporation or limited liability company if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of subsection (2)(r)(iii)(A) or (2)(r)(iii)(B);

(s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

(t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian;

(v) employment of a person performing the services of an intrastate or interstate common or contract motor carrier when hired by an individual or entity who meets the definition of a broker or freight forwarder, as provided in 49 U.S.C. 13102;

(w) employment of a person who is not an employee or worker in this state as defined in ~~39-71-118(10)~~ *39-71-118(8)*;

(x) employment of a person who is working under an independent contractor exemption certificate;

(y) employment of an athlete by or on a team or sports club engaged in a contact sport. As used in this subsection, "contact sport" means a sport that includes significant physical contact between the athletes involved. Contact sports include but are not limited to football, hockey, roller derby, rugby, lacrosse, wrestling, and boxing.

(z) a musician performing under a written contract.

(3) (a) (i) A person who regularly and customarily performs services at locations other than the person's own fixed business location shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 unless the person has waived the rights and benefits of the Workers' Compensation Act by obtaining an independent contractor exemption certificate from the department pursuant to 39-71-417.

(ii) Application fees or renewal fees for independent contractor exemption certificates must be deposited in the state special revenue account established in 39-9-206 and must be used to offset the certification administration costs.

(b) A person who holds an independent contractor exemption certificate may purchase a workers' compensation insurance policy and with the insurer's permission elect coverage for the certificate holder.

(c) For the purposes of this subsection (3), "person" means:

(i) a sole proprietor;

(ii) a working member of a partnership;

(iii) a working member of a limited liability partnership;

(iv) a working member of a member-managed limited liability company; or

(v) a manager of a manager-managed limited liability company that is engaged in the work of the construction industry as defined in 39-71-116.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its

corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

**Section 6. Calculation of volunteer firefighter benefits and premiums — definitions.** (1) (a) A plan No. 1 or plan No. 2 insurer shall designate whether an employer, as defined in [section 1], is to use actual volunteer hours or a flat assumed payroll amount for each volunteer firefighter for calculating premiums. The coverage option must be the same for all fire agencies organized under Title 7, chapter 33, that are covered by that insurer and meet the definition of employer in [section 1]. A plan No. 3 insurer shall use a flat assumed payroll amount for each volunteer firefighter for calculating premiums.

(b) If a plan No. 1 or plan No. 2 insurer uses actual volunteer hours, the payroll calculation is the number of actual volunteer hours of each volunteer firefighter, not to exceed 60 hours a week, times the state's average weekly wage divided by 40 hours.

(c) When a plan No. 1, plan No. 2, or plan No. 3 insurer uses a flat assumed payroll amount, the assumed payroll for each volunteer firefighter must be reported as a full month for any month in which the volunteer firefighter is on the roster of service as defined in [section 1]. The employer shall maintain the roster of service with the effective date of membership for each volunteer firefighter.

(2) For benefit purposes, if concurrent employment under 39-71-123 does not apply, a volunteer firefighter injured in the course and scope of employment as a volunteer firefighter is eligible for medical and compensation benefits provided in Title 39, chapter 71. Any weekly compensation benefit must be based on either the actual volunteer hours if chosen as provided in subsection (1)(b) or the flat assumed payroll amount on which premiums are based, whichever is applicable.

(3) For the purposes of this section, the following definitions apply:

(a) "Volunteer firefighter" has the meaning provided in [section 1].

(b) "Volunteer hours" means the time spent by a volunteer firefighter in the service of a fire agency organized under Title 7, chapter 33, that meets the definition of employer in [section 1], including but not limited to training time, response time, and time spent at the premises of the fire agency.

**Section 7. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 7, chapter 33, part 45, and the provisions of Title 7, chapter 33, part 45, apply to [section 1].

(2) [Section 6] is intended to be codified as an integral part of Title 39, chapter 71, part 7, and the provisions of Title 39, chapter 71, part 7, apply to [section 6].

**Section 8. Effective date.** [This act] is effective July 1, 2013.

Approved May 6, 2013

# CHAPTER NO. 413

[SB 410]

AN ACT AUTHORIZING TRANSFERS TO IMPLEMENT THE GENERAL APPROPRIATIONS ACT; CREATING STATE SPECIAL REVENUE ACCOUNTS AND AUTHORIZING APPROPRIATIONS PURSUANT TO THOSE ACCOUNTS IN ORDER TO IMPLEMENT CERTAIN TRANSFERS; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Transfers.** (1) By July 1, 2013, the state treasurer shall transfer $500,000 from the central stores account within the internal service fund to the general fund.

(2) By July 1, 2013, the state treasurer shall transfer the following amounts from the general fund:

(a) $2 million to the corrections operations account established in [section 2];

(b) $2 million to the public health operations account established in [section 3];

(c) $7.5 million to the governor's operations account established in [section 4];

(d) $2 million to the department of labor and industry operations account established in [section 5].

**Section 2. Corrections operations account — statutory appropriation.** (1) There is a corrections operations account in the state special revenue fund. The account consists of money deposited into the account pursuant to [section 1(2)(a)].

(2) Funds in the account are statutorily appropriated, as provided in 17-7-502, to the department of corrections for the biennium beginning July 1, 2013, for the purpose of funding various operations costs of the department.

**Section 3. Public health operations account — statutory appropriation.** (1) There is a public health operations account in the state special revenue fund. The account consists of money deposited into the account pursuant to [section 1(2)(b)].

(2) Funds in the account are statutorily appropriated, as provided in 17-7-502, to the department of public health and human services for the biennium beginning July 1, 2013, for the purpose of funding various operations, benefits, and grant costs of the department.

(3) Notwithstanding the provisions of 17-7-402 and 17-7-403, the department may add authority through the budget amendment process for any federal funds matched by these funds.

**Section 4. Governor's operations account.** (1) There is a governor's operations account in the state special revenue fund. The account consists of money deposited into the account pursuant to [section 1(2)(c)].

(2) Funds in the account are statutorily appropriated, as provided in 17-7-502, to the governor's office of budget and program planning for the biennium beginning July 1, 2013, for the purpose of transferring money to the following departments to fund operations costs:

(a) the department of public health and human services;

(b) the department of natural resources and conservation;

(c) the department of environmental quality;

(d) the department of administration;

(e) the department of commerce;

(f) the department of revenue;

(g) the department of corrections;

(h) the department of labor and industry; and

(i) the governor's office.

**Section 5. Department of labor and industry operations account.** (1) There is a department of labor and industry operations account in the state special revenue fund. The account consists of money deposited into the account pursuant to [section 1(2)(d)].

(2) Funds in the account are statutorily appropriated, as provided in 17-7-502, to the department of labor and industry for the biennium beginning July 1, 2013, for the purpose of funding various operations costs of the department.

**Section 6.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: *[section 4];* 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-51-501; *[section 5];* 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-206; 44-13-102; 50-4-623; *[section 3]; [section 2];* 53-1-109; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; 87-1-230; 87-1-603; 87-1-621; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 17, Ch. 593, L. 2005, and sec. 1, Ch. 186, L. 2009, the inclusion of 15-31-906 terminates January 1, 2015; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 8, Ch. 330, L. 2009, the inclusion of 87-1-621 terminates June 30, 2013; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 8, Ch. 427, L. 2009, the inclusion of 87-1-230 terminates June 30, 2013; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 47, Ch. 19, L. 2011, the inclusion of 87-1-621 terminates June 30, 2013; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; and pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017.)"

**Section 7. Codification instruction.** (1) [Section 2] is intended to be codified as an integral part of Title 53, and the provisions of Title 53 apply to [section 2].

(2) [Section 3] is intended to be codified as an integral part of Title 50, and the provisions of Title 50 apply to [section 3].

(3) [Section 4] is intended to be codified as an integral part of Title 2, chapter 15, part 2, and the provisions of Title 2, chapter 15, part 2, apply to [section 4].

(4) [Section 5] is intended to be codified as an integral part of Title 39, and the provisions of Title 39 apply to [section 5].

**Section 8. Coordination instruction.** If House Bill No. 2 is passed and approved, the conditional language on page B-8, lines 9 through 11, of the reference copy must read as follows:

(1) Subject to subsection (2), $60 million is unrestricted for use in programs administered by the department, and Medicaid Services — Developmental Services, Medicaid Services — Health Resources, Medicaid Services — Senior and Long-Term Care, and Medicaid Services — Addictive and Mental Disorders may be used only to pay for medicaid services for existing eligible medicaid enrollees for expenses recorded as benefits and claims in the state accounting system and may not be transferred to other uses in the department.

(2) The funds in subsection (1) may not be used to expand the medicaid program as allowed under Public Law 111-148 and Public Law 111-152 to newly eligible populations as defined in NFIB v. Sebelius, 132 S. Ct. 2566 (2012).

**Section 9. Effective date.** [This act] is effective on passage and approval.

**Section 10. Termination date.** [This act] terminates June 30, 2015.

Approved May 6, 2013

# CHAPTER NO. 414

[HB 184]

AN ACT CLARIFYING THAT A SUPERVISING BROKER OR REAL ESTATE FIRM IS NOT RESPONSIBLE OR LIABLE FOR A FOR SALE BY OWNER PERSONAL TRANSACTION ON THE PART OF A SALESPERSON; AMENDING SECTION 37-51-309, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 37-51-309, MCA, is amended to read:

**"37-51-309. Broker — salesperson — *for sale by owner* personal transactions of salesperson — notice to department of change of association.** (1) A salesperson may not be associated with or under contract to more than one supervising broker or perform services for a broker with a supervising broker endorsement other than the one designated on the license issued to the salesperson except on a temporary basis as provided in 37-51-302.

(2) When a licensed salesperson desires to change association or contractual relationship from one supervising broker to another, the salesperson shall notify the department promptly in writing of these facts, pay the required fee, and return the salesperson's license, and a new license and pocket card must be issued. A salesperson may not directly or indirectly work for or with a supervising broker until the salesperson has been issued a license to work for or with that supervising broker. On termination of a salesperson's association or contractual relationship, the salesperson shall surrender the salesperson's license to the salesperson's supervising broker, who shall return it to the department for cancellation.

(3) Only one license may be issued to a salesperson to be in effect at one time.

(4) (a) The provisions of this chapter do not prohibit a salesperson from engaging in *for sale by owner* personal transactions, and the provisions of this chapter do not require a supervising broker to exercise any supervision or

provide any training for a salesperson with respect to *for sale by owner* personal transactions of the salesperson.

(b) A supervising broker *or real estate firm* is not responsible or liable for the *for sale by owner* personal transactions of a salesperson. ~~if:~~

~~(i) the personal transaction does not involve the salesperson's supervising broker or real estate firm; and~~

~~(ii) prior~~ *(c) Prior* to entering into a *for sale by owner* personal transaction, the salesperson ~~discloses~~ *shall disclose* in writing to the other party that the transaction is a *for sale by owner* personal transaction with respect to the salesperson and that the transaction does not involve the salesperson's supervising broker or real estate firm.

*(d) A supervising broker or real estate firm is not responsible or liable for the failure of a salesperson to provide the disclosure required in subsection (4)(c).*

(5) For the purposes of this ~~part~~ *section*, "*for sale by owner* personal transaction" includes the following:

(a) the sale, purchase, or exchange of real property owned or acquired by the salesperson; and

(b) the leasing or renting of real property owned by the salesperson."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved May 6, 2013

# CHAPTER NO. 415

[HB 497]

AN ACT PROHIBITING MUNICIPALITIES FROM INCLUDING CERTAIN PROVISIONS IN MUNICIPAL SOCIAL HOST ORDINANCES; AND AMENDING SECTIONS 7-5-109 AND 7-5-4207, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Social host ordinances fining landlords prohibited — maintaining lists for enforcement prohibited.** (1) A social host ordinance enacted by a municipality may not impose a fine on a person who is a landlord of the property as defined in 70-24-103 unless the landlord is a participant in the party, event, or gathering that results in a violation of a social host ordinance.

(2) As part of enforcement of a social host ordinance, a municipality may not maintain or circulate a list of landlords, property owners, or properties on which a social host ordinance violation has occurred.

(3) For the purposes of this section, a "social host ordinance" is an ordinance enacted to prohibit the encouraging, conducting, allowing, or organizing of parties, events, and gatherings at which a person under 21 years of age is in possession of or is consuming an alcoholic beverage.

**Section 2.** Section 7-5-109, MCA, is amended to read:

**"7-5-109. Penalty for violation of ordinance.** (1) Except as provided in *[section 1] and* subsection (2) *of this section*, a local government may fix penalties for the violation of an ordinance that do not exceed a fine of $500 or 6 months' imprisonment or both the fine and imprisonment.

(2) A local government may fix penalties for the violation of an ordinance relating to local or federal wastewater pretreatment standards implementing the Federal Water Pollution Control Act, 33 U.S.C. 1251 through 1387, if the

penalties do not exceed $1,000 per day for each violation or 6 months' imprisonment, or both."

**Section 3.** Section 7-5-4207, MCA, is amended to read:

**"7-5-4207. Penalties for violation of municipal ordinances.** (1) Except as provided in *[section 1] and* subsection (2) *of this section*, the city or town council may impose fines and penalties for the violation of any city ordinance, but a fine or penalty may not exceed $500 and imprisonment may not exceed 6 months for any one offense.

(2) A local government may fix penalties for the violation of an ordinance relating to local or federal wastewater pretreatment standards implementing the Federal Water Pollution Control Act, 33 U.S.C. 1251 through 1387, if the penalties do not exceed $1,000 per day for each violation or 6 months' imprisonment, or both."

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 7, chapter 5, part 42, and the provisions of Title 7, chapter 5, part 42, apply to [section 1].

Approved May 6, 2013

# CHAPTER NO. 416

[SB 23]

AN ACT REVISING COUNTY INTERIM ZONING REQUIREMENTS AND PROCEDURES; REQUIRING A COUNTY TO INITIATE A STUDY OR INVESTIGATION TO VERIFY THE EXISTENCE OF AN EMERGENCY; ELIMINATING THE SPECIFICATION OF EXIGENT CIRCUMSTANCES; REQUIRING CERTAIN PROCEDURES FOR THE EXTENSION OF A RESOLUTION FOR AN INTERIM ZONING DISTRICT OR INTERIM REGULATION; AND AMENDING SECTION 76-2-206, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 76-2-206, MCA, is amended to read:

**"76-2-206. Interim zoning district or regulation.** (1) Subject to subsection (3), the board of county commissioners may establish an interim zoning district or interim regulation ~~as~~ *to address* an emergency ~~measure in order to promote~~ *that involves* the public health, safety, morals, ~~and general~~ *or general* welfare if:

(a) the purpose of the interim zoning district or interim regulation is to classify ~~and regulate~~ those uses and related matters that ~~constitute~~ *must be regulated to mitigate* the emergency; and

(b) *within 30 working days,* the county~~:~~ *initiates a study or investigation to verify that an emergency exists and to identify the facts and circumstances that constitute the emergency, the potential options for mitigating the emergency, and the course of action that the governing body intends to take, if any, during the term of the interim zoning district or interim regulation to mitigate the emergency.*

~~(i) is conducting or in good faith intends to conduct studies within a reasonable time; or~~

~~(ii) has held or is holding a hearing for the purpose of considering any of the following:~~

~~(A) a growth policy;~~

~~(B) zoning regulations; or~~

~~(C) a revision to a growth policy, to a master plan, as provided for in 76-1-604(6) and 76-2-201(2), or to zoning regulations pursuant to this part.~~

(2) A resolution for an interim zoning district or interim regulation must be limited to ~~1 year~~ *1 year* from the date it becomes effective. Subject to ~~subsection (3)~~ *subsections (4) and (5)*, the board of county commissioners may extend the resolution for 1 year, but not more than one extension may be made.

(3) The board of county commissioners shall observe the following procedures in the establishment of an interim zoning district or interim regulation:

(a) Notice of a public hearing on the proposed interim zoning district boundaries or of the interim regulation must be published ~~once a week for 2 weeks in a newspaper of general circulation within the county~~ *as provided in 7-1-2121.* ~~The~~ *In addition to the requirements of 7-1-2121, the* notice must state:

(i) the boundaries of the proposed district;

(ii) the specific emergency ~~or exigent circumstance~~ compelling the establishment of the proposed interim zoning district or interim regulation;

(iii) the general character of the proposed interim zoning district or interim regulation*, including how those uses and related matters that must be regulated to mitigate the emergency will be classified and regulated*; *and*

~~(iv) the time and place of the public hearing; and~~

~~(v)~~*(iv)* that the proposed interim zoning district or interim regulation is on file for public inspection at the office of the county clerk and recorder.

(b) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed establishment of an interim zoning district or interim regulation.

(c) After the hearing, the board of county commissioners may adopt a resolution to establish an interim zoning district or interim regulation.

*(4) The board of county commissioners shall observe the following procedures in the extension of a resolution pursuant to subsection (2):*

*(a) A study or investigation as provided in subsection (1)(b) must be completed prior to the hearing on the proposed extension of the resolution.*

*(b) Notice of a public hearing on the proposed extension of the resolution must be published as provided in 7-1-2121. In addition to the requirements of 7-1-2121, the notice must state:*

*(i) the boundaries of the existing interim zoning district;*

*(ii) the specific emergency that compelled the establishment of the existing interim zoning district or interim regulation and the reason for the proposed extension of the resolution; and*

*(iii) that the proposed extension of the resolution is on file for public inspection at the office of the county clerk and recorder.*

*(c) At the public hearing, which must be held prior to the expiration of the existing interim zoning district or interim zoning regulation, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed extension of the resolution.*

*(5) After the hearing provided for in subsection (4), the board of county commissioners may in its discretion extend the resolution for the interim zoning district or interim regulation.*"

Approved May 6, 2013

# CHAPTER NO. 417

[SB 44]

AN ACT ELIMINATING THE AIR POLLUTION CONTROL ADVISORY COUNCIL AND ITS FUNCTIONS; ELIMINATING A PROVISION RELATED TO PUBLIC HEARINGS ON RULES; AMENDING SECTIONS 75-2-103 AND 75-2-402, MCA; REPEALING SECTIONS 2-15-2106, 75-2-121, 75-2-122, 75-2-123, AND 75-2-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 75-2-103, MCA, is amended to read:

**"75-2-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

~~(1) "Advisory council" means the air pollution control advisory council provided for in 2-15-2106.~~

~~(2)~~*(1)* "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination ~~thereof~~ *of those air contaminants*.

~~(3)~~*(2)* "Air pollutants" means one or more air contaminants that are present in the outdoor atmosphere, including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

~~(4)~~*(3)* "Air pollution" means the presence of air pollutants in a quantity and for a duration that are or tend to be injurious to human health or welfare, animal or plant life, or property or that would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

~~(5)~~*(4)* "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.

~~(6)~~*(5)* "Board" means the board of environmental review provided for in 2-15-3502.

~~(7)~~*(6)* (a) "Commercial hazardous waste incinerator" means:

(i) an incinerator that burns hazardous waste; or

(ii) a boiler or industrial furnace subject to the provisions of 75-10-406.

(b) Commercial hazardous waste incinerator does not include a research and development facility that receives federal or state research funds and that burns hazardous waste primarily to test and evaluate waste treatment remediation technologies.

~~(8)~~*(7)* "Department" means the department of environmental quality provided for in 2-15-3501.

~~(9)~~*(8)* "Emission" means a release into the outdoor atmosphere of air contaminants.

~~(10)~~*(9)* (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

(i) generating electricity;

(ii) producing gas derived from coal;

(iii) producing liquid hydrocarbon products;

(iv) refining crude oil or natural gas;

(v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;

(vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or

(vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

~~(11)~~*(10)* "Environmental protection law" means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.

~~(12)~~*(11)* "Hazardous waste" means:

(a) a substance defined as hazardous under 75-10-403 or defined as hazardous in department administrative rules adopted pursuant to Title 75, chapter 10, part 4; or

(b) a waste containing 2 parts or more per million of polychlorinated biphenyl (PCB).

~~(13)~~*(12)* (a) "Incinerator" means any single- or multiple-chambered combustion device that burns combustible material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the purpose of removal, destruction, disposal, or volume reduction of any portion of the input material.

(b) Incinerator does not include:

(i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;

(ii) space heaters that burn used oil;

(iii) wood-fired boilers; or

(iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.

~~(14)~~*(13)* "Medical waste" means any waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in medical research on humans or animals, or in the production or testing of biologicals. The term includes:

(a) cultures and stocks of infectious agents;

(b) human pathological wastes;

(c) waste human blood or products of human blood;

(d) sharps;

(e) contaminated animal carcasses, body parts, and bedding that were known to have been exposed to infectious agents during research;

(f) laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents; and

(g) biological waste and discarded material contaminated with blood, excretion, exudates, or secretions from humans or animals.

~~(15)~~*(14)* (a) "Oil or gas well facility" means a well that produces oil or natural gas. The term includes:

(i) equipment associated with the well and used for the purpose of producing, treating, separating, or storing oil, natural gas, or other liquids produced by the well; and

(ii) a group of wells under common ownership or control that produce oil or natural gas and that share common equipment used for the purpose of producing, treating, separating, or storing oil, natural gas, or other liquids produced by the wells.

(b) The equipment referred to in subsection (15)(a) includes but is not limited to wellhead assemblies, amine units, prime mover engines, phase separators, heater treater units, dehydrator units, tanks, and connecting tubing.

(c) The term does not include equipment such as compressor engines used for transmission of oil or natural gas.

~~(16)~~*(15)* "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the federal government or an agency of the federal government, or any other legal entity and includes persons resident in Canada.

~~(17)~~*(16)* "Principal" means a principal of a corporation, including but not limited to a partner, associate, officer, parent corporation, or subsidiary corporation.

~~(18)~~*(17)* "Small business stationary source" means a stationary source that:

(a) is owned or operated by a person who employs 100 or fewer individuals;

(b) is a small business concern as defined in the Small Business Act, 15 U.S.C. 631, et seq.;

(c) is not a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.;

(d) emits less than 50 tons per year of an air pollutant;

(e) emits less than a total of 75 tons per year of all air pollutants combined; and

(f) is not excluded from this definition under 75-2-108(3).

~~(19)~~*(18)* (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or gaseous wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction, demolition, or salvage wastes; dead animals, dead animal parts, offal, animal droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts thereof; wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials; asphalt shingles; tarpaper; electrical equipment, transformers, or insulated wire; oil or petroleum products or oil or petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.

(b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of environmental quality, or slash and forest debris regulated under laws administered by the department of natural resources and conservation."

**Section 2.** Section 75-2-402, MCA, is amended to read:

**"75-2-402. Emergency procedure.** (1) ~~Any other law to the contrary notwithstanding~~ *Any other law to the contrary notwithstanding*, if the department finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the department shall order persons causing or contributing to the air pollution to immediately reduce or discontinue the emission of air contaminants. Upon issuance of this order, the department shall fix a place and time within 24 hours for a hearing to be held before the board. Within 24 hours after the ~~commencement~~ *start* of the hearing and without adjournment, the board shall ~~affirm~~ *confirm*, modify, or set aside the order of the department.

(2) ~~In the absence of a generalized condition such as that referred to~~ *Except as provided* in subsection (1), if the department finds that emissions from the operation of one or more air contaminant sources are causing imminent danger to human health or safety, it may order the person responsible for the operation in question to reduce or discontinue emissions immediately, without regard for 75-2-401. In this event, the requirements for hearing and ~~affirmance~~ *confirmation*, modification, or setting aside of orders as provided in subsection (1) apply.

(3) This section does not limit any power ~~which~~ *that* the governor or any other officer may have to declare an emergency and act on the basis of this declaration, whether the power is conferred by statute or ~~constitutional provisions~~ *the constitution* or ~~inheres in~~ *is inherent to* the office.

~~(4) Nothing in 75-2-205 may be construed to require a hearing before the issuance of an emergency order pursuant to this section.~~"

**Section 3. Repealer.** The following sections of the Montana Code Annotated are repealed:

2-15-2106. Air pollution control advisory council.

75-2-121. Advisory council.

75-2-122. Presiding officer — secretary.

75-2-123. Meetings.

75-2-205. Public hearings on rules.

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved May 6, 2013

# CHAPTER NO. 418

[SB 226]

AN ACT EXEMPTING CERTAIN AGRICULTURAL FEED TRUCKS FROM CERTAIN REQUIREMENTS AND TAXATION RELATED TO THE USE OF SPECIAL FUELS; AMENDING SECTIONS 15-70-321 AND 15-70-330, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-70-321, MCA, is amended to read:

**"15-70-321. Tax on special fuel and volatile liquids.** (1) ~~The~~ *Except as provided in subsection (4) or otherwise provided by law, the* department shall, under the provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor vehicles a tax, as provided in subsection (2):

(a) for each gallon of undyed special fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to produce motor power to operate motor vehicles upon the public roads and highways of this state;

(b) for each gallon of special fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used in motor vehicles, motorized equipment, and the internal combustion of any engines, including stationary engines, used in connection with any work performed under any contracts pertaining to the construction, reconstruction, or improvement of any highway or street and their appurtenances awarded by any public agencies, including federal, state, county, municipal, or other political subdivisions; and

(c) for each gallon of dyed special fuel delivered into the fuel supply tank of a diesel-powered highway vehicle, regardless of weight, operating upon the public roads and highways of this state.

(2) The tax imposed in subsection (1) is 27 3/4 cents per gallon.

(3) Material used for construction, reconstruction, or improvement in connection with work performed under a contract as provided in subsection (1)(b) must be produced using special fuel on which state fuel tax has been paid.

*(4) The tax may not be imposed on dyed special fuel delivered into the fuel supply tank of a vehicle that is equipped with a feed-delivery box if:*

*(a) the feed-delivery box is permanently affixed to the vehicle;*

*(b) the vehicle is used exclusively for the feeding of livestock; and*

*(c) the gross vehicle weight of the vehicle, exclusive of any towed units, is greater than 12,000 pounds.*"

**Section 2.** Section 15-70-330, MCA, is amended to read:

**"15-70-330. Special fuel penalties.** (1) In the case of a special fuel user who refuses or fails to file a return required by this part within the time prescribed by 15-70-103 and 15-70-325, there is imposed a penalty of $25 or a sum equal to 10% of the tax due, whichever is greater, together with interest at the rate of 1% on the tax due for each calendar month or fraction of a month during which the refusal or failure continues. However, if any special fuel user establishes to the satisfaction of the department that the failure to file a return within the time prescribed was due to reasonable cause, the department shall waive the penalty provided by this section.

(2) Whenever a special fuel user files a return but fails to pay in whole or in part the tax due under this part, interest at the rate of 1% a month or fraction of a month from the date on which the tax was due to the date of payment in full must be added to the amount due and unpaid.

(3) (a) A special fuel user may not use dyed special fuel to operate a motor vehicle upon the public roads and highways of this state unless*:*

*(i) the motor vehicle has a gross vehicle weight of greater than 12,000 pounds, exclusive of any towed units, is equipped with a feed-delivery box that is permanently affixed to the vehicle, and is used solely for the feeding of livestock; or*

*(ii)* the use is permitted pursuant to rules adopted under subsection ~~(3)(b)~~ *(3)(c)*.

*(b)* The purposeful or knowing use of dyed special fuel in a motor vehicle operating upon the public roads and highways of this state in violation of this subsection *(3)* is subject to the civil penalty imposed under 15-70-372(2). Each use is a separate offense.

~~(b)~~*(c)* The department shall adopt and enforce reasonable rules for the movement of off-highway vehicles traveling from one location to another on public highways, public roads, or streets when using dyed fuel or nontaxed fuel.

(4) The operator of the vehicle is liable for the tax imposed in 15-70-321. If the operator refuses or fails to pay the tax, in whole or in part, the seller of the special fuel is jointly and severally liable for the tax imposed under 15-70-321 and for the penalties described in this section if the seller knows or has reason to know that the fuel will be used for a taxable purpose."

Approved May 6, 2013

# CHAPTER NO. 419

[SB 280]

AN ACT AUTHORIZING A PROPERTY TAXPAYER THAT OBJECTS TO THE ASSESSED VALUATION OF PROPERTY TO HAVE THE OBJECTION RESOLVED THROUGH MEDIATION; REQUIRING PAYMENT OF A FEE AND PROVIDING PROCEDURES FOR MEDIATION; CLARIFYING THE INFORMATION THAT MAY BE CONVEYED BETWEEN PARTIES BY A MEDIATOR; AMENDING SECTIONS 15-1-211, 15-1-402, 15-8-601, 15-23-102, 15-23-104, AND 15-24-3112, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Mediation of valuation disputes — centrally assessed and industrial properties.** (1) For appeals relating to the assessed value of centrally assessed property or industrial property that is assessed annually by the department, the objecting taxpayer may require that all issues raised in the complaint be the subject of a mediation proceeding conducted as provided in 26-1-813. The request for mediation must be accompanied by a fee of $100, payable to the department for deposit in the general fund.

(2) If the taxpayer requests mediation, which must be granted, the request is to be included in the complaint filed with the state tax appeal board pursuant to 15-2-302 or, if subsequent to the appeal, upon separate motion to the state tax appeal board. If mediation is requested by the taxpayer, the mediation must be conducted no less than 60 days prior to the contested case hearing on all issues raised in the complaint, to be scheduled by the state tax appeal board.

(3) The mediation proceeding must be conducted pursuant to 26-1-813 as a private, confidential, and informal dispute resolution. The mediation must be conducted by a person who is not a public employee and must be held at a privately owned facility. Because the mediation proceeding cannot result in a judgment or a compelled agreement, the proceeding is not a governmental operation, and until the dispute between the taxpayer and the department is resolved, either by agreement or through the appeal process, the records of the mediation proceeding may not be disclosed to the public.

(4) Within 45 days after the request for mediation, the mediator must have been selected by the parties and the parties must have scheduled a mediation

proceeding unless waived by both parties. A mediation proceeding may not proceed past 120 days without the consent of the objecting taxpayer and the department. Each party is responsible for that party's mediation costs and shall jointly share the costs of the mediator.

(5) A mediator is prohibited from conveying information from one party to another during the mediation unless the source party specifically allows the conveyance of the information.

(6) If the mediation is successful, the department shall value the property that was the subject of the objection as agreed to in the mediation.

(7) If the mediation is unsuccessful, the parties shall proceed to a contested case hearing as scheduled by the state tax appeal board.

**Section 2. Mediation of valuation disputes — other property taxpayers.** (1) After a final decision of the county tax appeal board relating to the assessed value of property other than centrally assessed property or industrial property valued annually by the department, the objecting taxpayer may require that the assessed value be the subject of a mediation proceeding conducted as provided in 26-1-813. The request for mediation must be accompanied by a fee of $100, payable to the department for deposit in the general fund.

(2) If the taxpayer requests mediation, which must be granted, the request is to be included in the complaint filed with the state tax appeal board pursuant to 15-2-302 or, if subsequent to the appeal, upon separate motion to the state tax appeal board. If mediation is requested by the taxpayer, the mediation must be conducted no less than 60 days prior to the contested case hearing on all issues raised in the complaint, to be scheduled by the state tax appeal board.

(3) The mediation proceeding must be conducted according to [section 1(2) through (6)].

**Section 3.** Section 15-1-211, MCA, is amended to read:

**"15-1-211. Uniform dispute review procedure — notice — appeal.** (1) The department shall provide a uniform review procedure for all persons or other entities, except as provided in subsection (1)(a).

(a) The department's dispute review procedure must be adopted by administrative rule and applies to all matters administered by the department and to all issues arising from the administration of the department, except estate taxes, property taxes, and the issue of whether an employer-employee relationship existed between the person or other entity and individuals subjecting the person or other entity to the requirements of chapter 30, part 25, or whether the employment relationship was that of an independent contractor. ~~The procedure applies to assessments of centrally assessed property taxed pursuant to chapter 23.~~ *The procedure applies to assessments of centrally assessed property taxed pursuant to chapter 23.*

(b) (i) The term "other entity", as used in this section, includes all businesses, corporations, and similar enterprises.

(ii) The term "person" as used in this section includes all individuals.

(2) (a) Persons or other entities having a dispute with the department have the right to have the dispute resolved by appropriate means, including consideration of alternative dispute resolution procedures such as mediation.

(b) The department shall establish a dispute resolution office to resolve disputes between the department and persons or other entities.

(c) Disputes must be resolved by a final department decision within 180 days of the referral to the dispute resolution office, unless extended by mutual

consent of the parties. If a final department decision is not issued within the required time period, the remedy is an appeal to the appropriate forum as provided by law.

(3) (a) The department shall provide written notice to a person or other entity advising ~~them~~ *the person or entity* of a dispute over matters administered by the department.

(b) The person or other entity shall have the opportunity to resolve the dispute with the department employee who is responsible for the notice, as indicated on the notice.

(c) If the dispute cannot be resolved, either the department or the other party may refer the dispute to the dispute resolution office.

(d) The notice must advise the person or other entity of their opportunity to resolve the dispute with the person responsible for the notice and their right to refer the dispute to the dispute resolution office.

(4) Written notice must be sent to the persons or other entities involved in a dispute with the department indicating that the matter has been referred to the dispute resolution office. The written notice must include:

(a) a summary of the department's position regarding the dispute;

(b) an explanation of the right to the resolution of the dispute with a clear description of all procedures and options available;

(c) the right to obtain a final department decision within 180 days of the date that the dispute was referred to the dispute resolution office;

(d) the right to appeal should the department fail to meet the required deadline for issuing a final department decision; and

(e) the right to have the department consider alternative dispute resolution methods, including mediation.

(5) The department shall:

(a) develop guidelines that must be followed by employees of the department in dispute resolution matters;

(b) develop policies concerning the authority of an employee to resolve disputes; and

(c) establish procedures for reviewing and approving disputes resolved by an employee or the dispute resolution office.

(6) (a) (i) The director of revenue or the director's designee is authorized to enter into an agreement with a person or other entity relating to a matter administered by the department.

(ii) The director or the director's designee has no authority to bind a future legislature through the terms of an agreement.

(b) Subject to subsection (6)(a)(ii), an agreement under the provisions of subsection (6)(a)(i) is final and conclusive, and, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

(i) the agreement may not be reopened as to matters agreed upon or be modified by any officer, employee, or agent of this state; and

(ii) in any suit, action, or proceeding under the agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be annulled, modified, set aside, or disregarded."

**Section 4.** Section 15-1-402, MCA, is amended to read:

**"15-1-402. Payment of property taxes or fees under protest.** (1) (a) The person upon whom a property tax or fee is being imposed under this title

may, before the property tax or fee becomes delinquent, pay under written protest that portion of the property tax or fee protested.

(b) The protested payment must:

(i) be made to the officer designated and authorized to collect it;

(ii) specify the grounds of protest; and

(iii) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which may include but are not limited to changes in assessment due to reappraisal under 15-7-111.

(c) If the protested property tax or fee is on property that is subject to central assessment pursuant to 15-23-101, the person shall report to the department the grounds of the protest and the amount of the protested payment for each county in which a protested payment was made. ~~By November 1 of each year, the department shall mail a notice stating the requirements of this subsection (1)(c) to owners of property subject to central assessment under 15-23-101(1) and (2) who have filed a timely appeal under 15-1-211.~~

(2) A person appealing a property tax or fee pursuant to Title 15, chapter 2 or 15, including a person appealing a property tax or fee on property that is *annually assessed by the department or* subject to central assessment pursuant to 15-23-101(1) or (2), shall pay the tax or fee under protest when due in order to receive a refund. If the tax or fee is not paid under protest when due, the appeal *or mediation* may continue but a tax or fee may not be refunded as a result of the appeal *or mediation*.

(3) If a protested property tax or fee is payable in installments, a subsequent installment portion considered unlawful by the state tax appeal board need not be paid and an action or suit need not be commenced to recover the subsequent installment. The determination of the action or suit commenced to recover the first installment portion paid under protest determines the right of the party paying the subsequent installment to have it or any part of it refunded to the party or the right of the taxing authority to collect a subsequent installment not paid by the taxpayer plus interest from the date the subsequent installment was due.

(4) (a) Except as provided in subsection (4)(b), all property taxes and fees paid under protest to a county or municipality must be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and must be retained in the protest fund until the final determination of any action or suit to recover the taxes and fees unless they are released at the request of the county, municipality, or other local taxing jurisdiction pursuant to subsection (5). This section does not prohibit the investment of the money of this fund in the state unified investment program or in any manner provided in Title 7, chapter 6. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

(b) (i) Property taxes that are levied by the state against property that is centrally assessed pursuant to 15-23-101 and any protested taxes on industrial property that is annually assessed by the department in a school district that has elected to waive its right to protested taxes in a specific year pursuant to 15-1-409 must be remitted by the county treasurer to the department for deposit as provided in subsections (4)(b)(ii) through (4)(b)(iv).

(ii) The department shall deposit 50% of that portion of the funds levied for the university system pursuant to 15-10-108 in the state special revenue fund to the credit of the university system, and the other 50% of the funds levied pursuant to 15-10-108 must be deposited in a centrally assessed property tax state special revenue fund.

(iii) Fifty percent of the funds remaining after the deposit of university system funds must be deposited in the state general fund, and the other 50% must be deposited in a centrally assessed property tax state special revenue fund.

(iv) Fifty percent of the funds from a school district that has waived its right to protested taxes must be deposited in the state general fund, and the other 50% must be deposited in a school district property tax protest state special revenue fund.

(5) (a) Except as provided in subsections (5)(b) and (5)(c), the governing body of a taxing jurisdiction affected by the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled, except the amount paid by the taxpayer in the first year of the protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except the first-year protest amount.

(b) The governing body of a taxing jurisdiction affected by the payment of taxes under protest on property that is centrally assessed pursuant to 15-23-101 or on industrial property that is assessed annually by the department in the first and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled. The decision in a previous year of a taxing jurisdiction to leave protested taxes of centrally assessed property in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled.

(c) The provisions of subsection (5)(b) do not apply to a school district that has elected to waive its right to its portion of protested taxes on centrally assessed property and on industrial property that is assessed annually by the department for that specific year as provided in 15-1-409.

(6) (a) If action before the county tax appeal board, state tax appeal board, or district court is not commenced within the time specified or if the action is commenced and finally determined in favor of the department of revenue, county, municipality, or treasurer of the county or the municipality, the amount of the protested portions of the property tax or fee must be taken from the protest fund or the centrally assessed property tax state special revenue fund and deposited to the credit of the fund or funds to which the property tax belongs, less a pro rata deduction for the costs of administration of the protest fund and related expenses charged to the local government units.

(b) (i) If the action is finally determined adversely to the governmental entity levying the tax, then the treasurer of the municipality, county, or state entity levying the tax shall, upon receipt of a certified copy of the final judgment in the action and upon expiration of the time set forth for appeal of the final judgment, refund to the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or fee that the person holding the judgment is entitled to recover, together with interest from the date

of payment under protest. The department shall refund from the school district property tax protest state special revenue fund the protested portions of property taxes and interest to a taxpayer in a school district in which the school district has elected to waive its right to its portion of protested taxes for that specific year as provided in 15-1-409. If the amount available for the refund in the school district property tax protest state special revenue fund is insufficient to refund the property tax payments, the department shall pay the remainder of the refund from the state general fund.

(ii) The taxing jurisdiction shall pay interest at the rate of interest earned by the pooled investment fund provided for in 17-6-203 for the applicable period.

(c) If the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the treasurer shall apply the available amount first to tax repayment, then to interest owed, and lastly to costs.

(d) (i) If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the taxpayer refund, including tax payments and costs, for which the taxing jurisdiction is proratably responsible. The treasurer is not responsible for the amount required to be refunded by the state treasurer as provided in subsection (6)(b).

(ii) For an adverse protest action against the state for centrally assessed property, the department shall refund from the centrally assessed property tax state special revenue fund the amount of protested taxes and from the state general fund the amount of interest as required in subsection (6)(b). The amount refunded for an adverse protested action from the centrally assessed property tax state special revenue fund may not exceed the amount of protested taxes or fees required to be deposited for that action pursuant to subsections (4)(b)(ii) and (4)(b)(iii) or, for taxes or fees protested prior to April 28, 2005, an equivalent amount of the money transferred to the fund pursuant to section 3, Chapter 536, Laws of 2005. If the amount available for the adverse protested action in the centrally assessed property tax state special revenue fund is insufficient to refund the tax payments to which the taxpayer is entitled and for which the state is responsible, the department shall pay the remainder of the refund proportionally from the state general fund and from money deposited in the state special revenue fund levied pursuant to 15-10-108.

(e) In satisfying the requirements of subsection (6)(d), the taxing jurisdiction, including the state, is allowed not more than 1 year from the beginning of the fiscal year following a final resolution of the protest. The taxpayer is entitled to interest on the unpaid balance at the rate referred to in subsection (6)(b) from the date of payment under protest until the date of final resolution of the protest and at the combined rate of the federal reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution, plus 4 percentage points, from the date of final resolution of the protest until refund is made.

(7) A taxing jurisdiction, except the state, may satisfy the requirements of this section by use of funds from one or more of the following sources:

(a) imposition of a property tax to be collected by a special tax protest refund levy;

(b) the general fund or any other funds legally available to the governing body; and

(c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or school district is authorized to issue the bonds pursuant to procedures established by law. The bonds may be issued without being submitted to an election. Property taxes may be levied to amortize the bonds.

(8) If the department revises an assessment that results in a refund of taxes of $5 or less, a refund is not owed."

**Section 5.** Section 15-8-601, MCA, is amended to read:

**"15-8-601. Assessment revision — conference for review.** (1) (a) Except as provided in subsection (1)(b), whenever the department discovers that any taxable property of any person has in any year escaped assessment, been erroneously assessed, or been omitted from taxation, the department may assess the property provided that the property is under the ownership or control of the same person who owned or controlled it at the time it escaped assessment, was erroneously assessed, or was omitted from taxation. All revised assessments must be made within 10 years after the end of the calendar year in which the original assessment was or should have been made.

(b) Within the time limits set by 15-23-116, whenever the department discovers property subject to assessment under Title 15, chapter 23, that has escaped assessment, been erroneously assessed, or been omitted from taxation, the department may issue a revised assessment to the person, firm, or corporation who owned the property at the time it escaped assessment, was erroneously assessed, or was omitted from taxation, regardless of the ownership of the property at the time of the department's revised assessment.

(c) If an erroneous assessment is due to a calculation error by the department, the department shall revise the assessment of like properties that were also erroneously assessed using the same calculation.

(2) When the department proposes to revise the statement reported by the taxpayer under 15-8-301, the action of the department is subject to the notice and conference provisions of this section. Revised assessments of centrally assessed property *and industrial property that is assessed annually by the department* are subject to ~~review~~ *mediation* pursuant to ~~15-1-211~~ *[section 1]*.

(3) (a) Notice of revised assessment pursuant to this section must be made by the department by postpaid letter addressed to the person interested within 10 days after the revised assessment has been made. If the property is locally assessed, the notice must include the opportunity for a conference on the matter, at the request of the person interested, within 30 days after notice is given.

(b) An assessment revision review conference is not a contested case as defined in the Montana Administrative Procedure Act. The department shall keep minutes in writing of each assessment revision review conference, and the minutes are public records.

(c) Following an assessment revision review conference or expiration of the opportunity for a conference, the department shall order an assessment that it considers proper. Any party to the conference aggrieved by the action of the department or a taxpayer who does not request a conference may appeal to the county tax appeal board within 30 days of receipt of the revised assessment or the department's assessment made pursuant to the conference.

(4) The department shall enter in the property tax record all changes and corrections made by it."

**Section 6.** Section 15-23-102, MCA, is amended to read:

**"15-23-102. Independent appraisal option.** (1) The department of revenue may have property subject to the provisions of this chapter assessed by a qualified independent appraiser when both the department and the owner of the property subject to the assessment agree in writing:

(a) on a particular independent appraiser to do an appraisal;

(b) to share the costs of the independent appraisal; and

(c) to accept the results of the appraisal.

(2) Appeals from the decision of the department ~~pursuant to 15-1-211~~ *are subject to mediation under [section 1] and* may be taken to the state tax appeal board."

**Section 7.** Section 15-23-104, MCA, is amended to read:

**"15-23-104. Failure to file — estimate by department — penalty.** (1) If any person fails to file a report or return within the time established in 15-23-103 or by a later date approved by the department, the department shall estimate the value of the property that should have been reported on the basis of the best available information. In estimating the value of the net proceeds of mines, the department shall proceed under 15-23-506, and in estimating the value of the gross proceeds of coal mines, the department shall proceed under 15-35-107. In estimating the value of all other property subject to assessment under parts 2 through 4 of this chapter, the department shall proceed under 15-1-303. In estimating value under this section, the department may subpoena a person or the person's agent as specified in 15-1-302. An assessment pursuant to parts 5, 7, and 8 of this chapter based on estimated value or imputed value is subject to ~~review~~ *review under 15-1-211 and mediation* under ~~15-1-211~~ *[section 1]*. For each month or part of a month that a report is delinquent, the department shall impose and collect a $25 penalty, with the total not to exceed $200, and shall deposit the penalty to the credit of the general fund. The department shall assess a penalty of 1% of the tax due for each month or part of a month that the report is delinquent. The department shall notify the county treasurer of each affected county of the amount of the penalty, and the treasurer shall collect the penalty in the same manner as the taxes to which the penalty applies.

(2) For a delinquency in reporting under 15-23-212, the department shall assess a penalty of 1% of the tax due for each month or part of a month that the report is delinquent."

**Section 8.** Section 15-24-3112, MCA, is amended to read:

**"15-24-3112. Certification.** (1) (a) Upon application by a taxpayer, the department of environmental quality shall determine whether a facility or equipment qualifies for a tax abatement under 15-24-3111 or rules adopted under 15-24-3116. If the department determines that a facility or equipment qualifies for abatement or a classification, it shall issue a certification of eligibility.

(b) An application for certification must be made on forms available from the department.

(c) Certification remains in effect only as long as substantial compliance with this part continues.

(2) The department of environmental quality shall identify and track compliance with this part in the use of certified property. The department may revoke a certification for failure to maintain substantial compliance with eligibility requirements in 15-24-3111 or with rules adopted pursuant to

15-24-3116. Revocation of a certificate must be reported to the department of revenue within 30 days of revocation.

(3) If a taxpayer's certification is revoked, the taxpayer forfeits the abatement or classification under 15-6-157 or 15-6-158. Upon revocation, the property must be assessed at 100% of its taxable value beginning on January 1 of the year or years for which the certification is revoked. Any remaining abatement must be forfeited. The taxpayer is immediately liable for any additional taxes, penalty, and interest resulting from the revocation.

(4) A taxpayer that has forfeited any portion of its abatement because of revocation may not reapply for an abatement under this part.

(5) A taxpayer aggrieved by a determination made by the department of environmental quality or the department of revenue has the right to the review procedures in 15-1-211*, to mediation under [section 1],* ~~or~~ *and* to a hearing under Title 2, chapter 4, part 6."

**Section 9. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 15, chapter 1, part 2, and the provisions of Title 15, chapter 1, part 2, apply to [sections 1 and 2].

**Section 10. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 2] is effective January 1, 2015.

Approved May 6, 2013

# CHAPTER NO. 420

[SB 297]

AN ACT ESTABLISHING LIMITATIONS ON THE PAYMENTS NEGOTIATED FOR PROVIDER AGREEMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Limitations of provider agreements.** (1) Notwithstanding any other provision of law, a provider who has entered into a provider agreement with a person as defined in 33-1-202 is not required to provide a discount or accept payment at the rate agreed to in the provider agreement for health care services that are provided to an insured individual if the payment for the services is made directly or indirectly or is otherwise required to be made:

(a) under casualty insurance as described in 33-1-206; or

(b) under property insurance as described in 33-1-210.

(2) Insurance payments made to a provider of health care services under subsection (1) must be paid according to the terms of the applicable policy or in accordance with any written agreement or contract existing between the provider and the insurer or a person contractually engaged by the insurer to perform services or an insurance function for the insurer. This section does not prohibit negotiations regarding the amount of the billed charges or a reasonable request for additional information or documents in order to evaluate the claim.

(3) An insurer making payment on a claim under a disability insurance policy, member contract, health benefit plan, group health plan, blanket disability insurance policy as defined in 33-22-601, or other medical coverage shall credit toward satisfaction of the insured's deductible, copayment, or coinsurance, if any, any payment made by a casualty or property insurer but

only if the payment to be credited is applied to a covered medical expense under the terms of the applicable health policy.

(4) The provisions of this section apply regardless of whether the insured may be considered a third-party beneficiary of the provider agreement.

**Section 2. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 33, chapter 1, and the provisions of Title 33, chapter 1, apply to [section 1].

(2) [Section 1] is intended to be codified as an integral part of Title 50, chapter 4, and the provisions of Title 50, chapter 4, apply to [section 1].

**Section 3. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved May 6, 2013

# CHAPTER NO. 421

[SB 346]

AN ACT GENERALLY REVISING WATER LAWS RELATED TO GROUND WATER APPROPRIATIONS EXEMPT FROM PERMITTING; DEFINING "STREAM DEPLETION ZONE"; REDUCING THE EXEMPTION FOR GROUND WATER APPROPRIATIONS WITHIN STREAM DEPLETION ZONES; LIMITING AREAS WHERE STREAM DEPLETION ZONES MAY BE ESTABLISHED; CLARIFYING ENFORCEMENT BY SENIOR WATER RIGHT HOLDERS AGAINST GROUND WATER APPROPRIATIONS EXEMPT FROM PERMITTING; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 85-2-102 AND 85-2-306, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 85-2-102, MCA, is amended to read:

**"85-2-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to change an appropriation right to instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource in accordance with 85-2-436;

(d) in the case of the United States department of agriculture, forest service:

(i) instream flows and in situ use of water created in 85-20-1401, Article V; or

(ii) to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with 85-2-320;

(e) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(f) a use of water for aquifer recharge or mitigation; or

(g) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(2) "Aquifer recharge" means either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water.

(3) "Aquifer storage and recovery project" means a project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or another department-approved method. The stored water may be either pumped from the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use.

(4) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks through a change in an appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource authorized under 85-2-436;

(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(e) a use of water for aquifer recharge or mitigation; or

(f) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(5) "Certificate" means a certificate of water right issued by the department.

(6) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(7) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(8) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information for the department to begin evaluating the information.

(9) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(10) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(11) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(12) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973.

The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(13) "Ground water" means any water that is beneath the ground surface.

(14) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(15) "Mitigation" means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water.

(16) "Municipality" means an incorporated city or town organized and incorporated under Title 7, chapter 2.

(17) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(18) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(19) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water.

(b) The term does not mean a private corporation, association, or group.

(20) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(21) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

*(22) "Stream depletion zone" means an area where hydrogeologic modeling concludes that as a result of a ground water withdrawal, the surface water would be depleted by a rate equal to at least 30% of the ground water withdrawn within 30 days after the first day a well or developed spring is pumped at a rate of 35 gallons a minute.*

~~(22)~~*(23)* "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

~~(23)~~*(24)* "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(24)~~*(25)* "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(25)~~*(26)* "Water division" means a drainage basin as defined in 3-7-102.

~~(26)~~*(27)* "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(27)~~*(28)* "Water master" means a master as provided for in Title 3, chapter 7.

~~(28)~~*(29)* "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

~~(29)~~*(30)* "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

**Section 2.** Section 85-2-306, MCA, is amended to read:

**"85-2-306. Exceptions to permit requirements.** (1) (a) Except as provided in subsection (1)(b), ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works.

(b) If another person has rights in the ground water development works, water may be appropriated with the written consent of the person with those property rights or, if the ground water development works are on national forest system lands, with any prior written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the certificate.

(c) If the person does not have a possessory interest in the real property from which the ground water may be appropriated, the person shall provide to the owner of the real property written notification of the works and the person's intent to appropriate ground water from the works. The written notification must be provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice requirement only and does not create an easement in or over the real property where the ground water development works are located.

(2) Inside the boundaries of a controlled ground water area, ground water may be appropriated only:

(a) according to a permit received pursuant to 85-2-508; or

(b) according to the requirements of a rule promulgated pursuant to 85-2-506.

(3) (a) ~~(i) Except as provided in subsection (3)(a)(ii), outside~~ *Outside* the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring:

~~(A) with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit; or~~

~~(B)~~*(i)* when the appropriation is made by a local governmental fire agency organized under Title 7, chapter 33, and the appropriation is used only for emergency fire protection, which may include enclosed storage~~.~~*;*

*(ii) when a maximum appropriation of 350 gallons a minute or less is used in nonconsumptive geothermal heating or cooling exchange applications, all of the water extracted is returned without delay to the same source aquifer, and the distance between the extraction well and both the nearest existing well and the hydraulically connected surface waters is more than twice the distance between the extraction well and the injection well;*

*(iii) when the appropriation is outside a stream depletion zone, is 35 gallons a minute or less, and does not exceed 10 acre-feet a year, except that a combined appropriation from the same source by two or more wells or developed springs exceeding 10 acre-feet, regardless of the flow rate, requires a permit; or*

*(iv) when the appropriation is within a stream depletion zone, is 20 gallons a minute or less, and does not exceed 2 acre-feet a year, except that a combined appropriation from the same source by two or more wells or developed springs exceeding this limitation requires a permit.*

~~(ii) Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 350 gallons a minute or less for use in nonconsumptive geothermal heating or cooling exchange applications if all of the water extracted is returned without delay to the same source aquifer and if the distance between the extraction well and both the nearest existing well and the hydraulically connected surface waters is more than twice the distance between the extraction well and the injection well.~~

(b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department through its offices.

(ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refiling a correct and complete notice with the department.

(c) A certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof of landowner notification or a written federal special use authorization as necessary under subsection (1). The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

(5) An appropriation under subsection (4) is an existing right, and a permit is not required. However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(6) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if:

(a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;

(b) the appropriation is less than 30 acre-feet a year;

(c) the appropriation is from a source other than a perennial flowing stream; and

(d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger.

(7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete application for a stock water provisional permit, the department shall automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

(b) If the impoundment or pit is on national forest system lands, an application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

(8) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under 85-2-113."

**Section 3. Stream depletion zones — establishment — rulemaking**. (1) Notwithstanding the provisions of subsection (2), the department may establish a stream depletion zone by rule if:

(a) the stream depletion zone lies within a basin closed pursuant to 85-2-319, 85-2-321, 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344; and

(b) there exists a hydrogeologic assessment for the area where the stream depletion zone is proposed that was conducted by either the ground water investigation program established by 85-2-525 or by a hydrogeologist or a qualified licensed professional engineer.

(2) If the provisions of subsection (1) are met, the department shall initiate rulemaking to establish a stream depletion zone upon receipt of a petition signed by:

(a) a municipality, county, conservation district, or local water quality district formed under Title 7, chapter 13, part 45; or

(b) the owners of at least 15% of the flow rate of the surface water rights in the area estimated to be affected, the boundary of which cannot exceed the boundaries of the drainage subdivisions established by the office of water data coordination, United States geological survey, and used by the water court.

(3) The department shall provide notice of the rulemaking by first-class mail to an appropriator of water who, according to the records of the department, may be affected by the proposed stream depletion zone.

(4) In establishing rules related to stream depletion zones, the department shall consult with the ground water investigation program and the ground water assessment steering committee established by 2-15-1523.

**Section 4. Water right enforcement of ground water uses exempt from permitting — findings and purpose.** (1) The legislature finds that:

(a) the state of Montana has managed the allocation of water under the prior appropriation doctrine for more than 100 years;

(b) Article IX, section 3, of the Montana constitution recognizes and confirms all existing water rights;

(c) the right to the use of water through a water right is a recognized property right;

(d) the development of ground water wells that are exempt from permitting may have an adverse effect on other water rights;

(e) the Water Use Act requires the department to coordinate the development and use of the water resources of the state so as to effect full utilization, conservation, and protection of its water resources; and

(f) the ability to develop ground water wells that are exempt from permitting contributes to the full utilization of the water resources of the state.

(2) The establishment of a stream depletion zone pursuant to [section 3] provides a conclusive, scientific basis for determining where ground water rights that are exempt from permitting are affecting senior surface water rights.

(3) The purpose of this section is to continue allocating water under the exemptions provided for in 85-2-306 while providing a process by which senior water right holders may protect their rights under the prior appropriation doctrine. Nothing in this section is intended to limit the ability of a senior water right holder to enforce a water right or limit that enforcement to a specific area. Creation of a stream depletion zone is not a prerequisite to an enforcement action.

(4) Any use of water granted by a certificate of water right pursuant to 85-2-306(3)(a) is subject to enforcement according to priority by:

(a) any remedy legally available;

(b) the department, upon receiving a complaint, through the provisions of 85-2-114 and 85-2-122; or

(c) a water commissioner appointed pursuant to 85-5-101.

(5) For each certificate issued pursuant to 85-2-306(3)(a) after [the effective date of this act], the department shall include written notice of the provisions of this section.

**Section 5. Codification instruction.** [Sections 3 and 4] are intended to be codified as an integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, part 3, apply to [sections 3 and 4].

Approved May 6, 2013

# CHAPTER NO. 422

[SB 369]

AN ACT GENERALLY REVISING LAWS RELATED TO STATE LAND CABIN AND HOME SITES; REQUIRING THE BOARD OF LAND COMMISSIONERS, CONSISTENT WITH THE BOARD'S CONSTITUTIONAL FIDUCIARY DUTY OF ATTAINING FULL MARKET VALUE, TO MAKE AVAILABLE FOR SALE AT THE REQUEST OF THE LESSEE OR IMPROVEMENT OWNER ALL LEASED OR VACANT STATE LAND, CABIN OR HOME SITES, AND CABIN SITE IMPROVEMENTS; PROVIDING A PROCESS FOR SELLING ALL LEASED OR VACANT STATE LAND AND CABIN SITE IMPROVEMENTS FOR CABIN AND HOME SITES; PROVIDING FOR A VALUATION PROCESS PRIOR TO SALE; EXEMPTING THE SALE OF CABIN OR HOME SITE LOTS FROM THE PROVISIONS OF TITLE 75, CHAPTER 1, PARTS 1 THROUGH 3; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 77-2-303, 77-2-311, 77-2-318,

77-2-363, AND 77-2-366, MCA; REPEALING SECTION 77-2-320, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, implementation of the state cabin site leasing laws has become dysfunctional and those laws have become subject to continuous and unproductive litigation; and

WHEREAS, a significant number of state land cabin site properties are vacant and are producing no revenue for the state trust land beneficiaries; and

WHEREAS, the implementation of the state cabin site leasing laws has caused a loss in value of lessee private property improvements; and

WHEREAS, the sale of all state land cabin site properties is the only long-term and viable solution to resolve the state cabin site leasing law issues and maximize revenue to the state trust land beneficiaries; and

WHEREAS, it is recognized that in order to maximize the revenue from the sale of these state cabin site properties to the state trust land beneficiaries, the properties must be sold over a reasonable period of time.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 77-2-303, MCA, is amended to read:

**"77-2-303. Restrictions on land available for sale.** (1) Subject to purchase by the department pursuant to 17-6-340, land that in the judgment of the department is likely to contain valuable deposits of coal, oil, oil shale, phosphate, metals, sodium, or other valuable mineral deposits is not subject to sale of either the surface land or any of the mineral deposits. However, this subsection does not prohibit the sale of lands containing sand, gravel, building stone, brick clay, or similar materials.

(2) (a) ~~There~~ *Except any lands previously leased as cabin sites, there* is reserved from sale from all state land bordering on navigable lakes, nonnavigable meandered lakes, and navigable streams, that the board considers in the best interests of the state, a strip of land that includes all the land lying between low-water mark and high-water mark and that extends in width landward from the line of high-water mark of the lake or stream the full width of the 40-acre tract or government lot abutting the line of high-water mark. If the width of the abutting government lot at its narrowest point is less than 100 feet, then the strip reserved must extend to and include the next adjoining 40-acre tract or government lot. The land reserved from sale by this subsection is subject to the granting of easements the same as other state lands.

(b) Strips of land bordering on meandering lakes or on navigable streams, except the strip lying between low-water and high-water mark, whether surveyed and platted into blocks and lots or not, may be leased as provided in this title for the leasing of other state lands."

**Section 2.** Section 77-2-311, MCA, is amended to read:

**"77-2-311. Survey and plat of shore lands.** The board may cause any part of the lands bordering on lakes described in 77-2-303(2) and on navigable streams that are reserved from sale to be surveyed and platted into blocks and lots. The lots may not be less than 125 feet in width, measured in the general direction of the abutting water front*, except that any former cabin or home sites proposed for sale or sold by the board may possess a width less than 125 feet*. In all surveys and plats the strip of 100 feet in width along the water front, referred to in 77-2-303(2)(a), must be reserved for the use and enjoyment of the public. *Cabin sites or home sites bordering on meandered lakes or navigable streams may be surveyed and sold consistent with the procedures provided in 77-2-361 through 77-2-367.*"

**Section 3.** Section 77-2-318, MCA, is amended to read:

**"77-2-318. Sale of leased cabin or home sites ~~or city or town lots~~.** ~~(1) At the request of the lessee and if consistent with the orderly development and management of state lands, the board may make available for sale, in the manner provided in this part, any leased cabin or home site or city or town lot that is under lease during the 15th year of any 15-year lease that was established through the open competitive bidding process or through the transition process provided for in 77-1-236 or subsection (4) of this section.~~

*(1) (a) The board shall, consistent with the board's constitutional fiduciary duty of attaining full market value, make available for sale within a reasonable period of time as provided in this part those lands that were state land cabin or home sites on [the effective date of this act], at the request of a lessee or an improvement owner and with the consent of any mortgagee or other owner of an interest in the cabin or home site improvements, only if the requested sale is consistent with the board's constitutional fiduciary duty of attaining full market value and with the provisions of this part and if the sale is approved by the board.*

*(b) (i) The disposition of proceeds of any sale of state land property pursuant to this section must comply with the provisions of 77-2-337.*

*(ii) The proceeds of any sale of cabin site improvements pursuant to this part must go to the owner of record of the improvements.*

(2) The ~~lessee requesting the sale~~ *department* shall have prepared a current certificate of survey for the property. The cost of preparation of the certificate of survey must be included in the settlement for improvements, as provided for in 77-2-325, if a person other than the lessee is the purchaser.

(3) The sale of a lease is exempt from the subdivision laws, except that the development of any new, replacement, or additional water supply or sewage disposal system on the property must be approved pursuant to the review procedure, fee, and other requirements of Title 76, chapter 4, part 1.

(4) By January 1, ~~2012~~ *2014*, the board shall adopt rules to ensure that the sales process authorized pursuant to this section is orderly and consistent with its constitutional fiduciary duties and that the number of leased cabin or home sites ~~or city or town lots~~ made available for sale at any given time is consistent with the board's constitutional duty of attaining full market value.

(5) Upon a sale of leased land, the department shall, upon compliance with 77-2-101 through 77-2-106, grant a permanent easement across state lands to secure access using current routes.

*(6) For purposes of this section, "cabin site improvements" has the meaning provided in [section 6].*"

**Section 4.** Section 77-2-363, MCA, is amended to read:

**"77-2-363. Land banking land sales and limitations — sale preparation costs.** (1) (a) The board may not cumulatively sell or dispose of more than 250,000 acres of state land. Seventy-five percent of the acreage cumulatively sold must be isolated parcels that do not have a legal right of access by the public. At any one time during the life of the land banking process, the board may not sell more than 20,000 acres of state land unless the board has acted to use the revenue from that land to make purchases pursuant to 77-2-364.

(b) The estimated fair market value must be determined by a Montana-licensed and Montana-certified appraiser.

(2) (a) A person bidding to purchase state land offered for sale shall 20 days prior to the day of auction deposit with the department a bid bond in the form of a certified check or cashier's check drawn on any Montana bank equal to at least

20% of the minimum sale price specified by the department pursuant to 77-2-323(1) to guarantee the bidder's payment of the purchase price. *Bid bonds submitted to secure a bid upon a parcel formerly leased as a cabin or home site need only be equal to 5% of the minimum sale price as specified by the department.*

(b) If the current lessee of the land to be sold has initiated the sale as authorized by 77-2-364, the lessee may cancel the sale by giving notice to the department at least 10 days prior to the day of the auction. When the sale is canceled by the lessee, the lessee shall pay the costs incurred by the department for the preparation of the sale, including any costs incurred for preparation of documents required by 75-1-201.

(c) The department shall retain the bid bond of the successful bidder and shall return the bid bonds of the unsuccessful bidders. If the successful bidder fails to comply with the terms of the sale for any reason, the successful bidder's bid bond must be forfeited and credited to the interest and income account of the proper trust.

(3) Except for a sale that is initiated by the lessee of the parcel of land proposed for sale, prior to the proposed sale of any parcel of state land under the land banking process, the board shall give 60 days' notice of the proposed sale to the lessee of the parcel to allow the lessee sufficient time to determine whether the lessee wishes to propose an exchange of the land to the board.

(4) For a sale initiated by the board ~~or~~, the department, *or the cabin or home site lessee,* the lessee of the land must be afforded all the rights and privileges to match the high bid, as provided in 77-2-324.

(5) (a) ~~When~~ *Except as provided in subsection (6), when* the lessee has initiated a sale of land under this section, the lessee shall remit to the department the estimated costs of preparing the parcel for sale, including but not limited to appraisals, cultural surveys, environmental review pursuant to Title 75, chapter 1, parts 1 through 3, and land surveys*, if necessary*. Payment must be made within 10 days after the board has provided preliminary approval for the sale of the parcel.

(b) If the parcel is sold to the lessee, the funds remitted for the costs of the sale must be applied to the actual costs at closing. If the parcel is sold to a party other than the lessee, the funds remitted by the lessee must be refunded to the lessee and actual costs of preparing the parcel for sale must be assessed to the purchaser at closing.

*(6) For the sale of a parcel formerly leased as a cabin or home site:*

*(a) the department shall assume the cost of the land survey; and*

*(b) the sale is exempt from the provisions of Title 75, chapter 1, parts 1 through 3.*"

**Section 5.** Section 77-2-366, MCA, is amended to read:

**"77-2-366. Land banking *and state land cabin and home sites* — ~~report~~ *reports* to environmental quality council.** *(1) (a)* The department shall provide a report to the environmental quality council by ~~the~~ July 1 prior to each regular legislative session that describes the results of the land banking program in detail.

*(b)* At a minimum, the report must summarize the sale and purchase transactions made through the program by type, location, acreage, value, and trust beneficiary. The environmental quality council shall make any recommendations that it determines necessary regarding the implementation of the state land banking process, including recommendations for legislation.

*(2) Because it is the legislature's intent that the board implement the provisions of 77-2-318(1) in a timely manner, on or before July 1 of each year, the department, in consultation with the appropriate stakeholders, shall report to the environmental quality council by providing a summary of land sales of those lands that were state land cabin or home sites pursuant to 77-2-318 and efforts by the department to comply with the requirements of 77-2-318(1).*"

**Section 6. Valuation of cabin or home site and improvements — rulemaking.** (1) (a) Prior to the board's approval of any sale of state land leased as a cabin or home site or state land with a vacant cabin or home site as provided in 77-2-318, the board shall separately determine the full market value of the land and the value of the cabin site improvements existing on the land and the value of any necessary access easement across existing state lands from the nearest public road. The appraisal to determine these values must be based upon comparable sales of nearby existing properties with the hypothetical condition that the state parcel to be sold is accessible for all lawful purposes. The appraisal must determine the raw undeveloped value of the parcel and the value of the cabin site improvements.

(b) (i) In determining the value of state land leased as a cabin or home site pursuant to subsection (1)(a), the department shall establish a list that is acceptable to the board of no fewer than two third-party independent appraisers that are available to conduct the appraisal of the land and the cabin site improvements. The department shall provide a copy of the list to the cabin site or home site lessee. The lessee shall provide the department with a list of at least 50% of the appraisers from the department's list. The department shall select the appraiser to conduct the appraisal from the list provided by the lessee.

(ii) The department shall assume the proportionate cost of the appraisal of the state land valuation. The lessee shall assume the proportionate cost of the appraisal of the valuation of the cabin site improvements.

(c) The board shall disclose the results of the appraisal to the cabin site or home site lessee of the land for sale and shall give that lessee notice and opportunity for an administrative hearing before the department to contest those valuations. The department shall review the arguments and evidence received at the hearing to make a recommendation of the values of the land and the cabin site improvements to the board. The board shall make a final determination on the values of the land and cabin site improvements.

(2) (a) If the lessee consents to the terms and conditions of the proposed sale and the valuation of cabin site improvements, the sale must proceed utilizing the board's final determination of the values, and the lessee is obligated to transfer its interest in the cabin site improvements existing on the cabin or home site lease according to the board's final determination of their value.

(b) Nothing in this section prohibits the lessee from accepting a price for the cabin site improvements existing on the cabin or home site that is less than the board's final determination of value.

(3) For purposes of this section and 77-2-318, "cabin site improvements" includes but is not limited to:

(a) a home or residence;

(b) outbuildings and structures;

(c) sleeping cabins;

(d) utilities;

(e) water systems;

(f) septic systems;

(g) docks; and

(h) landscaping.

(4) The board may adopt rules to implement the provisions of this section.

**Section 7. Repealer.** The following section of the Montana Code Annotated is repealed:

77-2-320. Appraisal review board.

**Section 8. Codification instruction.** [Section 6] is intended to be codified as an integral part of Title 77, chapter 2, part 3, and the provisions of Title 77, chapter 2, part 3, apply to [section 6].

**Section 9. Effective date.** [This act] is effective on passage and approval.

Approved May 6, 2013

# CHAPTER NO. 423

[SB 392]

AN ACT INCREASING THE AUTHORITY OF THE COMMISSIONER OF POLITICAL PRACTICES TO ENFORCE LAWS PERTAINING TO ANONYMOUS ELECTION MATERIAL; AMENDING SECTION 13-35-225, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 13-35-225, MCA, is amended to read:

**"13-35-225. Election materials not to be anonymous — statement of accuracy — *notice — penalty.*** (1) All communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, internet website, or other form of general political advertising must clearly and conspicuously include the attribution "paid for by" followed by the name and address of the person who made or financed the expenditure for the communication. ~~When~~ *The attribution must contain:*

*(a) for election material financed by* a candidate or a candidate's campaign finances*,* ~~the expenditure, the attribution must be~~ the name and the address of the candidate or the candidate's campaign~~.~~*; and*

*(b)* ~~In the case of~~ *for election material financed by* a political committee, ~~the attribution must be~~ the name of the committee, the name of the committee treasurer, and the address of the committee or the committee treasurer.

(2) Communications in a partisan election financed by a candidate or a political committee organized on the candidate's behalf must state the candidate's party affiliation or include the party symbol.

(3) (a) Printed election material described in subsection (1) that includes information about another candidate's voting record must include:

(i) a reference to the particular vote or votes upon which the information is based;

(ii) a disclosure of contrasting votes known to have been made by the candidate on the same issue if closely related in time; and

(iii) a statement, signed as provided in subsection (3)(b), that to the best of the signer's knowledge, the statements made about the other candidate's voting record are accurate and true.

(b) The statement required under subsection (3)(a) must be signed:

(i) by the candidate if the election material was prepared for the candidate or the candidate's political committee and includes information about another candidate's voting record; or

(ii) by the person financing the communication or the person's legal agent if the election material was not prepared for a candidate or a candidate's political committee.

(4) If a document or other article of advertising is too small for the requirements of subsections (1) through (3) to be conveniently included, the candidate responsible for the material or the person financing the communication shall file a copy of the article with the commissioner of political practices, together with the required information or statement, at the time of its public distribution.

(5) If information required in subsections (1) through (3) is omitted or not printed, upon discovery of or notification about the omission, the candidate responsible for the material or the person financing the communication shall:

(a) file notification of the omission with the commissioner of political practices within 5 days of the discovery or notification;

(b) bring the material into compliance with subsections (1) through (3); and

(c) withdraw any noncompliant communication from circulation as soon as reasonably possible.

*(6) Whenever the commissioner receives a complaint alleging a violation of subsection (1) or (2), the commissioner shall as soon as practicable assess the merits of the complaint.*

*(7) (a) If the commissioner determines that the complaint has merit, the commissioner shall notify the complainant and the candidate or political committee of the commissioner's determination. The notice must state that the candidate or political committee shall bring the material into compliance as required under this section:*

*(i) within 5 days after receiving the notification if the notification occurs more than 7 days prior to an election; or*

*(ii) within 24 hours after receiving the notification if the notification occurs 7 days or less prior to an election.*

*(b) When notifying the candidate or campaign committee under subsection (7)(a), the commissioner shall include a statement that if the candidate or political committee fails to bring the material into compliance as required under this section, the candidate or political committee is subject to a civil penalty pursuant to 13-37-128.*"

**Section 2. Coordination instruction.** If both Senate Bill No. 387 and [this act] are passed and approved, then 13-35-225(7)(b) of [this act] must read as follows:

"(b) When notifying the candidate or campaign committee under subsection (7)(a), the commissioner shall include a statement that if the candidate or political committee fails to bring the material into compliance as required under this section, the candidate or political committee is subject to an administrative penalty as provided in [section 3 of Senate Bill No. 387]."

**Section 3. Applicability.** [This act] applies to proceedings begun on or after October 1, 2013.

Approved May 6, 2013

# RESOLUTIONS

## Adopted by the

## SIXTY-THIRD LEGISLATURE
## IN REGULAR SESSION

**Held at Helena, the Seat of Government**
**January 7, 2013, through April 24, 2013**

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**COMPILED BY MONTANA**
**LEGISLATIVE SERVICES DIVISION**

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## House Joint Resolutions

# HOUSE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM LEGISLATIVE STUDY REGARDING CERTAIN ASPECTS OF THE OFFICE OF COMMISSIONER OF POLITICAL PRACTICES; SPECIFYING OBJECTIVES OF THE STUDY; AND REQUESTING THAT FINDINGS AND RECOMMENDATIONS BE PRESENTED TO THE NEXT LEGISLATURE.

WHEREAS, the mission of the Office of Commissioner of Political Practices is to monitor and enforce, in a fair and impartial manner, campaign practices and campaign finance disclosure, lobbying disclosure, business interest disclosure of statewide and state district candidates, elected state officials, and state department directors, and ethical standards of conduct for legislators, public officers, and state employees and to investigate legitimate complaints that arise concerning any of the foregoing; and

WHEREAS, there is a range of options that could be considered for revising the selection and duties of the Commissioner and for changing the structure and operations of the office in Montana, including options for ensuring more immediate consequences for violating campaign laws; and

WHEREAS, a thorough interim study is needed to provide for further thoughtful, systematic, and bipartisan consideration of potential changes to the Office of Commissioner of Political Practices.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to examine:

(1) the process for selecting a Commissioner of Political Practices;

(2) the structure, composition, and duties of the Office of Commissioner of Political Practices; and

(3) the enforcement authority of the Office of Commissioner of Political Practices, including options for ensuring more immediate consequences for violating campaign laws.

BE IT FURTHER RESOLVED, that the examination include a review of practices in other states, analysis of options, consideration of stakeholder concerns, and the development of recommendations to improve confidence in the integrity, objectivity, and capabilities of the Office of Commissioner of Political Practices.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2014.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 64th Legislature.

Adopted March 26, 2013

## HOUSE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO INVESTIGATE ELECTRONIC RECORDS MANAGEMENT BY STATE AND LOCAL GOVERNMENT; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 64TH LEGISLATURE.

WHEREAS, Montana state government lacks enterprisewide policy, planning, and resources to properly archive, maintain, and access state and local government electronic records; and

WHEREAS, this lack of a framework for managing state and local government electronic records puts entities at risk of being unable to provide evidence to support the rule of law, support the accountability of government administration, detail interactions between the people of Montana and their government, and document the history and culture of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) identify and examine strategies for identifying, classifying, managing, and preserving electronic records that have value;

(2) examine the costs and benefits associated with the strategies;

(3) identify funding sources or mechanisms to evaluate long-term governance structures for governing electronic records management;

(4) identify and evaluate the methods and means for improving access to state government electronic records, including alternative formats specifically addressing retention of state e-mail records;

(5) examine public-private partnerships that increase awareness of public records management and access; and

(6) develop educational strategies to provide awareness of electronic records management processes inside and outside of government.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2014.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 64th Legislature.

Adopted March 18, 2013

# HOUSE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES TO LIMIT THE POWER OF CONGRESS TO REGULATE COMMERCE.

WHEREAS, Article I, section 8, clause 3, of The Constitution of the United States has been interpreted by the United States Supreme Court to grant Congress the overreaching power to regulate intrastate commerce.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Montana Legislature finds that the current allotment of power to the United States Congress that allows the Congress to regulate intrastate commerce to be overly broad and overreaching.

(2) That Congress, in accordance with Article V of The Constitution of the United States, immediately transmit to the several states for ratification an amendment to Article I, section 8, clause 3, of The Constitution of the United States stating:

"To regulate Commerce with foreign Nations, and interstate commerce between the several States, and with the Indian Tribes".

(3) That the Secretary of State send a copy of this resolution to the President of the United States, the Speaker of the United States House of Representatives, the Majority Leader of the United States Senate, and to each member of the Montana Congressional Delegation.

Adopted March 26, 2013

# HOUSE JOINT RESOLUTION NO. 9

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING THE RESPONSIBLE DEVELOPMENT OF COAL RESOURCES AND COAL-BASED ELECTRICITY.

WHEREAS, coal represents the most abundant source of energy in the United States; and

WHEREAS, coal is one of the most reliable and affordable sources of fuel for electric generation; and

WHEREAS, consumers, businesses, communities, and service providers need affordable energy more than ever in this time of economic uncertainty and stand to benefit from affordable and reliable coal-based electricity; and

WHEREAS, the United States holds more coal reserves than any other nation, and Montana is home to the largest coal reserves in the United States with nearly one-third of the estimated recoverable reserves; and

WHEREAS, Montana's annual coal production is currently only 1/20 of 1% of estimated recoverable reserves, and at our current rate of production, it would take more than 1,600 years to exhaust Montana's coal reserves; and

WHEREAS, responsible development of Montana's coal resources will create thousands of new jobs and provide millions of dollars in tax revenue for state and local governments and schools; and

WHEREAS, the coal reserves in Montana can meet the demands of the domestic market and earn revenue for the state of Montana by being exported to foreign markets via West Coast ports; and

WHEREAS, coal-generated electricity has increased by 183% since 1970, while emissions from coal-based power plants have been reduced by 75% per generation unit; and

WHEREAS, Montana, the Treasure State, has abundant natural resources and produces valuable commodities from agriculture, mining, timber, energy, and manufacturing industries; and

WHEREAS, expanded, responsible development of Montana's natural resources would benefit every Montanan by creating thousands of new jobs, new economic opportunities, and billions of dollars in tax revenue for state and local governments and schools; and

WHEREAS, producers of Montana commodities need access to all markets, foreign and domestic, in order to grow, prosper, and achieve maximum profitability.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the 63rd Legislature supports the continued use and responsible development of coal-based power in the United States and supports the expansion of additional shipping capacity through new and existing ports in order to allow for the sale of Montana resources to emerging markets.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States, the Montana Congressional Delegation, the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, the Secretary of the United States Department of Energy, the Administrator of the United States Environmental Protection Agency, and the Governor of the State of Montana.

Adopted April 9, 2013

## HOUSE JOINT RESOLUTION NO. 11

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RAISING CONCERNS ABOUT POTENTIAL CHANGES TO THE OPERATION AND ADMINISTRATION OF FEDERAL POWER MARKETING ADMINISTRATIONS.

WHEREAS, the Montana Legislature is concerned about outcomes resulting from Department of Energy Secretary Steven Chu's March 16, 2012, memorandum that may affect the Western Area Power Administration and the Bonneville Power Administration and their Montana electricity customers; and

WHEREAS, the memorandum states there will be directives issued to the federal Power Marketing Administration administrators related to the broadly stated initiatives contained in the memorandum; and

WHEREAS, these directives could harm the nearly 50% of Montanans whose electric bills are based on the underlying preference power from federal Power Marketing Administrations, and the Montana Legislature has a stake in the outcome of this initiative; and

WHEREAS, the federal Department of Energy asserts it has conducted a "robust" process of public involvement in the development of recommendations

to implement the initiatives by holding five public 1-day workshops and six listening sessions in cities across the western United States; and

WHEREAS, a committee composed of Western Area Power Administration and Department of Energy employees, known as the Joint Outreach Team, met in nonpublic work sessions to develop its draft recommendations; and

WHEREAS, the Montana Legislature does not consider these nonpublic Joint Outreach Team meetings either robust or public; and

WHEREAS, the Western Area Power Administration has an outstanding history of being an electric utility industry leader; and

WHEREAS, the Montana Legislature is appreciative that the Western Area Power Administration and Department of Energy Joint Outreach Team leaders attended a joint session of the Montana House and Senate Energy Committees on January 9, 2013, to share the outcomes of their report; and

WHEREAS, the Joint Outreach Team is planning to make final recommendations to the Secretary of Energy in early 2013.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That if the final recommendations are consistent with what the Joint Outreach Team leaders shared during their January 9, 2013, visit to Montana, these recommendations would:

(1) be much narrower in scope than the present draft report;

(2) contain greater recognition of the superb job the Western Area Power Administration has done and is doing in the areas covered in the report;

(3) ensure change is incremental, not wholesale; and

(4) most importantly, provide economic protections to Montana preference customers.

BE IT FURTHER RESOLVED, that although the Montana Legislature supports actions to increase efficiency, actions that create cost shifts to Montana preference customers who have paid their way are unacceptable.

BE IT FURTHER RESOLVED, that the Montana Legislature requests that, in the future, the Department of Energy make a greater effort to notify the Legislature of actions impacting Montana citizens in advance of public hearings rather than leaving the Legislature to first hear about these Department of Energy actions from its constituents.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the members of Montana's Congressional Delegation and to the U.S. Secretary of Energy.

Adopted March 19, 2013

## HOUSE JOINT RESOLUTION NO. 12

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REAFFIRMING MONTANA'S COMMITMENT TO ITS RELATIONSHIP WITH TAIWAN; SUPPORTING TAIWAN'S PARTICIPATION IN APPROPRIATE INTERNATIONAL ORGANIZATIONS; AND WELCOMING THE RESUMPTION OF FREE TRADE TALKS AND THE SIGNING OF FREE TRADE AGREEMENTS.

WHEREAS, Taiwan, the United States, and in particular the State of Montana share a historical and close relationship marked by strong bilateral trade, educational and cultural exchange, and tourism; and

WHEREAS, Taiwan shares with the United States and the State of Montana the common values of freedom, democracy, human rights, and rule of law; and

WHEREAS, the United States ranks as Taiwan's third largest trading partner, Taiwan is the tenth largest trading partner of the United States, and bilateral trade reached $67.2 billion in 2011; and

WHEREAS, Taiwan and the State of Montana have enjoyed a long and mutually beneficial relationship with the prospect of further growth, and Taiwan was Montana's fifth largest export destination in 2011, with $66.3 million worth of Montana goods shipped to Taiwan, including industrial machinery, chemical products, ores, specialty grains, and food products; and

WHEREAS, Taiwan has traditionally ranked as one of the top five importers of Montana wheat; and

WHEREAS, the United States on November 1, 2012, officially included Taiwan in its Visa Waiver Program, allowing Taiwan's citizens to travel to the United States for tourism or business for stays of 90 days or less without being required to obtain a visa, and the program will increase tourism and business between Taiwan and the United States, particularly Montana, with the prospect of 30% to 40% growth of Taiwanese travelers to the United States in 2013, rising from 400,000 Taiwanese travelers in 2011; and

WHEREAS, the issue of U.S. beef exports to Taiwan has been settled, and the resumption of trade talks on the Trade and Investment Framework Agreement and the signing of the Free Trade Agreement between Taiwan and the United States will not only help to forge a closer relationship but will also create greater benefits and well-being for the State of Montana and boost Taiwan's chances to enter the Trans-Pacific Partnership; and

WHEREAS, President Ma Ying-jeou has worked tirelessly to uphold democratic principles in Taiwan, ensure the prosperity of Taiwan's 23 million citizens, promote Taiwan's international standing as a responsible member of the international community, increase participation in international organizations, dispatch humanitarian missions abroad, and further improve relations between the United States and Taiwan; and

WHEREAS, Taiwan, as a willing and contributing member of the world community, has made countless contributions of technical and financial assistance in the wake of Hurricane Sandy and other natural disasters worldwide.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That Montana reaffirms its commitment to the strong and deepening relationship between Taiwan and the State of Montana.

(2) That Montana supports Taiwan's appropriate participation in international organizations that impact the health, safety, and well-being of Taiwan.

(3) That Montana welcomes the resumption of trade talks on the Trade and Investment Framework Agreement, welcomes the signing of the Free Trade Agreement between Taiwan and the United States in the process of closer

economic integration, and supports Taiwan's participation in the Trans-Pacific Partnership.

Adopted March 22, 2013

## HOUSE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BOARD OF PUBLIC EDUCATION TO INCLUDE THE SUCCESSFUL COMPLETION OF A FINANCIAL LITERACY COURSE AS A REQUIREMENT FOR GRADUATION.

WHEREAS, without knowledge and understanding of financial matters, people are incapable of managing their personal finances effectively and making sound decisions regarding matters like purchasing, saving, investing, and borrowing; and

WHEREAS, becoming financially literate and learning these necessary skills at an early age encourages greater economic self-sufficiency, higher levels of successful home ownership, and enhanced retirement security; and

WHEREAS, the informed use of credit and other financial products and services benefits individual consumers and promotes economic growth; and

WHEREAS, the past decade has seen declining personal savings rates, increased bankruptcy rates, increased home foreclosures, and rising percentages of household income devoted to servicing household debt; and

WHEREAS, a lack of financial literacy can be especially damaging to students and families during hard economic times; and

WHEREAS, many students in Montana's public schools do not receive sufficient financial education in their homes; and

WHEREAS, personal financial education and money management skills are crucial to ensure that our young people and adults are prepared to manage credit and debt, build savings, and become responsible workers, heads of households, investors, entrepreneurs, business leaders, and productive citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Board of Public Education be strongly urged to require students to demonstrate proficiency in financial literacy by successfully completing a financial literacy course as a requirement for graduation.

(2) That the required financial literacy course include instruction on:

(a) financial responsibility and decisionmaking;

(b) basic financial functions, including skills such as opening a bank account and writing a check;

(c) income and careers;

(d) planning and money management;

(e) credit and debt management, including the fundamentals of purchasing, saving, investing, and borrowing;

(f) risk management and insurance;

(g) how to avoid becoming a victim of predatory lending, financial scams, and other forms of financial exploitation;

(h) financial planning for higher education; and

(i) financial planning for retirement.

(3) That the Secretary of State send copies of this resolution to each member of the Board of Public Education and the Superintendent of Public Instruction.

Adopted April 9, 2013

## HOUSE JOINT RESOLUTION NO. 16

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF STATE-OPERATED PUBLIC INSTITUTIONS SERVING INDIVIDUALS WITH MENTAL ILLNESS, INTELLECTUAL DISABILITIES, AND CHEMICAL DEPENDENCY; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 64TH LEGISLATURE.

WHEREAS, the Department of Public Health and Human Services operates public institutions that care for individuals in need, including individuals in need of treatment and services because of mental illness, intellectual disabilities, or chemical dependency; and

WHEREAS, facilities operated by the Department of Corrections serve a number of offenders whose treatment needs involve mental illness, intellectual disabilities, or chemical dependency; and

WHEREAS, the understanding of treatment options and the recovery process for these individuals continues to evolve; and

WHEREAS, the state may be able to more effectively serve individuals who have similar treatment needs if it reviews and reconfigures its system of public institutions.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, to:

(1) study state-operated facilities that serve individuals with mental illness, intellectual disabilities, and chemical dependency to determine if changes to the current system of facilities could:

(a) provide more effective treatment; and

(b) serve individuals in a more cost-effective manner; and

(2) review operations at the Montana State Hospital at Warm Springs, the Montana Developmental Center at Boulder, the Montana Chemical Dependency Center at Butte, the Montana Mental Health Nursing Care Center at Lewistown, the Montana State Prison at Deer Lodge, and the Montana Women's Prison at Billings.

BE IT FURTHER RESOLVED, that the study review:

(1) the populations served by each facility;

(2) the services provided at each facility for treatment of mental illness, intellectual disabilities, and chemical dependency;

(3) the degree to which treatment needs are unmet or underserved at each facility;

(4) the cost of operating each facility, including the costs of providing treatment for mental illness, intellectual disabilities, and chemical dependency;

(5) barriers to providing necessary treatment at the facilities;

(6) the ways in which the facilities collaborate to meet treatment needs of the target populations;

(7) the projected long-term needs for the populations served by the facilities;

(8) alternative approaches to providing the services that may improve the quality of care and increase access to additional funding streams; and

(9) other items as identified by the interim committee.

BE IT FURTHER RESOLVED, that the study involve the participation of the Department of Public Health and Human Services, the Department of Corrections, community mental health providers, providers of services to individuals with intellectual disabilities and with substance abuse disorders, individuals who have received services in state-operated facilities identified in this resolution and their family members, and representatives of law enforcement, health care providers, health advocacy organizations, and other interested parties.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2014.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 64th Legislature.

Adopted April 10, 2013

## HOUSE JOINT RESOLUTION NO. 17

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO STUDY THE STATE PAY PLANS.

WHEREAS, the State of Montana currently has seven compensation plans, or "pay plans", used to provide compensation to state employees; and

WHEREAS, the costs related to the employment of state personnel are a large part of the state's budget and for many state agencies are a significant part of the agency's overall budget; and

WHEREAS, the public policy role of the Legislature regarding the cost of state government includes establishing and understanding the compensation system the state uses to attract and retain employees and providing for the costs of employment of personnel within an agency's budget.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Finance Committee, in consultation with the Legislative Council, be requested to study or to direct sufficient staff resources to study the state pay plans, including:

(1) what they are and how they are established;

(2) how agencies are using them to recruit, retain, and compensate employees;

(3) the process of negotiating with unions and how that process affects the state pay plans;

(4) if and how employee performance affects the salary of employees under the pay plans; and

(5) what data is used to develop the pay plans and how that data is generated.

BE IT FURTHER RESOLVED, that the study identify areas for future legislative action, if needed.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by the Legislative Finance Committee.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2014.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 64th Legislature.

Adopted April 10, 2013

## HOUSE JOINT RESOLUTION NO. 25

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF MONTANA'S WORKERS' COMPENSATION SYSTEM REGARDING SUBROGATION, THE WORKERS' COMPENSATION COURT STRUCTURE, THE STRUCTURE OF THE STATE COMPENSATION INSURANCE FUND, AND VARIOUS MEDICAL AND SAFETY COMPONENTS OF THE WORKERS' COMPENSATION SYSTEM.

WHEREAS, the term subrogation, frequently accompanied by the terms "made whole" and "third-party tortfeasors", is not well understood among those not in the insurance or legal worlds, yet the real-world impacts related to subrogation affect workers' compensation premiums paid by employers and affect injured workers who receive medical and wage-loss benefits under workers' compensation but do not receive compensation for pain and suffering or full wage-loss benefits, which may be available through subrogation if the worker's injuries were caused by a third-party tortfeasor; and

WHEREAS, under section 39-71-414, MCA, workers' compensation insurers are allowed to pursue subrogation and in certain cases to receive from third-party tortfeasors an offset of their workers' compensation payouts, yet various Montana court cases, including State Compensation Insurance Fund v. McMillan, 2001 MT 168, 306 Mont. 155, 31 P.3d 347, have held that section 39-71-414, MCA, does not apply until a claimant is given a chance to be made whole in a civil action against a third party or, as provided in Article II, section 16, of the Montana Constitution, given "full legal redress for injury incurred in employment"; and

WHEREAS, workers' compensation insurers in other states may be able to successfully subrogate and receive offsets against their costs thus potentially lowering workers' compensation premiums while in Montana few insurers are willing to pay the court costs necessary to pursue subrogation because of concerns that under the constitutional interpretations an injured worker first must be made whole; and

WHEREAS, this lack of a feasible, clear process to hold a third party responsible by workers' compensation insurers who seek to recover costs through subrogation may contribute to workers' compensation premiums in Montana being among the top 10 highest rates nationwide as determined by a

biennial Oregon workers' compensation analysis of national workers' compensation premiums; and

WHEREAS, previous studies of Montana's workers' compensation system have paid little attention to the workers' compensation court's structure, including whether the political nature of the judicial appointment process causes inconsistencies in the application of laws because of potential philosophical variations among judges; and

WHEREAS, several other states have dismantled their state-based workers' compensation funds and a 2003-2004 study of similarly changing Montana's workers' compensation system to allow the State Compensation Insurance Fund to become independent of the state was conducted by the State Compensation Insurance Fund itself, and a new review of the State Compensation Insurance Fund's independence is again timely;

WHEREAS, although the changes in workers' compensation laws in 2011 were broad and are expected to take time to show their ultimate impacts, some changes may be evident as to efficiencies regarding medical utilization and treatment guidelines, efforts to improve return-to-work or stay-at-work policies, and on-the-job safety and reports on these topics may help to determine if other statutory changes or other actions are needed to help reduce the number of Montanans injured or killed on the job.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to review:

(1) subrogation in light of Montana's Constitution and court cases regarding making an injured worker "whole", including an examination of the meaning of "made whole" and the impacts of the lack of effective subrogation on workers' compensation insurers;

(2) the use of subrogation in civil actions and in settlements and what lessons are to be learned regarding application of the law for each approach;

(3) how other states handle subrogation for workers' compensation purposes;

(4) the structure of the workers' compensation court and whether nonpolitical appointments are feasible or needed;

(5) the structure of the State Compensation Insurance Fund as a state agency, the implications of independence on the Montana workers' compensation insurance system, and the requirements for separating the State Compensation Insurance Fund from state government;

(6) the use of medical utilization and treatment guidelines, including the guidelines related to narcotic prescriptions, and whether any cost savings are associated with the use of the guidelines and whether medical providers are using the guidelines;

(7) the use of stay-at-work and return-to-work forms and the interaction between medical providers and employers to determine if employers are getting more information on workers' return-to-work status;

(8) the impact on employees of changes to benefits, the definition of permanent partial disability, and other provisions enacted by the 2011 Legislature in House Bill No. 334; and

(9) the actions already taken to increase safety in the workplace and what other actions may be possible or necessary to enhance safety in the workplace.

BE IT FURTHER RESOLVED, that a study provide an opportunity for panel discussions and interaction by stakeholders, including attorneys, insurers, and any injured workers willing to participate.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2014.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 64th Legislature.

Adopted April 24, 2013

## HOUSE JOINT RESOLUTION NO. 26

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY ON THE INTERSECTING INTERESTS OF ESTATE OWNERS AND DITCH OWNERS AND PROVIDING A MEANS TO ACCOMMODATE BOTH ESTATES.

WHEREAS, Montana has a rich history of irrigated agriculture that must be protected, but residential development in irrigated river valleys and elsewhere is increasingly pitting the rights of homeowners against the rights of ditch easement owners;

WHEREAS, inflexible notions of dominant and servient estates hamper the common-sense approach that competing uses of property between two interested owners should be accommodated where possible; and

WHEREAS, the Colorado Supreme Court has recognized that ditch easements are a property right that the burdened estate owner may not alter without consent of the ditch owner, but there may be some circumstances in which an alteration would not harm the ditch owner but would greatly benefit the burdened estate owner; and

WHEREAS, in a ruling on secondary easements to maintain ditches, the Montana Supreme Court concluded that some permanent encroachments may not justify a finding of unreasonable interference; and

WHEREAS, House Bill No. 149 and proposed amendments attempted to provide a process to accommodate the needs of both the estate owner and the ditch owner, but testimony made clear that the issue needs further study.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate the water policy interim committee, established by section 5-5-231, MCA, or direct sufficient staff resources to examine the intersecting interests of estate owners and ditch owners and contemplate options to accommodate both estates.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2014.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 64th Legislature.

Adopted April 24, 2013

# HOUSE JOINT RESOLUTION NO. 30

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO COMPILE INFORMATION ON STATE AND FEDERAL BENEFITS OFFERED TO ACTIVE-DUTY OR RESERVE MILITARY PERSONNEL, MEMBERS OF THE MONTANA NATIONAL GUARD, AND VETERANS OF EACH.

WHEREAS, the House Taxation Committee considered a number of bills to provide tax benefits for active-duty or reserve military personnel, members of the Montana National Guard, and veterans of each; and

WHEREAS, other standing committees and the Committee of the Whole of the 63rd Legislature also considered bills to provide various benefits for active-duty or reserve military personnel, members of the Montana National Guard, and veterans of each; and

WHEREAS, the information on the benefits offered to active-duty or reserve military personnel, members of the Montana National Guard, and veterans of each will likely be useful for the 64th Legislature.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to compile information on the benefits available to active-duty or reserve military personnel, members of the Montana National Guard, and veterans of each.

BE IT FURTHER RESOLVED, that the information compiled include all types of benefits offered by state and local government, including but not limited to:

(1) tax benefits, including treatment of pension income;

(2) reduced or waived fees for government services;

(3) hunting and fishing license benefits;

(4) education benefits, including allowing military education and training to apply for certification or licensure;

(5) employment preferences; and

(6) health benefits.

BE IT FURTHER RESOLVED, that the information clearly distinguish which benefits are available and the commensurate value of the benefits to active-duty or reserve military personnel, members of the Montana Army National Guard, and veterans of each.

BE IT FURTHER RESOLVED, that information also be compiled, to the extent possible, on federal benefits received by active-duty or reserve military personnel, members of the Montana National Guard, and veterans of each.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2014.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 64th Legislature.

Adopted April 24, 2013

# House Resolutions

## HOUSE RESOLUTION NO. 1

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ADOPTING THE HOUSE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following House Rules be adopted:

### RULES OF THE MONTANA HOUSE OF REPRESENTATIVES

### CHAPTER 1

### Administration

**H10-10. House officers — definitions.** (1) House officers include a Speaker, a Speaker pro tempore, majority and minority leaders, and majority and minority whips (section 5-2-221, MCA).

(2) A majority of representatives voting elects the Speaker and Speaker pro tempore from the House membership. A majority of each caucus voting nominates House members to the remaining offices, and those nominees are considered to have been elected by a majority vote of the House.

(3) (a) "Majority leader" means the leader of the majority party, elected by the caucus as provided in 5-2-221.

(b) "Majority party" means the party with the most members, subject to subsection (4).

(c) "Minority leader" means the leader of the minority party, elected by the caucus as provided in 5-2-221.

(d) "Minority party" means the party with the second most members, subject to subsection (4).

(4) If there are an equal number of members of the two parties with the most members, then the majority party is the party of the Speaker and the minority party is the other party with an equal number of members.

**H10-20. Speaker's duties.** (1) The Speaker is the presiding officer of the House, with authority for administration, order, decorum, and the interpretation and enforcement of rules in all House deliberations.

(2) The Speaker shall see that all members conduct themselves in a civil manner in accordance with accepted standards of parliamentary conduct. The Speaker may, when necessary, order the Sergeant-at-Arms to clear the aisles and seat the members of the House so that business may be conducted in an orderly manner.

(3) Signs, placards, or other objects of a similar nature are not permitted in the rooms, lobby, gallery, or on the floor of the House. The Speaker may order the galleries, lobbies, or hallway cleared in case of disturbance or disorderly conduct.

(4) The Speaker shall sign all necessary certifications by the House, including enrolled bills and resolutions, journals (section 5-11-201, MCA), subpoenas, and payrolls.

(5) The Speaker shall arrange the agendas for second and third readings each legislative day. Representatives may amend the agendas as provided in H40-130.

(6) The Speaker is the chief officer of the House, with authority for all House employees.

(7) The Speaker may name any member to perform the duties of the chair. If the House is not in session and the Speaker pro tempore is not available, the Speaker shall name a member who shall call the House to order and preside during the Speaker's absence.

(8) Upon request of the Minority Leader, the Speaker will submit a request for a fiscal note on any bill.

**H10-30. Speaker-elect.** During the transition period between the party organization caucuses and the election of House officers, the Speaker-elect has the responsibilities and authority appropriate to organize the House (section 5-2-202, MCA). Authority includes approving presession expenditures.

**H10-40. Speaker pro tempore duties.** The Speaker pro tempore shall, in the absence or inability of the Speaker, call the House to order and perform all other duties of the chair in presiding over the deliberations of the House and shall perform other duties and exercise other responsibilities as may be assigned by the Speaker.

**H10-50. Majority Leader.** The primary functions of the majority leader usually relate to floor duties. The duties of the majority leader may include but are not limited to:

(1) being the lead speaker for the majority party during floor debates;

(2) helping the Speaker develop the calendar;

(3) assisting the Speaker with program development, policy formation, and policy decisions; and

(4) presiding over the majority caucus meetings; and

(5) other duties as assigned by the caucus.

**H10-60. Majority Whip.** The duties of the majority whip may include but are not limited to:

(1) assisting the majority leader;

(2) ensuring member attendance;

(3) counting votes;

(4) generally communicating the majority position; and

(5) other duties as assigned by the caucus.

**H10-70. Minority Leader.** The minority leader is the principal leader of the minority caucus. The duties of the minority leader may include but are not limited to:

(1) developing the minority position;

(2) negotiating with the majority party;

(3) directing minority caucus activities on the chamber floor;

(4) leading debate for the minority; and

(5) other duties as assigned by the caucus.

**H10-80. Minority Whip.** The major responsibilities for the minority whip may include but are not limited to:

(1) assisting the minority leader on the floor;

(2) counting votes;

(3) ensuring attendance of minority party members; and

(4) other duties as assigned by the caucus.

**H10-90. Employees.** (1) The Speaker shall appoint a Chief Clerk and Sergeant-at-Arms and may appoint a Chaplain, subject to confirmation of the House (section 5-2-221, MCA).

(2) The Speaker shall employ necessary staff or delegate that function to the employees designated in subsection (1).

(3) The secretary for a standing or select committee is generally responsible to the committee chair but shall work under the direction of the Chief Clerk.

(4) The Speaker and majority and minority leaders may each appoint a private secretary.

**H10-100. Chief Clerk's duties.** The Chief Clerk, under the supervision of the Speaker, is the chief administrative officer of the House and is responsible to:

(1) supervise all House employees;

(2) have custody of all records and documents of the House;

(3) supervise the handling of legislation in the House, the House journal, and other House publications; deliver to the Secretary of State at the close of each session the House journal, bill and resolution records, and all original House bills and joint resolutions; collect minutes and exhibits from all House committees and subcommittees and arrange to have them printed on archival paper and copied in an electronic format within a reasonable time after each meeting. An electronic copy will be provided to the Legislative Services Division and the State Law Library of Montana. The archival paper copy will be delivered to the Montana Historical Society.

**H10-110. Duties of Sergeant-at-Arms.** The Sergeant-at-Arms shall:

(1) under the direction of the Speaker and the Chief Clerk, have charge of and maintain order in the House, its lobbies, galleries, and hallways and all other rooms in the Capitol assigned for the use of the House;

(2) be present whenever the House is in session and at any other time as directed by the presiding officer;

(3) execute the commands of the House and serve the writs and processes issued by the authority of the House and directed by the Speaker;

(4) supervise assistants to the Sergeant-at-Arms, who shall aid in the performance of prescribed duties and who have the same authority, subject to the control of the Speaker;

(5) clear the floor and anteroom of the House of all persons not entitled to the privileges of the floor prior to the convening of each session of the House;

(6) bring in absent members when so directed under a call of the House;

(7) enforce the distribution of any printed matter in the House chambers and anteroom in accordance with H20-70;

(8) enforce parking regulations applicable to areas of the Capitol complex under the control of the House;

(9) supervise the doorkeeper; and

(10) supervise the pages.

**H10-120. Legislative aides.** (1) A legislative aide is a person specifically designated by a representative to assist that representative in performing legislative duties. A representative may sponsor one legislative aide a session by written notification to the Sergeant-at-Arms.

(2) No representative may designate a second legislative aide in the same session without the approval of the House Rules Committee.

(3) A legislative aide must be of legal age unless otherwise approved by the House Rules Committee.

(4) The Sergeant-at-Arms shall issue distinctive identification tags to legislative aides. The cost must be paid by the sponsoring representative.

**H10-130. Legislative interns.** A legislative intern is a person designated under Title 5, chapter 6, MCA.

**H10-140. House journal.** (1) The House shall keep a journal, which is the official record of House actions (Montana Constitution, Art. V, Sec. 10). The journal must be prepared under the direction of the Speaker.

(2) Records of the following proceedings must be entered on the journal:

(a) the taking and subscription of the constitutional oath by representatives (Montana Constitution, Art. III, Sec. 3; 5-2-214);

(b) committee reports;

(c) messages from the Governor;

(d) messages from the Senate;

(e) every motion, the name of the representative presenting it, and its disposition;

(f) the introduction of legislation in the House;

(g) consideration of legislation subsequent to introduction;

(h) on final passage of legislation, the names of the representatives and their vote on the question (Montana Constitution, Art. V, Sec. 11);

(i) roll call votes; and

(j) upon a request by two representatives before a vote is taken, the names of the representatives and their votes on the question.

(3) The Chief Clerk shall provide to the Legislative Services Division such information as may be required for the publication of the daily journal.

(4) Any representative may examine the daily journal and propose corrections. The Speaker may direct a correction to be made when suggested subject to objection by the House.

(5) The Speaker shall authenticate the House journal after the close of the session (section 5-11-201, MCA).

(6) The Legislative Services Division shall publish and distribute the House journal (sections 5-11-202 and 5-11-203, MCA). The title of each bill must be listed in the index of the published session journal.

**H10-150. Votes recorded and public.** Every vote of each representative on each substantive question in the House, in any committee, or in Committee of the Whole must be recorded and made public (Montana Constitution, Art. V, Sec. 11).

**H10-160. Duration of legislative day.** A legislative day ends either 24 hours after the House convenes for that day or at the time the House convenes for the following legislative day, whichever is earlier. (See Joint Rule 10-20.)

## CHAPTER 2

## Decorum

**H20-10. Addressing the House — recognition.** (1) When a member desires to speak to or address any matter to the House, the member should rise and respectfully address the Speaker or the presiding officer.

(2) The Speaker or presiding officer may ask, "For what purpose does the member rise?" or "For what purpose does the member seek recognition?" and may then decide if recognition is to be granted. There is no appeal from the Speaker's or presiding officer's decision.

**H20-20. Questions of order and privilege — appeal — restrictions.** (1) The Speaker shall decide all questions of order and privilege, subject to an appeal by any representative seconded by two representatives. The question on appeal is, "Shall the decision of the chairman be sustained?".

(2) Responses to parliamentary inquiries and decisions of recognition may not be appealed.

(3) Questions of order and privilege, in order of precedence, are:

(a) those affecting the collective rights, safety, dignity, and integrity of the House; and

(b) those affecting the rights, reputation, and conduct of individual representatives.

(4) A member may not address the House on a question of privilege between the time:

(a) an undebatable motion is offered and the vote is taken on the motion;

(b) the previous question is ordered and the vote is taken on the proposition included under the previous question; or

(c) a motion to lay on the table is offered and the vote is taken on the motion.

**H20-30. Limits on lobbying.** Lobbying on the House floor and in the anteroom is prohibited during a daily session, 2 hours before the session, and 2 hours after the session.

**H20-40. Admittance to the House floor.** (1) The following persons may be admitted to the House floor during a daily session: present and former legislators; legislative employees necessary for the conduct of the session; registered media representatives; and members' spouses and children. The Speaker may allow exceptions to this rule.

(2) Only a member may sit in a member's chair when the House is in session.

**H20-50. Dilatory motions or questions — appeal.** The House has a right to protect itself from dilatory motions or questions used for the purpose of delaying or obstructing business. The presiding officer shall decide if motions (except a call of the House) or questions are dilatory. This decision may be appealed to the House.

**H20-60. Lobbying by employees — sanctions.** (1) A legislative employee, intern, or aide of either house is prohibited from lobbying, although a legislative committee may request testimony from a person so restricted.

(2) The Speaker may discipline or discharge any House employee violating this prohibition. The Speaker may withdraw the privileges of any House aide or intern violating this prohibition.

**H20-70. Papers distributed on desks — exception.** A paper concerning proposed legislation may not be placed on representatives' desks unless it is authorized by a member and permission has been granted by the Speaker. The Sergeant-at-Arms shall direct its distribution. This restriction does not apply to material prepared by staff and placed on a representative's desk at the request of the representative.

**H20-80. Violation of rules — procedure — appeal.** (1) If a member, in speaking or otherwise, violates the rules of the House, the Speaker shall, or the majority or minority leader may, call the member to order, in which case the member called to order must be seated immediately.

(2) The member called to order may move for an appeal to the House and if the motion is seconded by two members, the matter must be submitted to the House for determination by majority vote. The motion is nondebatable.

(3) If the decision of the House is in favor of the member called to order, the member may proceed. If the decision is against the member, the member may not proceed.

(4) If a member is called to order, the matter may be referred to the Rules Committee by the majority or minority leader. The Committee may recommend to the House that the member be censured or be subject to other action. The House shall act upon the recommendation of the Committee.

## CHAPTER 3

## Committees

**H30-10. House standing committees — appointments — classification.** (1) The Speaker shall determine the total number of members and after good faith consultation with the minority leader shall appoint the chairs, vice chairs, and members to the standing committees.

(2) The standing committees of the House are as follows:

(a) class one committees:

(i) Appropriations;

(ii) Business and Labor;

(iii) Judiciary;

(iv) State Administration; and

(v) Taxation;

(b) class two committees:

(i) Education;

(ii) federal Relations, Energy, and Telecommunications;

(iii) Human Services;

(iv) Natural Resources; and

(v) Transportation;

(c) class three committees:

(i) Agriculture;

(ii) Fish, Wildlife, and Parks; and

(iii) Local Government; and

(d) on call committees:

(i) Ethics;

(ii) Rules; and

(iii) Legislative Administration.

(3) A class 1 committee is scheduled to meet Monday through Friday. A class 2 committee is scheduled to meet Monday, Wednesday, and Friday. A class 3 committee is scheduled to meet Tuesday and Thursday. Unless a class is prescribed for a committee, it meets upon the call of the chair.

(4) The Legislative Council shall review the workload of the standing committees to determine if any change is indicated in the class of a standing committee for the next legislative session. The Legislative Council's recommendations must be submitted to the leadership nominated or elected at the presession caucus provided for in 5-2-201.

(5) There will be six subcommittees of the Committee on Appropriations, Education, General Government, Health and Human Services, Natural Resources and Transportation, Judicial Branch, Law Enforcement, and Justice, and Long-Range Planning. Each member serving on the Appropriations Committee must be appointed to at least one of the subcommittees.

(6) The Speaker shall give notice of each appointment to the Chief Clerk for publication.

(7) The Speaker may, in the Speaker's discretion or as authorized by the House, create and appoint select committees, designating the chairman and vice chairman of the select committee. Select committees may request or receive legislation in the same manner as a standing committee and are subject to the rules of standing committees.

**H30-20. Chairman's duties.** (1) The principal duties of the chairman of standing or select committees are to:

(a) preside over meetings of the committee and to put all questions;

(b) maintain order and decide all questions of order subject to appeal to the committee;

(c) supervise and direct staff of the committee;

(d) have the committee secretary keep the official record of the minutes;

(e) sign reports of the committee and submit them promptly to the Chief Clerk;

(f) appoint subcommittees to perform on a formal or an informal basis as provided in subsection (2); and

(g) inform the Speaker of committee activity.

(2) With the exception of the House Appropriations subcommittees, a subcommittee of a standing committee may be appointed by the chairman of the committee. The chairman of the standing committee shall appoint the chairman of the subcommittee.

**H30-30. Quorum — officers as members.** (1) A quorum of a committee is a majority of the members of the committee. A quorum of a committee must be present at a meeting to act officially. A quorum of a committee may transact business, and a majority of the quorum, even though it is a minority of the committee, is sufficient for committee action.

(2) The Speaker, the majority leader, and the minority leader are ex officio, nonvoting members of all House committees. They may count toward establishing a quorum.

**H30-40. Meetings — purpose — notice — minutes.** (1) All meetings of committees must be open to the public at all times, subject always to the power and authority of the chairman to maintain safety, order, and decorum. The date, time, and place of committee meetings must be posted.

(2) A committee or subcommittee may be assembled for:

(a) a public hearing at which testimony is to be heard and at which official action may be taken on bills, resolutions, or other matters;

(b) a formal meeting at which the committees may discuss and take official action on bills, resolutions, or other matters without testimony; or

(c) a work session at which the committee may discuss bills, resolutions, or other matters but take no formal action.

(3) All committees meet at the call of the chairman or upon the request of a majority of the members of the committee directed to and with the approval of the Speaker.

(4) All committees shall provide for and give public notice, reasonably calculated to give actual notice to interested persons, of the time, place, and subject matter of regular and special meetings. All committees are encouraged to provide at least 3 legislative days notice to members of committees and the general public. However, a meeting may be held upon notice appropriate to the circumstances.

(5) A committee may not meet during the time the House is in session without leave of the Speaker. Any member attending such a meeting must be considered excused to attend business of the House subject to a call of the House.

(6) All meetings of committees must be recorded and the minutes must be available to the public within a reasonable time after the meeting. The official record must contain at least the following information:

(a) the time and place of each meeting of the committee;

(b) committee members present, excused, or absent;

(c) the names and addresses of persons appearing before the committee, whom each represents, and whether the person is a proponent, opponent, or other witness;

(d) all motions and their disposition;

(e) the results of all votes;

(f) references to the recording log, sufficient to serve as an index to the original recording; and

(g) testimony and exhibits submitted in writing.

**H30-50. Procedures — absentee or proxy voting — member privileges.** (1) The chairman shall notify the sponsor of any bill pending before the committee of the time and place it will be considered.

(2) A standing or select committee may not take up referred legislation unless the sponsor or one of the cosponsors is present or unless the sponsor has given written consent. The chairman shall attempt to not schedule Senate bills while the Senate is in session.

(3) (a) Subject to subsection (3)(b), the committee shall act on each bill in its possession:

(i) by reporting the bill out of the committee:

(A) with the recommendation that it be referred to another committee;

(B) favorably as to passage; or

(C) unfavorably; or

(ii) by tabling the measure in committee.

(b) At the written request of the sponsor, a committee shall finally dispose of a bill without a hearing. A bill may not be reported from a committee without a hearing.

(4) The committee may not report a bill to the House without recommendation.

(5) The committee may recommend that a bill on which it has made a favorable recommendation by unanimous vote be placed on the consent calendar. A tie vote in a standing committee on the question of a recommendation to the whole House on a matter before the committee, for example on a question of whether a bill is recommended as "do pass" or "do not pass", does not result in the matter passing out to the whole House for consideration without recommendation.

(6) In reporting a measure out of committee, a committee shall include in its report:

(a) the measure in the form reported out;

(b) the recommendation of the committee;

(c) an identification of all substantive changes; and

(d) a fiscal note, if required.

(7) If a measure is withdrawn from a committee and brought to the House floor for debate on second reading on that day without a committee recommendation, the bill does not include amendments formally adopted by the committee because committee amendments are merely recommendations to the House that are formally adopted when the committee report is accepted by the House.

(8) A second to any motion offered in a committee is not required in order for the motion to be considered by the committee.

(9) The vote of each member on all committee actions must be recorded. All motions may be adopted only on the affirmative vote of a majority of the members voting. Standing and select committees may by a majority vote of the committee authorize members to vote by proxy if absent, while engaged in other legislative business or when excused by the presiding officer of the committee due to illness or an emergency. Authorization for absentee or proxy voting must be reflected in the committee minutes.

(10) A motion to take a bill from the table may be adopted by the affirmative vote of a majority of the members present at any meeting of the committee.

(11) An action formally taken by a committee may not be altered in the committee except by reconsideration and further formal action of the committee.

(12) A committee may reconsider any action as long as the matter remains in the possession of the committee. A committee member need not have voted with the prevailing side in order to move reconsideration.

(13) Any legislation requested by a committee requires three-fourths of all members of the committee to vote in favor of the question to allow the committee to request the drafting or introduction of legislation. Votes requesting drafting and introduction of committee legislation may be taken jointly or separately.

(14) The chairman shall decide points of order.

(15) The privileges of committee members include the following:

(a) to participate freely in committee discussions and debate;

(b) to offer motions;

(c) to assert points of order and privilege;

(d) to question witnesses upon recognition by the chairman;

(e) to offer any amendment to any bill; and

(f) to vote, either by being present or by proxy if authorized pursuant to subsection (9), using a standard form or through the vice chairman or minority vice chairman.

(16) Any meeting of a committee held through the use of telephone or other electronic communication must be conducted in accordance with Chapter 3 of the House Rules.

(17) A committee may consolidate into one bill any two or more related bills referred to it whenever legislation may be simplified by the consolidation.

(18) Committee procedure must be informal, but when any questions arise on committee procedure, the rules or practices of the House are applicable except as stated in the House Rules.

**H30-60. Public testimony — decorum — time restrictions.** (1) Testimony from proponents, opponents, and informational witnesses must be allowed on every bill or resolution before a standing or select committee. All persons, other than the sponsor, offering testimony shall register on the committee witness list.

(2) Any person wishing to offer testimony to a committee hearing a bill or resolution must be given a reasonable opportunity to do so, orally or in writing. Written testimony may not be required of any witness, but all witnesses must be encouraged to submit a statement in writing for the committee's official record.

(3) The chairman may order the committee room cleared of visitors if there is disorderly conduct. During committee meetings, visitors may not speak unless called upon by the chairman. Restrictions on time available for testimony may be announced.

(4) The number of people in a committee room may not exceed the maximum posted by the State Fire Marshal. The chairman shall maintain that limit.

(5) In any committee meeting, the use of cameras, television, radio, or any form of telecommunication equipment is allowed, but the chairman may designate the areas of the hearing room from which the equipment must be operated. Cell phone use is allowed only at the discretion of the chairman.

## CHAPTER 4

## Legislation

**H40-10. Introduction deadlines.** If a representative accepts drafted legislation from the Legislative Services Division after the deadline for preintroduction, the representative may not introduce that legislation after 2 legislative days from the time the bill was accepted from the Legislative Services Division.

**H40-20. House resolutions.** (1) A House resolution is used to adopt or amend House rules, make recommendations on the districting and apportionment plan (Montana Constitution, Art. V, Sec. 14), express the sentiment of the House, or assist House operations.

(2) As to drafting, introduction, and referral, a House resolution is treated as a bill. A House resolution may be requested and introduced at any time. Final passage of a House resolution is determined by the Committee of the Whole report. A House resolution does not progress to third reading.

(3) The Chief Clerk shall transmit a copy of each passed House resolution to the Senate and the Secretary of State.

**H40-30. Cosponsors.** (1) Prior to submitting legislation to the Chief Clerk for introduction, the chief sponsor may add representatives and senators as cosponsors by having them sign the legislation.

(2) After legislation is submitted for introduction but before the legislation returns from the first House committee, the chief sponsor may add or remove cosponsors by filing a cosponsor form with the Chief Clerk. This filing must be noted by the Chief Clerk for the record on Order of Business No. 11.

**H40-40. Introduction — receipt — messages from Senate and elected officials.** (1) During a session, proposed House legislation may be introduced in the House by submitting it, endorsed with the signature of a representative as chief sponsor, to the Chief Clerk for introduction. Except for the first 15 bill numbers that may be reserved for preintroduced legislation, in each session of the Legislature, the proposed legislation must be numbered consecutively by type in the order of receipt. Submission and numbering of properly endorsed legislation constitutes introduction.

(2) Preintroduction of legislation prior to a session under provisions of the joint rules constitutes introduction in the House.

(3) Acknowledgment by the Chief Clerk of receipt of legislation or other matters transmitted from the Senate for consideration by the House constitutes introduction of the Senate legislation in the House or receipt by the House for purposes of applying time limits contained in the House rules. All legislation may be referred to a committee prior to being read across the rostrum as provided in H40-50.

(4) Acknowledgment by the Chief Clerk of receipt of messages from the Senate or other elected officials constitutes receipt by the House for purposes of any applicable time limit. Senate legislation or messages received from the Senate or elected officials are subject to all other rules.

**H40-50. First reading — receipt of Senate legislation.** Legislation properly introduced or received in the House must be announced across the rostrum and public notice provided. This announcement constitutes first reading, and no debate or motion is in order except that a representative may question adherence to rules. Acknowledgment by the Chief Clerk of receipt of legislation transmitted from the Senate commences the time limit for consideration of the legislation. All legislation received by the House may be referred to a committee prior to being read across the rostrum.

**H40-60. One reading per day — exception.** Except on the final legislative day, legislation may receive no more than one reading per legislative day. On the final legislative day, legislation may receive more than one reading.

**H40-70. Referral.** (1) The Speaker shall refer to a House committee, joint select committee, or joint special committee all properly introduced House legislation and transmitted Senate legislation in conformity to the committee jurisdiction.

(2) Legislation may not receive final passage and approval unless it has been referred to a House committee, joint select committee, or joint special committee.

**H40-80. Rereferral — Appropriations Committee rereferral — normal progression.** (1) Except as provided in subsection (2), legislation that is in the possession of the House and that has not been finally disposed of may be rereferred to a House committee by House motion approved by not less than three-fifths of the members present and voting.

(2) (a) Legislation that is in the possession of the House and that has been reported from a committee with a do pass or be concurred in recommendation may be rereferred to a House committee by a majority vote.

(b) (i) With the consent of the majority leader, the minority leader, and the bill sponsor, legislation that has passed second reading in the Committee of the Whole and that has been rereferred to the Appropriations Committee pursuant to H40-80(2)(a) and is reported from committee without amendments may be placed on third reading.

(ii) Prior to being placed on third reading, legislation rereferred pursuant to H40-80(2)(b)(i) must be sent to be processed and reproduced as a third reading version and specifically marked as having been passed on second reading and rereferred to the House Appropriations Committee and reported from the committee without amendments.

(3) The normal progress of legislation through the House consists of the following steps in the order listed: introduction; referral to a standing or select committee; a report from the committee; second reading; and third reading.

**H40-90. Legislation withdrawn from committee.** Legislation may be withdrawn from a House committee by House motion approved by not less than three-fifths of the members present and voting.

**H40-100. Standing committee reports — requirement for rejection of adverse committee report.** (1) A House standing committee recommendation of "do pass" or "be concurred in" must be announced across the rostrum and, if there is no objection to form, is considered adopted.

(2) A recommendation of "do not pass" or "be not concurred in" must be announced across the rostrum and, on the following legislative day, may be debated and adopted or rejected on Order of Business No. 2. A motion to reject an adverse committee report must be approved by not less than three-fifths of the members voting. Failure to adopt a motion to reject an adverse committee report constitutes adoption of the report.

(3) If the House rejects an adverse committee report, the bill progresses to second reading, as scheduled by the Speaker, with any amendments recommended by the committee.

**H40-110. Consent calendar procedure.** (1) Noncontroversial bills and simple and joint resolutions may be recommended for the consent calendar by a standing committee and processed according to the following provisions:

(a) To be eligible for the consent calendar, the legislation must receive a unanimous vote by the members of the standing committee in attendance (do pass, do pass as amended). In addition, a motion must be made and passed unanimously to place the legislation on the consent calendar and this action reflected in the committee report. Appropriation or revenue bills may not be recommended for the consent calendar.

(b) The legislation must then be sent to be processed and reproduced as a third reading version and specifically marked as a "consent calendar" item.

(2) Other legislation may be placed on the consent calendar by agreement between the Speaker and the minority leader following a positive recommendation by a standing committee. The legislation must be sent to be processed as a second reading version but must be specifically announced and posted as a "consent calendar" item.

(3) Legislation must be posted immediately (as soon as it is received appropriately printed) on the consent calendar and must remain there for 1 legislative day before consideration under Order of Business No. 11, special orders of the day. At that time, the presiding officer shall announce consideration of the consent calendar and allow "reasonable time" for questions and answers upon request. No debate is allowed.

(4) If any one representative submits a written objection to the placement of legislation on the consent calendar, the legislation must be removed from the consent calendar and added to the regular second reading board.

(5) Consent calendar legislation will be considered on Order of Business No. 8, third reading of bills, following the regular third reading agenda, as separately noted on the agenda.

(6) Legislation on the consent calendar must be considered individually with the roll call vote spread on the journal as the final vote in the House.

(7) Legislation passed on the consent calendar must then be transmitted to the Senate. Legislation must be appropriately printed prior to transmittal.

**H40-120. Legislation requiring other than a majority vote.** Legislation that requires other than a majority vote for final passage needs only a majority vote for any action that is taken prior to third reading and that normally requires a majority vote.

**H40-130. Amending House second and third reading agendas — vote requirements.** (1) A majority of representatives present may rearrange or remove legislation from either the second or third reading agenda on that legislative day.

(2) Legislation may be added to the second or third reading agenda on that legislative day on a motion approved by not less than three-fifths of the members present and voting.

**H40-140. Second reading — timing — obverse vote on failed motion — status of amendments — rejection of report — segregation.** (1) Legislation returned or withdrawn from committee by motion must be placed on second reading prior to the transmittal deadlines provided for in Joint Rule 40-200 that are applicable to each piece of legislation.

(2) The House shall form itself into a Committee of the Whole to consider business on second reading. The Committee of the Whole may debate legislation, attach amendments, and recommend approval or disapproval of legislation.

(3) Except on the final legislative day, at least 1 legislative day must elapse between the time legislation is reported from committee and the time it is considered on second reading.

(4) If a motion to recommend that a bill "do pass" or "be concurred in" fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill "do not pass" or "be not concurred in", is considered to have passed. If a motion to recommend that a bill "do not pass" or "be not concurred in" fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill "do pass" or "be concurred in", is considered to have passed.

(5) An amendment attached to legislation by the Committee of the Whole remains unless removed by further legislative action.

(6) When the Committee of the Whole reports to the House, the House shall adopt or reject the Committee of the Whole report. If the House rejects the Committee of the Whole report, the legislation remains on second reading, as amended by the Committee of the Whole, unless the House orders otherwise.

(7) A representative may move to segregate legislation from the Committee of the Whole report before the report is adopted. Segregated legislation, as amended by the Committee of the Whole, must be placed on second reading unless the House orders otherwise. Amendments adopted by the Committee of the Whole on segregated legislation remain adopted unless reconsidered pursuant to H50-170 or unless the legislation is rereferred to a committee.

**H40-150. Amendments in the Committee of the Whole — timing — official records.** (1) All Committee of the Whole amendments must be prepared by the Legislative Services Division and checked by the House amendments coordinator for format, style, clarity, consistency, and other factors, in accordance with the most recent Bill Drafting Manual published by the Legislative Services Division, before the amendment may be accepted at the rostrum. The amendment form must include the date and time the amendment is submitted for that check.

(2) An amendment submitted to the rostrum for consideration by the Committee of the Whole must be marked as checked by the amendments coordinator and signed by a representative. Unless the majority leader, the minority leader, and sponsor agree, amendments must be printed and placed on the members' desks prior to consideration.

(3) An amendment may not be proposed until the sponsor has opened on a bill.

(4) A copy of every amendment rejected by the Committee of the Whole must be kept as part of the official records.

(5) An amendment may not change the original purpose of the bill.

**H40-160. Motions in the Committee of the Whole — quorum required.** (1) When the House resolves itself into a Committee of the Whole, the only motions in order are to:

(a) recommend passage or nonpassage;

(b) recommend concurrence or nonconcurrence (Senate amendments to House legislation);

(c) amend;

(d) reconsider as provided in H50-170;

(e) pass consideration;

(f) call for cloture;

(g) change the order in which legislation is placed on the agenda; and

(h) rise, rise and report, or rise and report progress and beg leave to sit again.

(2) Subsections (1)(d) through (1)(f) and (1)(h) are nondebatable but may be amended. Once a motion under subsection (1)(a) or (1)(b) is made, a contrary motion is not in order.

(3) The motions listed in subsection (1) may be made in descending order as listed.

(4) If a quorum of representatives is not present during second reading, the Committee of the Whole may not conduct business on legislation and a motion for a call of the House without a quorum is in order.

**H40-170. Limits on debate in the Committee of the Whole.** (1) Except as provided in H40-180, a representative may not speak more than once on the motion and may speak for no more than 5 minutes. The representative who makes the motion may speak a second time for 5 minutes in order to close.

(2) After at least two proponents and two opponents have spoken on a question and 30 minutes have elapsed, a motion to call for cloture is in order. Approval by not less than two-thirds of the members present and voting is required to sustain a motion for cloture. Notwithstanding the passage of a motion to end debate, the sponsor of the motion on which debate was ended may close.

(3) By previous agreement of the majority leader and the minority leader:

(a) a lead proponent and a lead opponent may be granted additional time to speak on a bill;

(b) a bill or resolution may be allocated a predetermined amount of time for debate and number of speakers.

**H40-180. Special provisions for debate on the general appropriations bill — sections — amendments.** (1) The Appropriations Committee chairman, in presenting the bill, is not subject to the 5-minute speaking limitation.

(2) Each appropriations subcommittee chairman shall fully present the chairman's portion of the bill. A subcommittee chairman is not subject to the 5-minute speaking limitation.

(3) After the presentation by the subcommittee chairman, the respective section of the bill is open for debate, questions, and amendments. A proposed amendment to the general appropriations act may not be divided.

(4) An amendment that affects more than one section of the bill must be offered when the first section affected is considered.

(5) Following completion of the debate on each section, that section is closed and may not be reopened except by majority vote.

(6) If a member moves to reopen a section for amendment, only the amendment of that member may be entertained. Another member wishing to amend the same section shall make a separate motion to reopen the section.

(7) Debate on the motion to reopen a section is limited to the question of reopening the section. The amendment itself may not be debated at that time. This limitation does not prohibit the member from explaining the amendment to be considered.

**H40-190. Engrossing.** (1) After legislation is passed on second reading, it must be engrossed within 48 hours under the direction of the Speaker. The Speaker may grant additional time for engrossing.

(2) When the legislation that has passed second reading, as amended, has been correctly engrossed, it must be placed on third reading on the following legislative day. If the bill is not amended, the bill must be sent to printing and must be placed on third reading on the legislative day after receipt. On the final legislative day, the correctly engrossed legislation may be placed on third reading on the same legislative day. For the purposes of this rule, "engrossing" means placing amendments in a bill. (See Joint Rule 40-150.)

**H40-200. Third reading.** (1) All bills, joint resolutions, and Senate amendments to House bills and joint resolutions passing second reading must be placed on third reading the day following the receipt of the engrossing or other appropriate printing report.

(2) Legislation on third reading may not be amended or debated.

(3) The Speaker shall state the question on legislation on third reading. If a majority of the representatives voting does not approve the legislation, it fails to pass third reading.

**H40-210. Senate legislation in the House.** Senate legislation properly transmitted to the House must be treated as House legislation.

**H40-220. Senate amendments to House legislation.** (1) When the Senate has properly returned House legislation with Senate amendments, the House shall announce the amendments on Order of Business No. 4, and the Speaker shall place them on second reading for debate. The Speaker may rerefer House legislation with Senate amendments to a committee for a hearing

if the Senate amendments constitute a significant change in the House legislation. The second reading vote is limited to consideration of the Senate amendments.

(2) If the House accepts Senate amendments, the House shall place the final form of the legislation on third reading to determine if the legislation, as amended, is passed or if the required vote is obtained.

(3) If the House rejects the Senate amendments, the House may request the Senate to recede from its amendments or may direct appointment of a conference committee and request the Senate to appoint a like committee.

**H40-230. Conference committee reports.** (1) When a House conference committee files a report, the report must be announced under Order of Business No. 3.

(2) The House may debate and adopt or reject the conference committee report on second reading on any legislative day. The House may reconsider its action in rejecting a conference committee report under rules for reconsideration, H50-160.

(3) If both the House and the Senate adopt the same conference committee report on legislation requiring more than a majority vote for final passage, the House, following approval of the conference committee report on third reading, shall place the final form of the legislation on third reading to determine if the required vote is obtained.

(4) If the House rejects a conference committee report, the committee continues to exist unless dissolved by the Speaker or by motion. The committee may file a subsequent report.

(5) A House conference committee may confer regarding matters assigned to it with any Senate conference committee with like jurisdiction and submit recommendations for consideration of the House.

**H40-240. Enrolling.** (1) When House legislation has passed both houses, it must be enrolled within 48 hours under the direction of the Speaker. The Speaker may grant additional time for enrolling.

(2) The chief sponsor of the legislation shall examine the enrolled legislation and, if it has no enrolling errors, shall, within 1 legislative day, certify the legislation as correctly enrolled.

(3) The correctly enrolled legislation must be delivered to the Speaker, who shall sign the legislation.

(4) After the legislation has been reported correctly enrolled but before it is signed, any representative may examine the legislation. (See Joint Rule 40-160.)

**H40-250. Governor's amendments.** (1) When the Governor returns a bill with recommended amendments, the House shall announce the amendments under Order of Business No. 5.

(2) The House may debate and adopt or reject the Governor's recommended amendments on second reading on any legislative day.

(3) If both the House and the Senate accept the Governor's recommended amendments on a bill that requires more than a majority vote for final passage, the House shall place the final form of the legislation on third reading to determine if the required vote is obtained.

**H40-260. Governor's veto.** (1) When the Governor returns a bill with a veto, the House shall announce the veto under Order of Business No. 5.

(2) On any legislative day, a representative may move to override the Governor's veto by a two-thirds vote under Order of Business No. 9.

## CHAPTER 5
## Floor Actions

**H50-10. Attendance — excuse — call of the House.** (1) A representative, unless excused, is required to be present at every sitting of the House.

(2) A representative may request in writing to be excused for a specified cause by the representative's party leader. This excused absence is not a leave with cause from a call of the House.

**H50-20. Quorum.** (1) A quorum of the House is fifty-one representatives (Montana Constitution, Art. V, Sec. 10).

(2) Any representative may question the lack of a quorum at any time a vote is not being taken. The question is nondebatable, may not be amended, and is resolved by a roll call.

(3) The House may not conduct business without a quorum, except that representatives present may convene, compel the attendance of absent representatives, or adjourn.

**H50-30. Call of the House without a quorum.** (1) In the absence of a quorum, a majority of the representatives present may compel the attendance of absent representatives through a call of the House without a quorum. The motion for the call is nondebatable, may not be amended, and is in order at any time it has been established that a quorum is not present.

(2) During a call of the House, all business is suspended. No motion is in order except a motion to adjourn or to remove the call.

(3) When a quorum has been achieved under the call, the call is automatically lifted. The call may also be lifted by adjournment or by two-thirds of the representatives present and voting.

**H50-40. Call of the House with a quorum.** (1) If a quorum is present but at least one representative is excused or absent, one-third of the representatives present and voting may order a call of the House with a quorum.

(2) The motion for a call is nondebatable, may not be amended, and is in order at any time a vote is not being taken, except that a call of the House with a quorum is not allowed in the Committee of the Whole.

(3) During a call of the House, all business is suspended. No motion is in order except a motion to adjourn or to remove the call.

(4) When all representatives are present, except those on leave with cause, the call is automatically lifted. The call may also be lifted by adjournment or by two-thirds of the representatives present and voting.

**H50-50. Leave with cause during call of the House.** (1) During a call of the House, a representative with an overriding medical or personal reason may request a leave with cause.

(2) If the representative is present at the time of the call, the Speaker may approve a request for a leave with cause.

(3) If the representative is not present at the time of the call, two-thirds of the representatives present and voting may approve a request for leave with cause.

(4) During a call of the House, a representative on leave with cause may not cast an absentee vote.

**H50-60. Opening and order of business.** The opening of each legislative day must include an invocation, the pledge of allegiance, and roll call. Following the opening, the order of business of the House is as follows:

(1) communications and petitions;

(2) reports of standing committees;

(3) reports of select committees;

(4) messages from the Senate;

(5) messages from the Governor;

(6) first reading and commitment of bills;

(7) second reading of bills;

(8) third reading of bills;

(9) motions;

(10) unfinished business;

(11) special orders of the day; and

(12) announcement of committee meetings.

**H50-70. Motions.** (1) Any representative may propose a motion allowed by the rules for the order of business under which the motion is offered for the consideration of the House. Unless otherwise specified in rule or law, a majority of representatives voting is necessary and sufficient to decide a motion.

(2) Seconds to motions on the House floor are not required.

(3) Absentee votes are not allowed on votes that are specified as "representatives present and voting".

(4) The majority leader shall make routine procedural motions required to conduct the business of the House.

**H50-80. Limits on debate of debatable motions.** (1) Except for the representative who places a debatable motion before the body, no representative may speak more than once on the question unless a unanimous House consents. The representative who places the motion may close.

(2) No representative may speak for more than 10 minutes on the same question, except that a representative may have 5 minutes to close.

**H50-90. Nondebatable motions.** (1) A representative has the right to understand any question before the House and, usually under the administration of the presiding officer, may ask questions to exercise this right.

(2) The following motions are nondebatable:

(a) to adjourn pursuant to H50-250;

(b) for a call of the House;

(c) to recess or rise;

(d) for parliamentary inquiry;

(e) to table or take from the table;

(f) to call for the previous question or cloture;

(g) to amend a nondebatable motion;

(h) to divide a question;

(i) to suspend the rules;

(j) all incidental motions, such as motions relating to voting or of a general procedural nature;

(k) to appeal a call to order;

(l) to question the lack of a quorum pursuant to H50-20; and

(m) to change a vote pursuant to H50-210.

**H50-100. Questions.** A representative may, through the presiding officer, ask questions of another representative during a floor session. There is no limit on questions and answers, except as provided in H20-50.

**H50-110. Amending motions — limitations.** (1) A representative may move to amend the specific provisions of a motion without changing its substance.

(2) No more than one motion to amend a motion is in order at any one time.

(3) A motion for a call of the House, for the previous question, to table, or to take from the table may not be amended.

**H50-120. Substitute motions.** (1) When a question is before the House, no substitute motion may be made except the following, which have precedence in the order listed:

(a) to adjourn (nondebatable H50-90 and H50-250);

(b) for a call of the House (nondebatable H50-90);

(c) to recess or rise (nondebatable H50-90);

(d) for a question of privilege;

(e) to table (nondebatable H50-90);

(f) to call for the previous question or cloture;

(g) to postpone consideration to a day certain;

(h) to refer to a committee; and

(i) to propose amendments.

(2) Nothing in this section allows a motion that would not otherwise be allowed under a particular order of business.

(3) (a) Except as provided in subsection (3)(b), no more than one substitute motion is in order at any one time.

(b) A motion for cloture is in order on a substitute motion to amend.

**H50-130. Withdrawing motions.** A representative who proposes a motion may withdraw it before it is voted on or amended.

**H50-140. Dividing a question.** Except as provided in H40-180(3), a representative may request to divide a question as a matter of right if it includes two or more propositions so distinct that they can be separated and if at least one substantive question remains after one substantive question is removed. The request is nondebatable under H50-90. The presiding officer may rule that a question is nondivisible. The ruling of the chair may be appealed as provided in H50-160(15) or (17) and H70-50. For an appeal of a ruling of the presiding officer, the question for the house must be stated as, "Shall the ruling of the chair be upheld?".

**H50-150. Previous question — close.** (1) If a majority of representatives present and voting adopts a motion for the previous question, debate is closed on the question and it must be brought to a vote. The Speaker may not entertain a motion to end debate unless at least one proponent and one opponent have spoken on the question.

(2) Notwithstanding the passage of a motion to end debate, the sponsor of the motion on which debate was ended may close.

**H50-160. Questions requiring other than a majority vote.** The following questions require the vote specified for each condition:

**100 House Members**

(1) a motion to approve a bill to appropriate the principal of the tobacco settlement trust fund pursuant to Article XII, section 4, of the Montana Constitution (two-thirds);

(2) a motion to approve a bill to appropriate the principal of the coal severance tax trust fund pursuant to Article IX, section 5, of the Montana Constitution (three-fourths);

(3) a motion to approve a bill to appropriate highway revenue, as described in Article VIII, section 6, of the Montana Constitution, for purposes other than therein described (three-fifths);

(4) a motion to approve a bill to authorize creation of state debt pursuant to Article VIII, section 8, of the Montana Constitution (two-thirds);

(5) a motion to appropriate the principal of the noxious weed management trust fund pursuant to Article IX, section 6, of the Montana Constitution (three-fourths);

(6) a motion to temporarily suspend a joint rule governing the procedure for handling bills pursuant to Joint Rule 60-10(2) (two-thirds).

**Members Present and Voting**

(1) a motion to override the Governor's veto pursuant to H40-260 and Article VI, section 10(3), of the Montana Constitution (two-thirds);

(2) a call of the House with a quorum pursuant to H50-40(1) (one-third);

(3) a motion to lift a call of the House pursuant to H50-30(3) or H50-40(4) (two-thirds);

(4) a motion to rerefer a bill from one committee to another pursuant to H40-80(1) (three-fifths);

(5) a motion to withdraw a bill from a committee pursuant to H40-90 (three-fifths);

(6) a motion to add legislation to the second or third reading agenda on that day pursuant to H40-130(2) (three-fifths);

(7) a motion to remove legislation from its normal progress through the House as provided under H40-80(3) and reassign it unless otherwise specifically provided by these rules, such as H40-80(2) (three-fifths);

(8) a motion to change a vote pursuant to H50-210 (unanimous);

(9) a motion to call for cloture pursuant to H40-170(2) (two-thirds);

(10) a motion to approve a bill conferring immunity from suit as described in Article II, section 18, of the Montana Constitution (two-thirds);

(11) a motion to amend rules pursuant to H70-10(2) or suspend rules pursuant to H70-30 (two-thirds);

(12) a motion to overturn an adverse committee report pursuant to H40-100(2) (three-fifths);

(13) a motion to record a vote pursuant to H50-200(2) (one representative);

(14) a motion to record a vote in the journal (two representatives);

(15) an appeal of the ruling of the presiding officer pursuant to H20-20(1) or H20-80(2) (three representatives);

(16) a motion to speak more than once on a debatable motion pursuant to H50-80(1) (unanimous vote);

(17) a motion to appeal the presiding officer's interpretation of the rules to the House Rules Committee pursuant to H70-50 (15 representatives).

**Entire Legislature**

(1) a motion to approve a bill proposing to amend the Montana Constitution pursuant to Article XIV, section 8, of the Montana Constitution (two-thirds of the entire Legislature).

**H50-170. Reconsideration — time restriction.** (1) Any representative may, within 1 legislative day of a vote, move to reconsider the House vote on any matter still within the control of the House.

(2) A motion to reconsider is a debatable motion, but the debate is limited to the motion. The debate on a motion to reconsider is limited to two proponents and two opponents to the motion and the debate may not address the substance of the matter for which reconsideration is sought. However, an inquiry may be made concerning the purpose of the motion to reconsider.

(3) A motion for reconsideration, unless tabled or replaced by a substitute motion, must be disposed of when made.

(4) When a motion for reconsideration fails, the question is finally settled. A motion for reconsideration may not be renewed or reconsidered.

(5) A motion to recall legislation from the Senate constitutes a motion to reconsider and is subject to the same rules.

(6) A motion for reconsideration is not in order on a vote to postpone to a day certain or to table legislation.

(7) There may be only one reconsideration vote on a specific issue on a legislative day.

**H50-180. Renewing procedural motions.** The House may renew a procedural motion if further House business has intervened.

**H50-190. Tabling.** (1) Under Order of Business No. 9, a representative may move to table any question, motion, or legislation before the House except the question of a quorum or a call of the House. The motion is nondebatable and may not be amended.

(2) When a matter has been tabled, a representative may move to take it from the table under Order of Business No. 9 on any legislative day.

**H50-200. Voting — conflict of interest — present by electronic means.** (1) The representatives shall vote to decide any motion or question properly before the House. Each representative has one vote.

(2) The House may, without objection, use a voice vote on procedural motions that are not required to be recorded in the journal. If a representative rises and objects, the House shall record the vote.

(3) The House shall record the vote on all substantive questions. If the voting system is inoperable, the Chief Clerk shall record the representatives' votes by other means.

(4) A member who is present shall vote unless the member has disclosed a conflict of interest to the House.

(5) A member may be present for a vote by electronic means.

**H50-210. Changing a vote — consent required.** (1) A representative may move to change the representative's vote within 1 legislative day of the vote. The motion is nondebatable. The motion must be made on Order of Business No. 9, motions. All of the members present and voting are required to consent to the change in order for it to be effective.

(2) The representative making the motion shall first specify the bill number, the question, and the original vote tally. A vote may not be changed if it would affect the outcome of legislation.

(3) A vote change must be entered into the journal as a notation that the member's vote was changed. The original printed vote will not be reprinted to reflect the change.

(4) An error caused by a malfunction of the voting system may be corrected without a vote.

**H50-220. Absentee votes — restrictions.** (1) An excused representative may file an absentee vote authorization form to vote during the excused absence on any vote for which absentee voting is allowed.

(2) An excused representative shall sign an absentee vote authorization form that specifies the motion and the desired vote.

(3) The absentee vote authorization form must be handed in at the rostrum by the party whip or designated representative before voting on the motion has commenced.

(4) The absentee vote authorization may be revoked before the vote by the member who signed the authorization.

(5) Absentee voting is not allowed on third reading or on motions specified as present and voting pursuant to H50-70.

**H50-230. Recess.** The House may stand at ease or recess under any order of business by order of the Speaker or a majority vote. The recess may be ended at the call of the chair or at a time specified.

**H50-240. Adjournment for a legislative day.** (1) A representative may move that the House adjourn for that legislative day. The motion is nondebatable and may be made under any order of business except Order of Business No. 7.

(2) A motion to adjourn for a legislative day must specify a date and time for the House to convene on the subsequent legislative day.

**H50-250. Adjournment sine die.** Subject to Article V, section 10(5), of the Montana Constitution, a representative may move that the House adjourn for the session. The motion is nondebatable and may be made under any order of business except Order of Business No. 7.

## CHAPTER 6
## Motions

**H60-10. Proposal for consideration.** (1) Every question presented to the House or a committee must be submitted as a definite proposition.

(2) A representative has the right to understand any question before the House and, under the authority of the presiding officer, may ask questions to exercise this right.

**H60-20. Nondebatable motions.** The following motions, in addition to any other motion specifically designated, must be decided without debate:

(1) to adjourn;

(2) for a call of the House;

(3) to recess or rise;

(4) for parliamentary inquiry;

(5) to table or to take from the table;

(6) to call for the previous question or for cloture;

(7) to amend a nondebatable motion;

(8) to divide a question;

(9) to suspend the rules; and

(10) all incidental motions, such as motions relating to voting or of a general procedural nature.

**H60-30. Motions allowed during debate.** (1) When a question is under debate, only the following motions are in order. The motions have precedence in the following order:

(a) to adjourn;

(b) for a call of the House;

(c) to recess or rise;

(d) for a question of privilege;

(e) to table or take from the table;

(f) to call for the previous question or cloture;

(g) to postpone consideration to a day certain;

(h) to refer or rerefer; and

(i) to propose amendments.

(2) This section does not allow a motion that would not otherwise be allowed under a particular order of business.

(3) Only one substitute motion is in order at any time.

**H60-40. Motions to adjourn or recess.** (1) A motion to adjourn or recess is always in order, except:

(a) when the House is voting on another motion;

(b) when the previous question has been ordered and before the final vote;

(c) when a member entitled to the floor has not yielded for that purpose; or

(d) when business has not been transacted after the defeat of a motion to adjourn or recess.

(2) A motion to adjourn sine die pursuant to H50-250 is subject to Article V, section 10(5), of the Montana Constitution.

(3) The vote by which a motion to adjourn or recess is carried or fails is not subject to a motion to reconsider.

**H60-50. Motion to table.** (1) A motion to table, if carried, has the effect of postponing action on the proposition to which it was applied until superseded by a motion to take from the table.

(2) After a vote on a motion to table is carried or fails, the motion cannot be reconsidered.

(3) A motion to table is not in order after the previous question has been ordered.

**H60-60. Motion to postpone.** A motion to postpone to a day certain may be amended and is debatable within narrow limits. The merits of the proposition that is the subject of the motion to postpone may not be debated.

**H60-70. Motion to refer.** When a motion is made to refer a subject to a standing committee or select committee, the question on the referral to a standing committee must be put first.

**H60-80. Terms of debate on motion to refer or rerefer.** (1) A motion to refer or rerefer is debatable within narrow limits. The merits of the proposition that is the subject of the motion may not be debated.

(2) A motion to refer or rerefer with instructions is fully debatable.

**H60-100. Moving the previous question after a motion to table.** (1) If a motion to table is made directly to a main motion, a motion for the previous question is not in order.

(2) If an amendment to a main motion is pending and a motion to table is made, the previous question may be called on the main motion, the pending amendment, and the motion to table the amendment.

**H60-110. Standard motions.** The following are standard motions:

(1) moving House bills or resolutions on second reading, "Mister/Madam Chairman, I move that when this committee does rise and report after having under consideration House Bill ___, that it recommend the same (do pass)/(do pass as amended)/(do not pass)."

(2) moving Senate bills and Senate amendments to House bills, "Mister/Madam Chairman, I move that when this committee does rise and report after having under consideration Senate Bill ___/Senate amendments to House Bill ___, that it recommend the same (be concurred in)/(be not concurred in)."

(3) Committee of the Whole floor amendments, "Mister/Madam Chairman, I move that House Bill ___/Senate Bill ___ be amended and request that the amendment be posted and deemed read."

(4) introducing visitors, "Mister/Madam Speaker/Chairman, I request that we be off the record and out of the journal."

(5) changing a vote, "Mister Speaker, I would like my vote changed on House Bill ___/Senate Bill ___ from (yes/no) to (yes/no). The question on the bill was ( ) with a vote tally of ____ for and ____ against."

(6) question another representative, "Mister/Madam Speaker/Chairman, would Representative ___ yield to a question?"

## CHAPTER 7

## Rules

**H70-10. House rules — amendment — report timing.** (1) The House may adopt, through a House resolution passed by a majority of its members, rules to govern its proceedings.

(2) After adoption of the House rules, two-thirds of the representatives voting must vote in favor of the question to amend the rules.

(3) The Speaker shall refer to the House Rules Committee all resolutions for House rules.

(4) The House Rules Committee shall report all resolutions for House rules within 1 legislative day of referral.

**H70-20. Tenure of rules.** Rules adopted by the House remain in effect until removed by House resolution or until a new House is elected and takes office.

**H70-30. Suspension of rules.** The House may suspend a House rule on a motion approved by not less than two-thirds of the members voting.

**H70-40. Supplementary rules.** Mason's Manual of Legislative Procedure (2010) governs House proceedings in all cases not covered by House rules.

**H70-50. Interpreting rules — appeal.** The Speaker shall interpret all questions on House rules, subject to appeal by any 15 representatives to the House Rules Committee. Unless the delay would cause legislation to fail to meet a scheduled deadline, the House Rules Committee may consider and report on the appeal on the next legislative day. The decision of the House Rules Committee may be appealed to the House by any representative.

**H70-60. Joint rules superseded.** A House rule, insofar as it relates to the internal proceedings of the House, supersedes a joint rule.

## Appendix

(1) Except as provided in subsections (2) through (4), legislation dealing with an enumerated subject must be referred to a standing committee as follows:

**Agriculture:** Agriculture; country of origin labeling for products; crops; crop insurance; farm subsidies; fuel produced from grain; grazing (other than state land leases); irrigation; livestock; poultry; and weed control.

**Appropriations:** Appropriations for the Legislature, general government, and bonding, including supplemental appropriations and the coal severance tax.

**Business and Labor:** Alcohol regulation other than taxation; associations; corporations; credit transactions; employment; financial institutions; gambling; insurance; labor unions; partnerships; private sector pensions and pension plans; professions and occupations other than the practice of law; salaries and wages; sales; secured transactions; securities regulation other than criminal provisions; sports other than hunting, fishing, and competition water sports; trade regulation; unemployment insurance; the Uniform Commercial Code; and workers' compensation.

**Education:** Higher education; home schools; K-12 education; religion in schools; school buildings and other structures; school libraries and university system libraries; school safety; school sports; school staff other than teachers; school transportation; students; teachers; and vocational education and training.

**Ethics:** Ethical standards applicable to members, officers, and employees of the House and ethical standards for lobbyists.

**Federal Relations, Energy, and Telecommunications:** Energy generation and transmission; Indian reservations; international relations; interstate cooperation and compacts, except those relating to law enforcement and water compacts; relations with the federal government; relations with sovereign Indian tribes; telecommunications; and utilities other than municipal utilities.

**Fish, Wildlife, and Parks:** Fish; fishing; hunting; outdoor recreation; parks other than those owned by local governments; relations with federal and state governments concerning fish and wildlife; Virginia City and Nevada City; water sports; and wildlife.

**Human Services:** Developmentally disabled persons; disabled persons; health; health and disability insurance; housing; human services; mental illness or incapacity; retirement other than pensions and pension plans; senior citizens; tobacco regulation other than taxation; and welfare.

**Judiciary:** Abortion; arbitration and mediation; civil procedure; constitutional amendments; consumer protection; contracts; corrections; courts; criminal law; criminal procedure; discrimination; evidence; family law; fees imposed by or relating to the court system; guaranty; human rights; impeachment; indemnity; judicial system; landlord and tenant; law enforcement; liability and immunity from liability; minors; practice of law; privacy; property law; religion other than in schools; state law library; surety; torts; and trusts and estates.

**Legislative Administration:** Interim committees and matters related to legislative administration, staffing patterns, budgets, equipment, operations, and expenditures.

**Local Government:** Cities; consolidated governments; counties; libraries and parks owned or operated by local governments; local development; local

government finance and revenue; local government officers and employees, local planning; special districts and other political subdivisions, except school districts; towns; and zoning.

**Natural Resources:** Board of Land Commissioners; dams, except for electrical generation; emission standards; environmental protection; extractive activities; fires and fire protection, except for a local government fire department; forests and forestry; hazardous waste; mines and mining; natural gas; natural resources; oil; pollution; solid waste; state land, except state parks; water and water rights; water bodies and water courses; and water compacts.

**Rules:** House rules; joint rules; legislative procedure; jurisdictions of committees; and rules of decorum.

**State Administration:** Administrative rules; arts and antiquities; ballots; elections; initiative and referendum procedures; military affairs; public contracts and procurement; public employee retirement systems; state buildings; state employees; state employee benefits; state equipment and property, except state lands and state parks; state government generally; state-owned libraries other than the state law library; veterans; and voting.

**Taxation:** Taxes other than fuel taxes.

**Transportation:** Fuel taxes; highways; railroads; roads; traffic regulation; transportation generally; vehicles; and vehicle safety.

(2) If a select committee is created to address a specific subject, then bills relating to that subject must be assigned to the select committee.

(3) (a) If legislation deals with more than one subject and the subjects are assigned to more than one committee, the bill must be assigned to a class one committee before a class two committee and to a class two committee before a class three committee. If there is a conflict of subjects between the same class of committees, then the bill must be assigned by the Speaker.

(b) If a bill contains substantive provisions dealing with policy and an appropriation, the bill must be referred to the committee with jurisdiction over the subject addressed in the policy provisions. If the bill is reported from the committee to which it was assigned, the Speaker may rerefer the bill to the Appropriations Committee. The referral must be announced to the House. The rereferral does not require action or approval by the House, but may be overturned by a majority vote.

(4) If a committee chair upon consultation with the vice chair determines that the committee cannot effectively process all bills assigned to the committee because of time limitations, the chair shall, in writing, request the Speaker to reassign specific bills. The Speaker shall reassign the bills to an appropriate committee. The reassignments must be announced to the House. The reassignments do not require action or approval by the House, but may be overturned by a three-fifths vote.

Adopted January 9, 2013

## HOUSE RESOLUTION NO. 2

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA PROVIDING RECOMMENDATIONS ON THE LEGISLATIVE REDISTRICTING PLAN TO THE MONTANA DISTRICTING AND APPORTIONMENT COMMISSION.

WHEREAS, the Montana Districting and Apportionment Commission submitted its legislative redistricting plan to the Legislature on January 8, 2013, as required by Article V, section 14, of the Montana Constitution; and

WHEREAS, the Commission adopted criteria to guide the drawing of district lines that preserve the principle of "one person, one vote"; and

WHEREAS, the House of Representatives commends the Commission for establishing a maximum 3% population deviation, which surpasses the standard of a 5% population deviation; and

WHEREAS, the Commission formed districts that successfully comply with all requirements of the federal Voting Rights Act and that protect the voting rights of minority populations; and

WHEREAS, the House of Representatives contends that criteria directing the creation of compact and contiguous districts that preserve communities of interest and, when possible, follow the lines of political and geographic boundaries have not been satisfactorily adhered to; and

WHEREAS, the House of Representatives contends that the proposed plan does not pass a general appearance test regarding compactness in numerous instances, particularly House Districts 23 and 24 in Cascade County, House Districts 47, 48, 49, and 50 in Yellowstone County, House District 66 in Gallatin County, House District 81 in Lewis and Clark County, and House District 96 in Missoula County; and

WHEREAS, the House of Representatives contends that the proposed plan fractures communities of interest in House Districts 21, 23, 77, 78, 82, and 84; and

WHEREAS, the House of Representatives contends that pairings of House Districts made to form Senate Districts fracture communities of interest, particularly the assignments of House Districts 73, 74, 75, 76, 77, and 79 in Deer Lodge, Jefferson, and Silver Bow Counties; and

WHEREAS, the House of Representatives contends that holdover Senator Webb is assigned to a Senate District predominantly composed of citizens who have never had the opportunity to vote for him, when it is possible to assign him to a district that includes significant populations from his original Senate District; and

WHEREAS, the Legislature is required to return the plan to the Commission with its recommendations on or before February 7, 2013.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the House of Representatives urges the passage of amendments necessary for the Legislative Redistricting Plan to conform to the Commission's established criteria. To this end, the House of Representatives recommends that the Commission consider the following amendments:

(1) redraw House Districts 21 and 23 in Cascade County, House Districts 47, 48, 49, and 50 in Yellowstone County, House District 66 in Gallatin County, House Districts 82 and 84 in Lewis and Clark County, and House District 96 in Missoula County to better meet the standard of a general appearance test regarding compactness. A compact district would be more square-like, as opposed to a long rectangle.

(2) preserve both compactness and communities of interest by reassigning the following House Districts into Senate District pairings: House Districts 73 and 76, House Districts 74 and 77, and House Districts 75 and 78. The House

District lines for Districts 74 and 77 should be moved together in order to meet the contiguous standard in the Commission's criteria.

(3) redraw House Districts 77 and 78 to keep the town of Anaconda whole; and

(4) reassign Senator Webb from Senate District 23 to Senate District 22.

BE IT FURTHER RESOLVED, that a copy of this resolution be kept on file by the Secretary of State and that copies be sent by the Secretary of State to the presiding officer and each member of the Montana Districting and Apportionment Commission.

Adopted February 4, 2013

## HOUSE RESOLUTION NO. 5

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA INVITING FIREARMS MANUFACTURERS AND FIREARMS ACCESSORY MANUFACTURERS THREATENED BY HOSTILE LAWS IN OTHER STATES TO MOVE TO MONTANA.

WHEREAS, some states have enacted laws or are considering enacting laws that would prohibit the possession of certain firearms or of certain firearms accessories; and

WHEREAS, these laws may make it impossible for existing manufacturers to remain in or legally do business in those states; and

WHEREAS, many firearms and firearms accessory manufacturers are examining options for relocating their manufacturing to a more firearms-friendly location; and

WHEREAS, Montana is a firearms-friendly state with a good legal infrastructure for firearms possession, use, and manufacture; and

WHEREAS, Montana has a well-educated workforce of people with a strong work ethic and with a culture of firearms knowledge and tolerance; and

WHEREAS, Montana offers space, beauty, and a great place to live and work.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Montana says to threatened firearms manufacturers and firearms accessory manufacturers: "Come to Montana. We want you here!".

BE IT FURTHER RESOLVED, that Montana says: "Montana is open for business for manufacturers of firearms and firearms accessories".

BE IT FURTHER RESOLVED, that the Secretary of State is encouraged to coordinate with firearms-related groups and businesses existing in Montana to develop contacts with manufacturers of firearms and firearms accessories in other states and deliver this resolution to them.

BE IT FURTHER RESOLVED, that Governor Steve Bullock is urged to actively seek out any manufacturers of firearms and firearms accessories to encourage them to move to Montana and to aid these manufacturers in relocation in whatever way may be possible.

Adopted April 8, 2013

# Senate Joint Resolutions

## SENATE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ADOPTING THE JOINT LEGISLATIVE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following Joint Rules be adopted:

**JOINT RULES OF THE MONTANA SENATE AND HOUSE OF REPRESENTATIVES**

**CHAPTER 10**

**Administration**

**10-10. Time of meeting.** Each house may order its time of meeting.

**10-20. Legislative day — duration.** (1) If either house is in session on a given day, that day constitutes a legislative day.

(2) A legislative day for a house ends either 24 hours after that house convenes for the day or at the time the house convenes for the following legislative day, whichever is earlier.

**10-30. Schedules.** The presiding officer of each house shall coordinate its schedule to accommodate the workload of the other house.

**10-40. Adjournment — recess — meeting place.** A house may not, without the consent of the other, adjourn or recess for more than 3 days or to any place other than that in which the two houses are sitting (Montana Constitution, Art. V, Sec. 10(5)). The procedure for obtaining consent is contained in Joint Rule 20-10.

**10-50. Access of media — registration — decorum — sanctions.** (1) Subject to the presiding officer's discretion on issues of decorum and order, a registered media representative may not be prohibited from photographing, televising, or recording a legislative meeting or hearing.

(2) The presiding officer shall authorize the issuance of cards to media representatives to allow floor access, and media representatives holding the cards are subject to placement on the floor by the presiding officer. The presiding officer may delegate enforcement of this rule to the office of the Secretary of the Senate, Chief Clerk of the House, the respective Sergeant-at-Arms, or the Legislative Information Officer. The privilege may be revoked or suspended for a violation of decorum and order as agreed to by the media representative upon application for registration.

(3) Registered media representatives may be subject to seating in designated areas. Overflow access will be in the gallery.

**10-60. Conflict of interest.** A member who has a personal or private interest in any measure or bill proposed or pending before the Legislature shall disclose the fact to the house to which the member belongs. (section 2-2-112, MCA)

**10-70. Telephone calls and internet access.** (1) Long-distance telephone calls made by a member while the Legislature is in session or while the member is in travel status are considered official legislative business. These include but are not limited to calls made to constituencies, places of business, and family members. A member's access to the internet through a permissible server is a proper use of the state communication system if the use is for legislative business or is within the scope of permissible use of long-distance telephone calls.

(2) Session staff, including aides and interns, may use telephones for long-distance calls only if specifically authorized to do so by their legislative sponsor or supervisor. Sponsoring members and supervisors are accountable for use of state telephones and internet access by their staff, including aides and interns, and may not authorize others to use state phones or state servers to access the internet.

(3) Permanent staff of the Legislature shall comply with executive branch rules applying to the use of state telephones.

**10-80. Joint employees.** The presiding officers of each house, acting together, shall:

(1) hire joint employees; and

(2) review a dispute or complaint involving the competency or decorum of a joint employee, and dismiss, suspend, or retain the employee.

**10-85. Harassment prohibited — reporting.** (1) Legislators and legislative employees have the right to work free of harassment on account of race, color, sex, culture, social origin or condition, or religious ideas when performing services in furtherance of legislative responsibilities, whether the offender is an employer, employee, legislator, lobbyist, or member of the public.

(2) A violation of this policy must be reported to the party leader in the appropriate house if the offended party is a legislator or to the presiding officer if the offended party is the party leader. The presiding officer may refer the matter to the rules committee of the applicable house, and the offender is subject to discipline or censure, as appropriate.

(3) If the offended party is an employee of the house of representatives or the senate, the violation must be reported to the employee's supervisor or, if the offender is the supervisor for the house of representatives or the senate, the report should be made to the chief clerk of the house of representatives or to the secretary of the senate, as appropriate. If the offended party is a permanent legislative employee, the report should be made to the employee's supervisor or, if the offender is the supervisor, to the appropriate division director. If the offender is a division director, the report should be made to the presiding officer of the appropriate statutory committee.

(4) If the offended party is a supervisor for the house of representatives or the senate, the violation must be reported to the chief clerk of the house of representatives or to the secretary of the senate, as appropriate. If the offended party is a supervisor of permanent legislative employees, the violation must be reported to the appropriate division director. If the offender is a division director, the report should be made to the presiding officer of the appropriate statutory committee.

(5) The chief clerk or the secretary shall report the violation to the presiding officer. The presiding officer may refer the matter to the rules committee. If the offender is an employee or supervisor, the employee or supervisor is subject to discipline or discharge.

**10-90. Legislative interns.** Qualifications for legislative interns are specified in Title 5, chapter 6, MCA.

**10-100. Legislative Services Division.** (1) The staff of the Legislative Services Division shall serve both houses as required.

(2) Staff members shall:

(a) maintain personnel files for legislative employees; and

(b) prepare payrolls for certification and signature by the presiding officer and prepare a monthly financial report.

(3) The Legislative Services Division shall train journal clerks for both houses.

**10-120. Engrossing and enrolling staff — duties.** (1) The Legislative Services Division shall provide all engrossing and enrolling staff.

(2) The duties of the engrossing and enrolling staff are:

(a) to engross or enroll any bill or resolution delivered to them within 48 hours after it has been received, unless further time is granted in writing by the presiding officer of the house in which the bill originated; and

(b) to correct clerical errors, absent the objection of the sponsor of a bill, resolution, or amendment and the Secretary of the Senate or the Chief Clerk of the House of Representatives in any bill or amendment originating in the house by which the Clerk or Secretary is employed. The following kinds of clerical errors may be corrected:

(i) errors in spelling;

(ii) errors in numbering sections;

(iii) additions or deletions of underlining or lines through matter to be stricken;

(iv) material copied incorrectly from the Montana Code Annotated;

(v) errors in outlining or in internal references;

(vi) an error in a title caused by an amendment;

(vii) an error in a catchline caused by an amendment;

(viii) errors in references to the Montana Code Annotated; and

(ix) other nonconformities of an amendment with Bill Drafting Manual form.

(3) The engrossing and enrolling staff shall give notice in writing of the clerical correction to the Secretary of the Senate or the Chief Clerk of the House, who shall give notice to the sponsor of the bill or amendment. The form must be filed in the office of the amendments coordinator. A party receiving notice may register an objection to the correction by filing the objection in writing with the Secretary of the Senate or the Chief Clerk of the House by the end of the next legislative day following receipt of the notice. The Senate or House shall vote on whether or not to uphold the objection. If the objection is upheld, the Secretary of the Senate or the Chief Clerk of the House shall notify the Executive Director of the Legislative Services Division, and the engrossing staff shall change the bill to remove the correction or corrections to which the objection was made.

(4) For the purposes of this rule, "engrossing" means placing amendments in a bill.

**10-130. Bills — sponsorship — style — format — withdrawal prohibited.** (1) A bill must be sponsored by a member of the Legislature.

(2) A bill must be:

(a) printed on paper with numbered lines;

(b) numbered at the foot of each page (except page 1);

(c) backed with a page of substantial material that includes spaces for notations for tracking the progress of the bill; and

(d) introduced. Introduction constitutes the first reading of the bill.

(3) In a section amending an existing statute, matter to be stricken out must be indicated with a line through the words or part to be deleted, and new matter must be underlined.

(4) Sections of the Montana Code Annotated repealed or amended in a bill must be stated in the title.

(5) Introduced bills must be reproduced on white paper and distributed to members.

(6) An introduced bill may not be withdrawn.

**10-140. Voting on bills — constitutional amendments.** (1) A bill may not become a law except by vote of the constitutionally required majority of all the members present and voting in each house (Montana Constitution, Art. V, Sec. 11(1)). On final passage, the vote must be taken by ayes and noes and the names of those voting entered on the journal (Montana Constitution, Art. V, Sec. 11(2)).

(2) Any vote in one house on a bill proposing an amendment to The Constitution of the State of Montana under circumstances in which there exists the mathematical possibility of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote.

(3) This rule does not prevent a committee from tabling a bill proposing an amendment to The Constitution of the State of Montana.

**10-150. Recording and publication of voting.** (1) Every vote of each member on each substantive question in the Legislature, in any committee, or in Committee of the Whole must be recorded and made available to the public. On final passage of any bill or joint resolution, the vote must be taken by ayes and noes and the names entered on the journal.

(2) (a) Roll call votes must be taken by ayes and noes and the names entered on the journal on adopting an adverse committee report and on those motions made in Committee of the Whole to:

(i) amend;

(ii) recommend passage or nonpassage;

(iii) recommend concurrence or nonconcurrence; or

(iv) indefinitely postpone.

(b) The text of all proposed amendments in Committee of the Whole must be recorded.

(3) A roll call vote must be taken on nonsubstantive questions on the request of two members who may, on any vote, request that the ayes and noes be spread upon the journal.

(4) Roll call votes and other votes that are to be made public but are not specifically required to be spread upon the journal must be entered in the minutes of the appropriate committee or of the appropriate house (Montana Constitution, Art. V, Sec. 11(2)). A copy of the minutes must be filed with the Montana Historical Society. If electronically recorded minutes are kept for a committee, a written log conforming to section 2-3-212(2), MCA, must also be kept.

**10-160. Journal.** Each house shall:

(1) supply the Legislative Services Division with the contents of the daily journal to be stored on an automated system;

(2) examine its journal and order correction of any errors; and

(3) make a daily journal available to all members.

**10-170. Journals — authentication — availability.** (1) The journal of the Senate must be authenticated by the signature of the President and the journal of the House of Representatives must be authenticated by the signature of the Speaker.

(2) The Legislative Services Division shall make the completed journals available to the public (sections 5-11-201 through 5-11-203, MCA).

## CHAPTER 20

## Relations With Other House

**20-10. Consent for adjournment or recess.** As required by Article V, section 10(5), of the Montana Constitution, the consent of the other house is required for adjournment or recess for more than 3 calendar days. Consent for adjournment is obtained by having the house wishing to adjourn send a message to the other house and having the receiving house vote favorably on the request. The receiving house shall inform the requesting house of its consent or lack of consent. Consent is not required on or after the 87th legislative day.

## CHAPTER 30

## Committees

**30-10. Joint committee chair — exception.** Except as provided in Joint Rule 30-50 concerning the joint meetings of the Senate Finance and Claims Committee and the House Appropriations Committee, the chair of the Senate committee is the chair of all joint committees.

**30-20. Voting in joint committees — exception.** (1) Except for Rules Committees and conference committees, a member of a joint committee votes individually and not by the house to which the committee member belongs.

(2) Because the Rules Committees and conference committees are joint meetings of separate committees, in those committees the committees from each house vote separately. A majority of each committee shall agree before any action may be taken, unless otherwise specified by individual house rules.

**30-30. Conference committees — subject matter restrictions.** (1) If either house requests a conference committee and appoints a committee for the purpose of discussing an amendment on which the two houses cannot agree, the other house shall appoint a committee for the same purpose. The time and place of all conference committee meetings must be agreed upon by their chairs and announced from the rostrum. This announcement is in order at any time. Failure to make this announcement does not affect the validity of the legislation being considered. A conference committee meeting must be conducted as an open meeting, and minutes of the meeting must be kept.

(2) A conference committee, having conferred, shall report to the respective houses the result of its conference. A conference committee shall confine itself to consideration of the disputed amendment. The committee may recommend:

(a) acceptance or rejection of each disputed amendment in its entirety; or

(b) further amendment of the disputed amendment.

(3) If either house requests a free conference committee and the other house concurs, appointments must be made in the same manner as provided in

subsection (1). A free conference committee may discuss and propose amendments to a bill in its entirety and is not confined to a particular amendment. However, a free conference committee is limited to consideration of amendments that are within the scope of the title of the introduced bill.

**30-40. Conference committee — enrolling.** A conference committee report must give clerical instructions for a corrected reference bill and for enrolling by referring to the reference bill version.

**30-50. Committee consideration of general appropriation bills.** (1) All general appropriation bills must first be considered by a joint subcommittee composed of designated members of the Senate Finance and Claims Committee and the House Appropriations Committee, and then by each committee separately.

(2) Joint meetings of the House Appropriations Committee and the Senate Finance and Claims Committee must be held upon call of the chair of the House Appropriations Committee, who is chair of the joint committee.

(3) The committee chair of the Senate Finance and Claims Committee or of the House Appropriations Committee may be a voting member in the joint subcommittees if:

(a) either house has fewer members on the joint subcommittees;

(b) the chair represents the house with fewer members on the subcommittees; and

(c) the chair is present for the vote at the time that a question is called. A vote may not be held open to facilitate voting by a chair.

**30-60. Estimation of revenue.** (1) The Revenue and Transportation Interim Committee shall introduce a House joint resolution for the purpose of estimating revenue that may be available for appropriation by the Legislature. (5-5-227, MCA)

(2) For the 2013 legislative session only, in the event that the Revenue and Transportation Interim Committee has not caused a revenue estimating resolution to be introduced in accordance with 5-5-227, MCA, a Senate joint resolution must be introduced by the chair of the Senate Taxation Committee for the purpose of estimating revenue that may be available for appropriation by the Legislature.

(3) The Senate shall transmit the Senate joint resolution on the revenue estimate to the House no later than the 15th legislative day. The Senate joint resolution does not constitute the Legislature's revenue estimate until adopted and passed by the House with any House amendments concurred in by the Senate.

**30-70. Appointment of interim committees.** As provided for in section 5-5-211(6), MCA, 50% of interim committees must be selected from the following legislative standing committees:

(1) Economic Affairs Interim Committee:

(a) Senate Agriculture, Livestock, and Irrigation Committee;

(b) Senate Business, Labor, and Economic Affairs Committee;

(c) Senate Finance and Claims Committee;

(d) House Agriculture Committee;

(e) House Business and Labor Committee;

(f) House Federal Relations, Energy, and Telecommunications Committee; and

(g) House Appropriations Committee;
(2) Education and Local Government Interim Committee:
(a) Senate Education and Cultural Resources Committee;
(b) Senate Local Government Committee;
(c) Senate Finance and Claims Committee;
(d) House Education Committee;
(e) House Local Government Committee; and
(f) House Appropriations Committee;
(3) Children, Families, Health, and Human Services Interim Committee:
(a) Senate Public Health, Welfare, and Safety Committee;
(b) Senate Finance and Claims Committee;
(c) House Human Services Committee; and
(d) House Appropriations Committee;
(4) Law and Justice Interim Committee:
(a) Senate Judiciary Committee;
(b) Senate Finance and Claims Committee;
(c) House Judiciary Committee; and
(d) House Appropriations Committee;
(5) Revenue and Transportation Interim Committee:
(a) Senate Taxation Committee;
(b) Senate Highways and Transportation Committee;
(c) Senate Finance and Claims Committee;
(d) House Taxation Committee;
(e) House Transportation Committee; and
(f) House Appropriations Committee;
(6) State Administration and Veterans' Affairs Interim Committee:
(a) Senate State Administration Committee;
(b) Senate Finance and Claims Committee;
(c) House State Administration Committee; and
(d) House Appropriations Committee;
(7) Energy and Telecommunications Interim Committee:
(a) Senate Energy Committee;
(b) House Federal Relations, Energy, and Telecommunications Committee;
(c) House Appropriations Committee; and
(d) Senate Finance and Claims Committee.

## CHAPTER 40
## Legislation

**40-10. Amendment to state constitution.** A bill must be used to propose an amendment to The Constitution of the State of Montana. The bill is not subject to the veto of the Governor (Montana Constitution, Art. VI, Sec. 10(1)).

**40-20. Appropriation bills — introduction in House — feed bill.** (1) All appropriation bills must originate in the House of Representatives.

(2) Appropriation bills for the operation of the Legislature must be introduced by the chair of the House Appropriations Committee.

**40-30. Effective dates.** (1) Except as provided in subsections (2) through (4), a statute takes effect on October 1 following its passage and approval unless a different time is prescribed in the enacting legislation.

(2) A law appropriating public funds for a public purpose takes effect on July 1 following its passage and approval unless a different time is prescribed in the enacting legislation.

(3) A statute providing for the taxation or imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed in the enacting legislation.

(4) A joint resolution takes effect on its passage unless a different time is prescribed in the joint resolution (sections 1-2-201 and 1-2-202, MCA).

**40-40. Bill requests and introduction — limits and procedures — drafting priority — agency and committee bills.** (1) Prior to a regular session, a person entitled to serve in that session, referred to as a "member", or a legislative committee is entitled to request bill drafting services from the Legislative Services Division. Deadlines for requesting certain types of bills during a legislative session are contained in Joint Rule 40-50.

(a) Prior to 5 p.m. on December 5 preceding a regular session of the Legislature, a member may request an unlimited number of bills and resolutions to be prepared by the Legislative Services Division for introduction in the regular session.

(b) After 5 p.m. on December 5, a member may request no more than seven bills or resolutions to be prepared by the Legislative Services Division. At least five of the seven bills or resolutions must be requested before the regular session convenes.

(c) After December 5, a member, in the member's discretion, may grant to any other member any of the remaining bill or resolution requests the granting member has not used. A bill requested by an individual may not be transferred to another legislator but may be introduced by another legislator. The requestor must pick up the bill and sign a receipt indicating delivery of the bill and may either introduce the bill or give the bill to another legislator for introduction.

(d) These limitations on bill and resolution requests do not apply to:

(i) Code Commissioner bills;

(ii) a bill or resolution requested by a standing committee; and

(iii) a bill or resolution requested by a member at the request of a newly elected state official if so designated.

(2) (a) Except as provided in subsection (2)(b) or this subsection, the staff of the Legislative Services Division shall work on bill draft requests in the order received. After a member has requested the drafting of five bills, the sixth bill request and all subsequent bill requests of that member must receive a lower drafting priority than all other bills of members not in excess of five per member. The Speaker of the House, the minority leader of the House, the President of the Senate, and the minority leader of the Senate may each direct the staff of the Legislative Services Division to assign a higher priority to 20 draft requests. The staff of the Legislative Services Division shall assign a higher priority to any bill draft request when jointly directed by the President of the Senate, the minority leader of the Senate, the Speaker of the House, and the minority leader of the House.

(b) Except for bill draft requests described in subsection (1)(d)(iii), if a draft bill has not been received by the Legislative Services Division by November 15

for a bill by request of an agency or entity, the draft loses its priority under this rule.

(3) Bills and resolutions must be reviewed by the staff of the Legislative Services Division prior to introduction for proper format, style, and legal form. The staff of the Legislative Services Division shall store bills on the automated bill drafting equipment and shall print and deliver them to the requesting members. The original bill back must be signed to indicate review by the Legislative Services Division. A bill may not be introduced unless it is so signed.

(4) (a) During a session, a bill may be introduced by endorsing it with the name of a member and presenting it to the Chief Clerk of the House of Representatives or the Secretary of the Senate. Bills or joint resolutions may be sponsored jointly by Senate and House members. A jointly sponsored bill must be introduced in the house in which the member whose name appears first on the bill is a member. The chief joint sponsor's name must appear immediately to the right of the first sponsor's name, and the chief sponsor may not be changed. Except as provided in subsection (4)(b), in each session of the Legislature, bills, joint resolutions, and simple resolutions must be numbered consecutively in separate series in the order of their receipt.

(b) The first 15 House bills may be reserved for preintroduced bills.

(5) (a) Any bill requested by an interim or statutory legislative committee or on behalf of an administrative or executive agency or department through an interim or statutory committee must be so indicated by placing after the names of the sponsors the phrase "By Request of the..... (Name of committee or agency)". The phrase may not be added to an introduced bill by amendment. The phrase may not be placed on a bill unless requested by a statutory or interim committee prior to the convening of the session. Unless requested by an individual member, a bill draft request submitted at the request of an agency must be submitted to, reviewed by, and requested by the appropriate interim or statutory committee. Except as provided in subsection (5)(b), an agency or committee bill request must be preintroduced or the request is canceled. Preintroduction of an agency, committee, or individual legislator's bill must occur no later than 5 p.m. on December 15th prior to the convening of a regular legislative session. Preintroduction is accomplished when the Legislative Services Division receives a signed preintroduction form.

(b) The preintroduction requirement does not apply to an office held by an elected official during the official's first year in that office or to bills requested by a joint select or joint special committee appointed prior to the convening of the legislative session to address a specific issue. Bills requested under this subsection (5)(b) may include the phrase "By Request of.....(Name of official or committee)".

(6) Bills may be preintroduced, numbered, and reproduced prior to a legislative session by the staff of the Legislative Services Division. Actual signatures of persons entitled to serve as members in the ensuing session may be obtained on a consent form from the Legislative Services Division and the sponsor's name printed on the bill. Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill. These names will be forwarded to the Legislative Services Division to be included on the face of the bill following standing committee approval.

**40-50. Schedules for drafting requests and bill introduction.** (1) The following schedule must be followed for submission of drafting requests.

Request Deadline

| | 5:00 P.M. Legislative Day |
|---|---|
| • General Bills and Resolutions | 12 |
| • Revenue Bills | 17 |
| • Committee Bills and Resolutions | 36 |
| • Committee Revenue Bills and Bills Proposing Referenda | 62 |
| • Committee Bills implementing provisions of a general appropriation act | 67 |
| • Interim study resolutions | 60 |
| • Appropriation Bills | 45 |
| • Resolutions to express confirmation of appointments | No Deadline |
| • Bills repealing or directing the amendment or adoption of administrative rules and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules | No Deadline |

(2) Bills and resolutions must be introduced within 2 legislative days after delivery. Failure to comply with the introduction deadline results in the bill draft being canceled.

**40-60. Joint resolutions.** (1) A joint resolution must be adopted by both houses and is not approved by the Governor. It may be used to:

(a) express desire, opinion, sympathy, or request of the Legislature;

(b) recognize relations with other governments, sister states, political subdivisions, or similar governmental entities;

(c) request, but not require, a legislative entity to conduct an interim study;

(d) adopt, amend, or repeal the joint rules;

(e) approve construction of a state building under section 18-2-102 or 20-25-302, MCA;

(f) deal with disasters and emergencies under Title 10, specifically as provided in sections 10-3-302(3), 10-3-303(3), 10-3-303(4), and 10-3-505(5), MCA;

(g) submit a negotiated settlement under section 39-31-305(3), MCA;

(h) declare or terminate an energy emergency under section 90-4-310, MCA;

(i) ratify or propose amendments to the United States Constitution;

(j) advise or request the repeal, amendment, or adoption of a rule in the Administrative Rules of Montana; or

(k) approve the organization of a new community college district under section 20-15-209, MCA.

(2) A joint resolution may not be used for purposes of congratulating or recognizing an individual or group achievement. Recognition of individual or group achievements is handled on special orders of the day.

(3) Except as otherwise provided in these rules or The Constitution of the State of Montana, a joint resolution is treated in all respects as a bill.

(4) A copy of every joint resolution must be transmitted after adoption to the Secretary of State by the Secretary of the Senate or the Chief Clerk of the House.

**40-65. Appropriation required for bills requesting interim studies.** A bill including a request for an interim study may not be transmitted to the Governor unless the bill contains an appropriation sufficient to conduct the study. A fiscal note may be requested for a bill requesting an interim study if the appropriation does not appear to be sufficient.

**40-70. Bills with same purpose — vetoes.** (1) A bill may not be introduced or received in a house after that house, during that session, has finally rejected a bill designed to accomplish the same purpose, except with the approval of the Rules Committee of the house in which the bill is offered for introduction or reception.

(2) Failure to override a veto does not constitute final rejection.

**40-80. Reproduction of full statute required.** A statute may not be amended or its provisions extended by reference to its title only, but the statute section that is amended or extended must be reproduced or published at length.

**40-90. Bills — original purpose.** A law may not be passed except by bill. A bill may not be so altered or amended on its passage through either house as to change its original purpose (Montana Constitution, Art. V, Sec. 11(1)).

**40-100. Fiscal notes.** (1) As provided in Title 5, chapter 4, part 2, MCA, all bills reported out of a committee of the Legislature, including interim committees, having a potential effect on the revenues, expenditures, or fiscal liability of the state, local governments, or public schools, except appropriation measures carrying specific dollar amounts, must include a fiscal note incorporating an estimate of the fiscal effect. The Legislative Services Division staff shall indicate at the top of each bill prepared for introduction that a fiscal note may be necessary under this rule. Fiscal notes must be requested by the presiding officer of either house, who, at the time of introduction or after adoption of substantive amendments to an introduced bill, shall determine the need for the note, based on the Legislative Services Division staff recommendation.

(2) The Legislative Services Division shall make available an electronic copy of any bill for which it has been determined a fiscal note may be necessary to the Budget Director immediately after the bill has been prepared for introduction and delivered to the requesting member. The Budget Director may proceed with the preparation of a fiscal note in anticipation of a subsequent formal request. A bill with financial implications for a local government or school district must comply with subsection (4).

(3) The Budget Director, in cooperation with the governmental entity or entities affected by the bill, is responsible for the preparation of the fiscal note. Except as provided in subsection (4), the Budget Director shall return the fiscal note within 6 days unless further time is granted by the presiding officer or committee making the request, based upon a written statement from the Budget Director that additional time is necessary to properly prepare the note.

(4) (a) A bill that may require a local government or school district to perform an activity or provide a service or facility that requires the direct expenditure of additional funds without a specific means to finance the activity, service, or facility in violation of section 1-2-112 or 1-2-113, MCA, must be accompanied, at the time that the bill is presented for introduction, by an estimate of all direct and indirect fiscal impacts on the local government or school district. The

estimate of the fiscal impacts must be prepared by the Budget Director in cooperation with a local government or school district affected by the bill.

(b) The Budget Director has 10 days to prepare the estimate. Upon completion of the estimate, the Budget Director shall submit it to the presiding officer and the chief sponsor of the bill.

(5) A completed fiscal note must be submitted by the Budget Director to the presiding officer who requested it. The presiding officer shall notify the bill's chief sponsor of the completed fiscal note and request the chief sponsor's signature. The chief sponsor has 1 legislative day after delivery to review the fiscal note and to discuss the findings with the Budget Director, if necessary. After the legislative day has elapsed, all fiscal notes must be reproduced and placed on the members' desks, either with or without the chief sponsor's signature.

(6) A fiscal note must, if possible, show in dollar amounts:

(a) the estimated increase or decrease in revenues or expenditures;

(b) costs that may be absorbed without additional funds; and

(c) long-range financial implications.

(7) The fiscal note may not include any comment or opinion relative to merits of the bill. However, technical or mechanical defects in the bill may be noted.

(8) A fiscal note also may be requested, with the approval of the presiding officer, on a bill and on an amended bill by:

(a) a committee considering the bill;

(b) a majority of the members of the house in which the bill is to be considered, at the time of second reading; or

(c) the chief sponsor.

(9) The Budget Director shall prepare and deliver an amended fiscal note on an amended bill within 3 days of the request by the presiding officer; otherwise the bill may proceed without the updated fiscal note.

(10) The Budget Director shall make available on request to any member of the Legislature all background information used in developing a fiscal note.

(11) If a bill requires a fiscal note, the bill may not be reported from a committee for second reading unless the bill is accompanied by the fiscal note.

**40-110. Sponsor's fiscal note rebuttal.** (1) If a sponsor elects to prepare a sponsor's fiscal note rebuttal pursuant to section 5-4-204, MCA, the sponsor shall make the election as provided and return the completed sponsor's fiscal note rebuttal form to the presiding officer within 4 days of the election. The form must identify the bill number, the sponsor of the bill, the date prepared, the version of the fiscal note being rebutted, the reasons the sponsor disagrees with the fiscal note, the items or assumptions in the fiscal note that the sponsor believes are incorrect, and the sponsor's estimate of the fiscal impact, if an estimate is available.

(2) The presiding officer may grant additional time to the sponsor for preparation of the sponsor's fiscal note rebuttal.

(3) Upon receipt of the completed sponsor's fiscal note rebuttal form, the presiding officer shall refer it to the committee hearing the bill. If the bill is printed, the form must be identified as a sponsor's fiscal note rebuttal, reproduced, and placed on the members' desks.

(4) The Legislative Services Division shall provide forms for preparation of sponsors' fiscal note rebuttals and shall print the completed sponsors' fiscal note

rebuttal forms on a different color paper than the fiscal notes prepared by the Budget Director.

**40-120. Substitute bills.** (1) A committee may recommend that every clause in a bill be changed and that entirely new material be substituted so long as the new material is relevant to the title and subject of the original bill. The substitute bill is considered an amendment and not a new bill.

(2) The proper form of reporting a substitute bill by a committee is to propose amendments to strike out all of the material following the enacting clause, to substitute the new material, and to recommend any necessary changes in the title of the bill.

(3) If a committee report is adopted that recommends a substitute for a bill originating in the other house, the substitute bill must be printed and reproduced.

**40-130. Reading of bills.** Prior to passage, a bill, other than a bill requested by a joint select or joint special committee as provided in 40-40(5)(b), must be read three times in the house in which it is under consideration. It may be read either by title or by summary of title. Introduction constitutes the first reading of the bill.

**40-140. Second reading — bill reproduction.** (1) If the majority of a house adopts a recommendation for the passage of a bill originating in that house after the bill has been returned from a committee with amendments, the bill must be reproduced on yellow paper with all amendments incorporated into the copies.

(2) If a bill has been returned from a committee without amendments, only the first sheet must be reproduced on yellow paper, and the remainder of the text may be incorporated by reference to the preceding version of the entire bill.

(3) A bill requested by and heard by a joint select or joint special committee, as provided in 40-40(5)(b), may be referred directly to second reading. If the bill is passed by the house of origin, the bill must be transmitted to the other house, and if the bill was not amended, it may be placed on second reading without the need for referral to a committee.

**40-150. Engrossing.** (1) When a bill has been reported favorably by Committee of the Whole of the house in which it originated and the report has been adopted, the bill must be engrossed if the bill is amended. Committee of the Whole amendments must be included in the engrossed bill. If the bill is not amended, the bill must be sent to printing. The bill must be placed on the calendar for third reading on the legislative day after receipt.

(2) Copies of the engrossed bill to be distributed to members are reproduced on blue paper. If a bill is unamended by the Committee of the Whole and contains no clerical errors, it is not required to be reprinted. Only the first sheet must be reproduced on blue paper, with the remainder of the text incorporated by reference to the preceding version of the entire bill.

(3) If a bill is amended by a standing committee in the second house, the amendments must be included in a tan-colored bill and distributed in the second house for second reading consideration. If the bill is amended in Committee of the Whole, the amendments must be included in a salmon-colored reference bill and distributed in the second house for third reading. If the bill passes on third reading, copies of the reference bill must be distributed in the original house. The original house may request from the second house a specified number of copies of the amendments to be printed.

**40-160. Enrolling.** (1) When a bill has passed both houses, it must be enrolled. An original and two duplicate printed copies of the bill must be enrolled, free from all errors, with a margin of two inches at the top and one inch on each side. In sections amending existing statutes, new matter must be underlined and deleted matter must be shown as stricken.

(2) When the enrolling is completed, the bill must be examined by the sponsor.

(3) The correctly enrolled bill must be delivered to the presiding officer of the house in which the bill originated. The presiding officer shall sign the original and two copies of each bill not later than the next legislative day after it has been reported correctly enrolled, unless the bill is delivered on the last legislative day, in which case the presiding officer shall sign it that day. The fact of signing must be announced by the presiding officer and entered upon the journal no later than the next legislative day. At any time after the report of a bill correctly enrolled and before the signing, if a member signifies a desire to examine the bill, the member must be permitted to do so. The bill then must be transmitted to the other house where the same procedure must be followed.

(4) A bill that has passed both houses of the Legislature by the 90th day may be:

(a) enrolled;

(b) clerically corrected by the presiding officers, if necessary;

(c) signed by the presiding officers; and

(d) delivered to the Governor or, in the case of a bill proposing a referendum, to the Secretary of State, not later than 5 working days after the 90th legislative day.

(5) All journal entries authorized under this rule must be entered on the journal for the 90th day.

(6) The original and two copies signed by the presiding officer of each house must be presented to the Governor or the Secretary of State, as applicable, in return for a receipt. A report then must be made to the house of the day of the presentation, which must be entered on the journal.

(7) The original must be filed with the Secretary of State. Signed copies with chapter numbers assigned pursuant to section 5-11-204, MCA, must be filed with the Clerk of the Supreme Court and the Legislative Services Division.

**40-170. Amendment by second house.** (1) Amendments to a bill by the second house may not be further amended by the house in which the bill originated, but must be either accepted or rejected. A bill amended by the second house when the effect of the combined amendments is to return the bill to the form that the bill passed the house in which the bill originated is not considered to have been amended and need not be returned to the house of origin for acceptance or rejection of the amendments. If the amendments are rejected, a conference committee may be requested by the house in which the bill originated. If the amendments are accepted and the bill is of a type requiring more than a majority vote for passage, the bill again must be placed on third reading in the house of origin.

(2) The vote on third reading after concurrence in amendments is the vote of the house of origin that must be used to determine if the required number of votes has been cast.

**40-180. Final action on a bill.** (1) When a bill being heard by the second house has received its third reading or has been rejected, the second house shall

transmit it as soon as possible to the original house with notice of the second house's action.

(2) A bill that reduces revenue and that contains a contingent voidness provision may not be transmitted to the Governor unless there is an identified corresponding reduction in an appropriation contained in the general appropriations act.

**40-190. Transmittal of bills between houses — referral — hearing.** (1) Each house shall transmit to the other with any bill all relevant papers.

(2) When a House bill is transmitted to the Senate, the Secretary of the Senate shall give a dated receipt for the bill to the Chief Clerk of the House. When a Senate bill is transmitted to the House of Representatives, the Chief Clerk of the House shall give a dated receipt to the Secretary of the Senate.

(3) Transmitted bills must be referred to committee and scheduled for hearing.

**40-200. Transmittal deadlines — two-thirds vote requirement.** (1) (a) A bill or amendment transmitted after the deadline established in this subsection (1) may be considered by the receiving house only upon approval of two-thirds of its members present and voting. If the receiving house does not so vote, the bill or amendment must be held pending in the house to which it was transmitted.

(b) (i) A bill, except for an appropriation bill, a revenue bill, a bill proposing a referendum, an interim study resolution, or amendments considered by joint committee, must be transmitted from one house to the other on or before the 45th legislative day.

(ii) Amendments, except to appropriation bills, committee bills implementing the general appropriations bill, the revenue estimating resolution, interim study resolutions, bills proposing referenda, and revenue bills, must be transmitted from one house to the other on or before the 73rd legislative day.

(c) (i) Revenue bills and bills proposing referenda must be transmitted to the other house on or before the 71st legislative day.

(ii) Amendments to revenue bills and bills proposing referenda, received from the other house, must be transmitted to the house of origin on or before the 82nd legislative day.

(iii) A revenue bill is one that either increases or decreases revenue by enacting, eliminating, increasing, or decreasing taxes, fees, or fines or by suspending or otherwise changing the allocation of revenues.

(d) (i) Appropriation bills and any bill implementing provisions of a general appropriation bill must be transmitted to the Senate on or before the 67th legislative day. A fund transfer within the state treasury is not an appropriation for purposes of this section.

(ii) Senate amendments to appropriation bills must be transmitted by the Senate to the House on or before the 80th legislative day.

(2) (a) A joint resolution introduced pursuant to 5-5-227, MCA, for the purpose of estimating revenue available for appropriation by the Legislature must be transmitted to the Senate no later than the 60th legislative day.

(b) Amendments to the revenue estimating resolution must be transmitted to the body in which the resolution was introduced no later than the 82nd legislative day.

(3) Bills repealing or directing the amendment or adoption of administrative rules and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules may be transmitted at any time during a session.

(4) Interim study resolutions must be transmitted from one house to the other on or before the 85th legislative day.

**40-210. Governor's veto.** (1) Except as provided in 40-65 and 40-180, each bill passed by the Legislature must be submitted to the Governor for the Governor's signature. This does not apply to:

(a) bills proposing amendments to The Constitution of the State of Montana;

(b) bills ratifying proposed amendments to the United States Constitution;

(c) resolutions; and

(d) referendum measures of the Legislature.

(2) If the Governor does not sign or veto the bill within 10 days after its delivery, the bill becomes law.

(3) The Governor shall return a vetoed bill to the Legislature with a statement of reasons for the veto.

(4) If after receipt of a veto message, two-thirds of the members of each house present approve the bill, it becomes law.

(5) If the Legislature is not in session when the Governor vetoes a bill, the Governor shall return the bill with reasons for the veto to the Legislature as provided by law. The Legislature may be polled on a bill that it approved by two-thirds of the members present or it may be reconvened to reconsider any bill so vetoed (Montana Constitution, Art. VI, Sec. 10).

(6) The Governor may veto items in appropriation bills, and in these instances the procedure must be the same as upon veto of an entire bill (Montana Constitution, Art. VI, Sec. 10).

**40-220. Response to Governor's veto.** (1) When the presiding officer receives a veto message, the presiding officer shall read it to the members over the rostrum. After the reading, a member may move that the Governor's veto be overridden.

(2) A vote on the motion is determined by roll call. If two-thirds of the members present vote "aye", the veto is overridden. If two-thirds of the members present do not vote "aye", the veto is sustained.

**40-230. Governor's recommendations for amendment — procedure.** (1) The Governor may return any bill to the Legislature with recommendations for amendment. The Governor's recommendations for amendment must be considered first by the house in which the bill originated.

(2) If the Legislature passes the bill in accordance with the Governor's recommendations, it shall return the bill to the Governor for reconsideration. The Governor may not return a bill to the Legislature a second time for amendment.

(3) If the Governor returns a bill to the originating house with recommendations for amendment, the house shall reconsider the bill under its rules relating to amendments offered in Committee of the Whole.

(4) The bill then is subject to the following procedures:

(a) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in Committee of the Whole, the bill and the originating house's approval or disapproval of the Governor's recommendations.

(b) If both houses approve the Governor's recommendations, the bill must be returned to the Governor for reconsideration.

(c) If both houses disapprove the Governor's recommendations, the bill must be returned to the Governor for reconsideration.

(d) If one house disapproves the Governor's recommendations and the other house approves, then either house may request a conference committee, which may be a free conference committee.

(i) If both houses adopt a conference committee report, the bill in accordance with the report must be returned to the Governor for reconsideration.

(ii) If a conference committee fails to reach agreement or if its report is not adopted by both houses, the Governor's recommendations must be considered not approved and the bill must be returned to the Governor for further consideration.

## CHAPTER 60

## Rules

**60-10. Suspension of joint rule — change in rules.** (1) A joint rule may be repealed or amended only with the concurrence of both houses, under the procedures adopted by each house for the repeal or amendment of its own rules.

(2) A joint rule governing the procedure for handling bills may be temporarily suspended by the consent of two-thirds of the members of either house, insofar as it applies to the house suspending it.

(3) Any Rules Committee report recommending a change in the joint rules must be referred to the other house. Any new rule or any change in the rules of either house must be transmitted to the other house for informational purposes.

(4) Upon adoption of any change, the Secretary of the Senate and the Chief Clerk of the House of Representatives shall provide the office of the Legislative Services Division:

(a) one copy of all motions or resolutions amending Senate, House, or joint rules; and

(b) copies of all minutes and reports of the Rules Committees.

**60-20. Reference to Mason's Manual.** Mason's Manual of Legislative Procedure (2010) governs the proceedings of the Senate and the House of Representatives in all cases not covered by these rules.

**60-30. Publication and distribution of joint rules.** (1) The Legislative Services Division shall codify and publish in one volume:

(a) the rules of the Senate;

(b) the rules of the House of Representatives; and

(c) the joint rules of the Senate and the House of Representatives.

(2) After the rules have been published, the Legislative Services Division shall distribute copies as directed by the Senate and the House of Representatives.

**60-40. Tenure of joint rules.** The joint rules remain in effect until removed by a joint resolution or until a new Legislature is elected and takes office.

Adopted January 18, 2013

# SENATE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ESTABLISHING AN OFFICIAL ESTIMATE OF THE STATE'S GENERAL FUND REVENUE FOR FISCAL YEAR 2013 AND EACH FISCAL YEAR OF THE 2014-2015 BIENNIUM FOR THE PURPOSE OF ACHIEVING A BALANCED BUDGET AS REQUIRED BY ARTICLE VIII, SECTION 9, OF THE MONTANA CONSTITUTION; ACCEPTING AN UNASSIGNED GENERAL FUND BALANCE THAT WAS ESTABLISHED BASED ON GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; ESTABLISHING OFFICIAL ESTIMATES OF CERTAIN NONGENERAL FUND REVENUE; AND REQUESTING THAT THE GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING USE THE REVENUE ESTIMATES CONTAINED IN THIS RESOLUTION AS OFFICIAL REVENUE ESTIMATES FOR FISCAL YEARS 2013, 2014, AND 2015.

WHEREAS, Article VI, section 9, of the Montana Constitution requires the Governor to submit to the Legislature a budget for the ensuing fiscal period, containing in detail for all operating funds the proposed expenditures and estimated revenue of the state; and

WHEREAS, Article VIII, section 9, of the Montana Constitution prohibits the Legislature from appropriating funds in excess of the anticipated revenue of the state; and

WHEREAS, the Revenue and Transportation Interim Committee, which is required by section 5-5-227(2), MCA, to estimate the amount of revenue projected to be available for legislative appropriation and to introduce a resolution setting forth the Committee's current revenue estimate, did not introduce an estimate of the amount of revenue; and

WHEREAS, the proposed Joint Rules of the 63rd Legislature require the chair of the Senate Taxation Committee to prepare a revenue estimate for the purpose of estimating revenue that may be available for appropriation by the Legislature; and

WHEREAS, the Legislative Fiscal Analyst and the Executive Branch agencies assisted in the development of the revenue estimates; and

WHEREAS, the proposed Joint Rules of the 63rd Legislature provide that the Senate shall transmit the revenue estimate to the House no later than the 15th legislative day and that the Senate Joint Resolution does not constitute the Legislature's revenue estimate until passed by the House and any House amendments are concurred in by the Senate; and

WHEREAS, the amount of estimated revenue and the general fund balance affects policy decisions of the Executive Branch and the Legislative Branch; and

WHEREAS, the revenue estimates and the underlying assumptions contained in this resolution provide the basis for a comprehensive analysis of the state's revenue condition.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the state general fund revenue for fiscal years 2013, 2014, and 2015 be estimated to be $1,994,950,000, $2,056,252,000, and $2,137,410,000, respectively.

BE IT FURTHER RESOLVED, that the Legislature accepts for budget purposes the preliminary unassigned fiscal year 2012 fund balance of

$452,400,000 for the general fund, prepared according to generally accepted accounting principles.

BE IT FURTHER RESOLVED, that the Legislature recommends that the Governor's Office of Budget and Program Planning use the revenue estimates and the underlying assumptions contained in this resolution as the official revenue estimates for fiscal years 2013, 2014, and 2015.

GENERAL FUND REVENUE

The projections for total general fund revenue for fiscal years 2013, 2014, and 2015 are based on the assumption of the continuation of Montana law as it existed on January 1, 2013, and on the assumption of the expiration of the federal Economic Growth and Tax Relief Act of 2001 (Pub. L. 107-16, 115 Stat. 38) and the Jobs and Growth Tax Relief Reconciliation Act of 2003 (Pub. L. 108-27, 117 Stat. 752). The revenue estimates contained in the following tables are based on the assumptions listed in the tables that follow the general fund estimates and the assumptions for each general fund revenue source contained in the "Legislative Budget Analysis, 2015 Biennium, Volume 2 — Revenue Estimates" prepared by the Legislative Fiscal Division.

Current Law
General Fund Revenue Estimates
(In Millions of Dollars)

| Source of Revenue | Actual Fiscal 2012 | Estimated Fiscal 2013 | Estimated Fiscal 2014 | Estimated Fiscal 2015 |
|---|---|---|---|---|
| Individual Income Tax | 898.851 | 983.953 | 1,039.160 | 1,104.898 |
| Property Tax | 236.662 | 241.741 | 246.621 | 254.664 |
| Corporation License Tax | 127.771 | 150.658 | 154.096 | 155.022 |
| Vehicle Tax | 83.871 | 84.608 | 85.070 | 85.651 |
| Insurance Tax & License Fees | 58.951 | 59.932 | 52.021 | 54.052 |
| Coal Trust Interest | 25.840 | 24.451 | 24.424 | 24.411 |
| US Mineral Royalty | 31.057 | 36.989 | 30.953 | 29.009 |
| All Other Revenue | 47.258 | 32.595 | 32.488 | 32.773 |
| Tobacco Settlement | 3.322 | 3.552 | 3.519 | 3.486 |
| Telecommunications Excise Tax | 21.459 | 22.606 | 23.236 | 23.823 |
| Video Gambling Tax | 53.824 | 57.706 | 59.929 | 62.117 |
| Treasury Cash Account Interest | 2.654 | 2.779 | 2.346 | 2.778 |
| Estate Tax | 0.060 | 0.000 | 0.000 | 0.000 |
| Oil & Natural Gas Production Tax | 97.560 | 98.750 | 99.336 | 97.427 |
| Motor Vehicle Fee | 16.084 | 16.225 | 16.314 | 16.425 |
| Public Institution Reimbursements | 14.562 | 16.332 | 17.663 | 18.301 |
| Lodging Facility Use Tax | 15.606 | 17.314 | 18.365 | 19.477 |
| Coal Severance Tax | 12.350 | 12.864 | 14.857 | 15.906 |
| Liquor Excise & License Tax | 17.037 | 18.206 | 19.284 | 20.431 |
| Cigarette Tax | 31.483 | 30.991 | 30.433 | 29.499 |
| Investment License Fee | 6.961 | 7.210 | 7.457 | 7.714 |
| Lottery Profits | 13.061 | 14.477 | 14.342 | 15.076 |
| Liquor Profits | 9.500 | 10.604 | 10.985 | 11.602 |
| Nursing Facilities Fee | 5.077 | 4.876 | 4.740 | 4.603 |
| Electrical Energy Tax | 4.481 | 4.442 | 4.521 | 4.565 |
| Metalliferous Mines Tax | 10.010 | 10.904 | 10.595 | 10.039 |

| | | | | |
|---|---|---|---|---|
| Highway Patrol Fines | 4.385 | 4.427 | 4.467 | 4.508 |
| Public Contractors Tax | (3.042) | 1.140 | 3.259 | 3.259 |
| Wholesale Energy Tax | 3.427 | 4.038 | 4.140 | 4.217 |
| Tobacco Tax | 5.709 | 5.821 | 6.005 | 6.197 |
| Driver's License Fee | 4.369 | 3.867 | 4.389 | 3.923 |
| Rental Car Sales Tax | 3.420 | 3.539 | 3.632 | 3.744 |
| Railroad Car Tax | 2.273 | 2.157 | 2.320 | 2.437 |
| Wine Tax | 2.104 | 2.144 | 2.218 | 2.291 |
| Beer Tax | 2.956 | 3.052 | 3.067 | 3.085 |
| Total General Fund | 1,870.954 | 1,994.950 | 2,056.252 | 2,137.410 |

## SIGNIFICANT ASSUMPTIONS FOR GENERAL FUND REVENUE ESTIMATES

| Year | Assumption | 2012 | 2013 | 2014 | 2015 |
|---|---|---|---|---|---|
| **Individual Income Tax** | | | | | |
| FY | Income Tax Audit Collections (Millions) | $28.307 | $36.193 | $37.255 | $38.046 |
| CY | Taxpayer Population (Percent Change) | 0.67% | 1.34% | 1.34% | 1.58% |
| | Income Indicators | | | | |
| CY | Wage and Salary Income (Percent Change) | 4.35% | 3.17% | 4.50% | 5.07% |
| CY | Net Farm Income (Percent Change) | -14.75% | 60.25% | 23.45% | 5.74% |
| CY | Interest Income (Percent Change) | -1.12% | 1.03% | 2.96% | 6.16% |
| CY | Dividend Income (Percent Change) | 1.66% | 13.08% | -1.88% | 9.48% |
| CY | Rent, Royalty, and Partnership Income (Percent Change) | 3.12% | 4.64% | 8.96% | 5.10% |
| CY | Net Business Income (Percent Change) | 4.74% | 7.10% | -1.64% | 2.17% |
| CY | Capital Gains and Losses (Percent Change) | 28.89% | 3.39% | 3.40% | 10.88% |
| CY | Supplemental Gains (Percent Change) | 16.28% | 2.94% | 8.32% | 7.99% |
| CY | Social Security Income (Percent Change) | 3.02% | 3.90% | 8.51% | 6.97% |
| CY | IRA Income (Percent Change) | 9.95% | 10.76% | 12.05% | 11.75% |
| CY | Pension Income (Percent Change) | 5.09% | 5.58% | 7.00% | 7.49% |
| CY | Other Income (Percent Change) | 0.00% | 0.00% | 0.00% | 0.00% |
| CY | Bond Interest (Percent Change) | 16.04% | -1.08% | -7.29% | -5.60% |
| CY | Federal Income Tax Refunds (Percent Change) | 0.00% | 0.00% | 0.00% | 0.00% |
| CY | Other Additions to Income (Percent Change) | 11.75% | 12.78% | 13.51% | 14.20% |
| CY | IRA Reduction (Percent Change) | 0.95% | 0.98% | 0.99% | 0.99% |
| CY | Reductions to Income (Percent Change) | -1.37% | 11.35% | 11.87% | 12.31% |
| CY | Other Reductions to Income (Percent Change) | 12.67% | 12.96% | 13.34% | 13.71% |

| | | | | | |
|---|---|---|---|---|---|
| | Deductions From Income | | | | |
| CY | Medical Premiums (Percent Change) | 5.36% | 5.36% | 5.36% | 5.36% |
| CY | Medical Deductions (Percent Change) | 4.10% | 4.10% | 4.10% | 4.10% |
| CY | Real Estate Tax (Percent Change) | 5.22% | 5.22% | 5.22% | 5.22% |
| CY | Other Taxes (Percent Change) | 1.15% | 1.15% | 1.15% | 1.15% |
| CY | Home Mortgage (Percent Change) | 3.62% | 3.62% | 3.62% | 3.62% |
| CY | Contributions (Percent Change) | 6.72% | 6.82% | 6.92% | 7.01% |
| CY | Gambling Losses (Percent Change) | 10.32% | 10.32% | 10.32% | 10.32% |
| FY | Bonus Depreciation (Millions) | | $0.529 | $0.418 | $0.274 |
| CY | Homeowner and Renter Credit (Millions) | $10.786 | $10.786 | $10.786 | $10.786 |
| CY | All Other Credits (Percent Change) | 30.62% | 5.80% | 6.21% | 7.32% |
| | Other Individual Income Tax Assumptions | | | | |
| CY | All Filers Liability (Millions) | $842.262 | $887.531 | $940.049 | $1,005.320 |
| CY | Current Calendar Year to Fiscal Year Conversion | 50.0% | 50.0% | 50.0% | 50.0% |
| CY | Previous Calendar Year to Fiscal Year Conversion | 50.0% | 50.0% | 50.0% | 50.0% |
| FY | Fiscal Year 2012 Adjusted Base (Millions) | $889.940 | | | |

**Property Taxes: Taxable Value for Statewide General Fund Mill Levies and Other Property Tax Indicators**

| | | | | | |
|---|---|---|---|---|---|
| | Taxable Value—40-Mill and 55-Mill Levies | | | | |
| FY | Property Class One (Millions) | $3.888 | $4.189 | $4.275 | $4.337 |
| FY | Property Class Two (Millions) | $22.987 | $31.132 | $33.820 | $35.056 |
| FY | Property Class Three (Millions) | $150.429 | $147.792 | $145.202 | $142.657 |
| FY | Property Class Four (Millions) | $1,418.797 | $1,446.304 | $1,478.146 | $1,511.683 |
| FY | Property Class Five (Millions) | $40.642 | $45.673 | $48.816 | $52.176 |
| FY | Property Class Six (Millions) | $0.000 | $0.000 | $0.000 | $0.000 |
| FY | Property Class Seven (Millions) | $1.194 | $1.170 | $1.147 | $1.124 |
| FY | Property Class Eight (Millions) | $186.854 | $179.237 | $180.358 | $179.206 |
| FY | Property Class Nine (Millions) | $304.226 | $322.490 | $345.727 | $370.637 |
| FY | Property Class Ten (Millions) | $6.390 | $6.349 | $6.308 | $6.268 |
| FY | Property Class Twelve (Millions) | $71.336 | $72.349 | $76.657 | $81.222 |
| FY | Property Class Thirteen (Millions) | $193.267 | $197.605 | $208.267 | $219.505 |
| FY | Total Taxable Value 55-Mill and 40-Mill (Millions) | $2,370.852 | $2,422.804 | $2,512.787 | $2,589.610 |
| | Other Property Tax Indicators | | | | |
| FY | Tax Increment Finance Value (Millions) | $46.300 | $47.037 | $47.037 | $45.359 |
| FY | Property Tax Abatement Value (Millions) | $25.369 | $20.225 | $20.877 | $21.539 |
| FY | Taxable Value in 6-Mill Vo-Tech Counties (Millions) | $2,442.522 | $2,490.066 | $2,580.701 | $2,656.509 |

| | | | | | |
|---|---|---|---|---|---|
| FY | Taxable Value in 1.5-Mill Vo-Tech Counties (Millions) | $797.739 | $806.969 | $836.367 | $862.955 |
| | Property Tax Nonlevy Revenue | | | | |
| FY | 40-Mill Nonlevy Revenue (Millions) | $0.000 | $0.000 | $0.000 | $0.000 |
| FY | 40-Mill Adjustments (Millions) | $0.000 | $0.000 | $0.000 | $0.000 |
| FY | 55-Mill Nonlevy Revenue (Millions) | $13.027 | $12.647 | $8.933 | $9.627 |
| FY | 55-Mill Adjustments (Millions) | $0.000 | $0.000 | $0.000 | $0.000 |
| FY | 1.5-Mill Nonlevy Revenue (Millions) | $0.000 | $0.000 | $0.000 | $0.000 |
| FY | 1.5-Mill Adjustments (Millions) | $0.000 | $0.000 | $0.000 | $0.000 |
| **Vehicle Tax** | | | | | |
| FY | Large Trucks Growth Rate (Percent Change) | 0.68% | 0.88% | 0.55% | 0.68% |
| FY | Motor Home Growth Rate (Percent Change) | -12.26% | 0.88% | 0.55% | 0.68% |
| FY | Light Vehicle Growth Rate (Percent Change) | -1.99% | 0.88% | 0.55% | 0.68% |
| FY | Boat and Snowmobile Growth Rate (Percent Change) | 6.86% | 0.88% | 0.55% | 0.68% |
| **Corporation License Tax** | | | | | |
| | Tax Liability by Industrial Sector (Millions) | | | | |
| CY | Agriculture | $2.757 | $2.758 | $2.798 | $2.841 |
| CY | Mining | $14.531 | $13.742 | $13.152 | $12.339 |
| CY | Utilities | $0.805 | $1.646 | $1.751 | $2.255 |
| CY | Construction | $1.040 | $1.342 | $1.379 | $1.560 |
| CY | Manufacturing | $35.540 | $34.141 | $32.215 | $34.280 |
| CY | Trade | $14.159 | $14.515 | $14.892 | $15.348 |
| CY | Transportation | $9.126 | $9.600 | $10.162 | $10.851 |
| CY | Information | $1.880 | $2.305 | $2.358 | $2.613 |
| CY | Professional | $7.344 | $7.599 | $7.848 | $8.095 |
| CY | Large Banks | $20.902 | $21.819 | $22.823 | $24.014 |
| CY | Social | $2.113 | $2.194 | $2.283 | $2.370 |
| CY | Unknown | $0.150 | $0.150 | $0.150 | $0.150 |
| | Other Corporation License Tax Factors | | | | |
| FY | Refunds (Millions) | -$38.757 | -$24.632 | -$24.632 | -$25.713 |
| FY | Audits, Penalties, Interest (Millions) | $27.366 | $22.306 | $22.602 | $22.602 |
| FY | Insure Montana Credit (Millions) | $0.000 | $1.000 | $1.000 | $1.000 |
| FY | Calculated Fiscal Factor | 1.269 | 1.350 | 1.350 | 1.350 |
| FY | Bonus Depreciation (Millions) | $0.000 | $2.137 | $4.103 | $3.282 |
| **Insurance Premiums Tax and License Fees** | | | | | |
| FY | General Fund Fee Revenue (Millions) | $0.028 | $0.028 | $0.028 | $0.028 |
| FY | Genetics Fee (Millions) | $1.295 | $1.295 | $1.295 | $1.295 |
| FY | Premiums Tax (Millions) | $71.963 | $73.356 | $75.599 | $78.488 |
| FY | Offsets (Millions) | $2.400 | $2.300 | $1.000 | $1.000 |
| FY | Refunds (Millions) | $0.20 | $0.20 | $0.20 | $0.20 |

| | | | | | |
|---|---|---|---|---|---|
| **Video Gambling Tax** | | | | | |
| FY | Video Machine Net Income (Millions) | $358.824 | $384.706 | $399.527 | $414.115 |
| **Motor Vehicle Fee—General Fund Allocations** | | | | | |
| FY | Motor Vehicle Registration Fee (Millions) | $10.242 | $10.332 | $10.389 | $10.460 |
| FY | Recording of Liens Fee (Millions) | $0.559 | $0.564 | $0.567 | $0.571 |
| FY | Title Fee (Millions) | $2.387 | $2.408 | $2.421 | $2.438 |
| FY | Personal License Plate Fee (Millions) | $1.246 | $1.257 | $1.264 | $1.272 |
| FY | New License Plate Fee (Millions) | $0.554 | $0.559 | $0.562 | $0.565 |
| FY | Other Fees (Millions) | $0.900 | $0.908 | $0.913 | $0.919 |
| **U.S. Mineral Royalty** | | | | | |
| CY | Oil Production (Millions of Barrels) | 3.113 | 2.740 | 2.566 | 2.391 |
| CY | Coal Production (Millions of Tons) | 26.756 | 22.147 | 21.259 | 22.720 |
| CY | Natural Gas Production (MMCF) | 16.604 | 14.364 | 11.911 | 9.458 |
| CY | Oil Price (Per Barrel) | 85.652 | 80.027 | 78.296 | 73.507 |
| CY | Coal Price (Per Ton) | 16.412 | 16.072 | 16.385 | 16.815 |
| CY | Natural Gas Price (Per MCF) | 2.410 | 3.267 | 4.182 | 4.443 |
| CY | Oil Royalty Rate (Percent) | 12.44% | 12.44% | 12.44% | 12.44% |
| CY | Coal Royalty Rate (Percent) | 10.96% | 10.96% | 10.96% | 10.96% |
| CY | Natural Gas Royalty Rate (Percent) | 12.76% | 12.76% | 12.76% | 12.76% |
| CY | Other Royalties (Millions) | $0.236 | $0.236 | $0.236 | $0.236 |
| CY | Rent and Bonus (Millions) | $21.264 | $26.984 | $10.208 | $10.208 |
| **Telecommunications Excise Tax** | | | | | |
| FY | Taxable Gross Receipts (Millions) | $568.31 | $600.15 | $616.94 | $632.58 |
| **Tobacco Settlement** | | | | | |
| FY | Volume Change (Percent Change) | -3.09% | -2.37% | -4.02% | -4.02% |
| FY | Cumulative Volume Change (Percent Change) | -47.34% | -48.59% | -50.66% | -52.64% |
| FY | CPI Change (Percent Change) | 3.00% | 3.00% | 3.00% | 3.00% |
| FY | Cumulative CPI Change (Percent Change) | 49.92% | 54.42% | 59.05% | 63.83% |
| FY | Subsequent Manufacturers' Payment (Millions) | $511.641 | $514.960 | $509.915 | $504.952 |
| FY | Nonparticipating Manufacturers' Adjustment (Millions) | -$3.166 | -$3.186 | -$3.155 | -$3.125 |
| **Public Institution Reimbursements** | | | | | |
| FY | Private Payments (Millions) | $1.840 | $2.433 | $2.487 | $2.517 |
| FY | Insurance Payments (Millions) | $0.462 | $0.668 | $0.664 | $0.660 |
| FY | Medicaid Payments (Millions) | $7.645 | $9.296 | $10.151 | $10.361 |
| FY | Medicare Payments (Millions) | $3.996 | $5.904 | $6.219 | $6.527 |
| FY | Debt Service MT Developmental Center (Millions) | $0.984 | $0.988 | $0.988 | $0.988 |
| FY | Debt Service MT State Hospital (Millions) | $1.834 | $1.794 | $1.794 | $1.794 |

| | | | | | |
|---|---|---|---|---|---|
| FY | Medicare Part D (Millions) | $0.619 | $0.812 | $0.922 | $1.018 |
| **Estate Tax** | | | | | |
| FY | Annual Change in Tax (Percent Change) | 38.35% | -100.00% | 0.00% | 0.00% |
| **Oil Production Tax** | | | | | |
| CY | Oil Production (Million Barrels) | 25.014 | 25.652 | 26.344 | 26.806 |
| CY | Montana Oil Price (Weighted Price/Barrel) | $87.931 | $83.707 | $80.546 | $76.194 |
| CY | Effective Tax Rate (Percent) | 9.58% | 10.10% | 10.28% | 10.48% |
| **Natural Gas Production Tax** | | | | | |
| CY | Natural Gas Production (MMCF) | 75.601 | 68.381 | 61.478 | 55.068 |
| CY | Montana Natural Gas Price (Weighted Price/MCF) | $2.390 | $3.492 | $4.252 | $4.121 |
| CY | Effective Tax Rate (Percent) | 9.41% | 9.69% | 9.56% | 9.49% |
| **Treasury Cash Account** | | | | | |
| FY | TCA Average Balance (Millions) | $880.340 | $886.847 | $753.354 | $762.300 |
| FY | TCA Average Yield (Percent) | 0.30% | 0.31% | 0.31% | 0.36% |
| FY | TRANS Issue Size (Millions) | $0.000 | $0.000 | $0.000 | $0.000 |
| **Liquor Excise and License Tax** | | | | | |
| FY | Gross Sales (Millions) | $89.987 | $95.334 | $100.981 | $106.974 |
| FY | Tribal Distributions (Millions) | $0.335 | $0.337 | $0.357 | $0.375 |
| **Coal Severance Tax** | | | | | |
| CY | Severance Tax Coal Production (Million Tons) | 34.493 | 37.056 | 36.946 | 37.671 |
| CY | Montana Contract Sales Price (Weighted CSP/Ton) | $12.074 | $12.618 | $13.072 | $13.588 |
| **Cigarette Tax** | | | | | |
| FY | Cigarette Packs (Millions) | 44.895 | 44.517 | 43.699 | 42.367 |
| FY | Effective Tax Rate Per Pack (Dollars) | $1.70 | $1.70 | $1.70 | $1.70 |
| FY | Tribal Distributions (Millions) | $3.818 | $3.590 | $3.498 | $3.406 |
| **Lottery Profits** | | | | | |
| FY | Total Lottery Sales (Millions) | $52.602 | $54.417 | $55.763 | $57.308 |
| FY | Lottery Interest Earnings (Millions) | $0.011 | $0.013 | $0.014 | $0.020 |
| FY | Other Revenue (Millions) | $0.007 | $0.007 | $0.007 | $0.007 |
| FY | Lottery Operating Budget (Millions) | $7.807 | $7.290 | $7.963 | $7.853 |
| FY | Lottery Prizes and Commissions (Millions) | $31.761 | $32.678 | $33.487 | $34.415 |
| **Nursing Facilities Fee** | | | | | |
| FY | Bed Days (Millions) | 1.722 | 1.674 | 1.627 | 1.580 |
| FY | Intermediate Care Revenue (Millions) | $14.700 | $14.304 | $13.919 | $13.544 |
| **Liquor Profits** | | | | | |
| FY | Gross Liquor Sales (Millions) | $113.383 | $120.121 | $127.236 | $134.787 |

| | | | | | |
|---|---|---|---|---|---|
| FY | Cost of Goods Sold (Millions) | $63.924 | $67.954 | $72.160 | $76.637 |
| FY | Liquor Discounts and Commissions (Millions) | $14.013 | $14.845 | $15.725 | $16.658 |
| FY | Liquor Operating Costs (Millions) | $1.923 | $1.923 | $2.103 | $2.069 |
| FY | Other Income (Millions) | -$0.009 | -$0.009 | -$0.009 | -$0.009 |
| **Investment License Fee** | | | | | |
| FY | License Registration (Percent Change) | 0.56% | 3.58% | 3.43% | 3.44% |
| FY | Portfolio Growth (Percent Change) | 36.99% | 4.49% | 3.98% | 3.87% |
| FY | Expense Growth (Percent Change) | -1.11% | 4.44% | 16.33% | -0.53% |
| **Electrical Energy Tax** | | | | | |
| FY | Kilowatt Hours Produced (Millions) | 21,624.098 | 22,207.522 | 22,604.971 | 22,824.278 |
| **Highway Patrol Fines** | | | | | |
| FY | Montana Population >= 16 Years of Age | 0.804 | 0.811 | 0.818 | 0.826 |
| FY | Per Capita Fines | $5.44 | $5.46 | $5.46 | $5.46 |
| **Metalliferous Mines Tax** | | | | | |
| CY | Copper Production (Million lb) | Not disclosed, confidential information | | | |
| CY | Silver Production (Million oz) | Not disclosed, confidential information | | | |
| CY | Gold Production (Million oz) | Not disclosed, confidential information | | | |
| CY | Lead Production (Million lb) | Not disclosed, confidential information | | | |
| CY | Zinc Production (Million lb) | Not disclosed, confidential information | | | |
| CY | Molybdenum Production (Million lb) | Not disclosed, confidential information | | | |
| CY | Palladium Production (Million oz) | Not disclosed, confidential information | | | |
| CY | Platinum Production (Million oz) | Not disclosed, confidential information | | | |
| CY | Nickel Production (Million lb) | Not disclosed, confidential information | | | |
| CY | Rhodium Production (Million oz) | Not disclosed, confidential information | | | |
| CY | Sapphire Production (Million oz) | Not disclosed, confidential information | | | |
| CY | Copper Sulfide Production (Million lb) | Not disclosed, confidential information | | | |
| CY | Copper Price (Per lb) | Not disclosed, confidential information | | | |
| CY | Silver Price (Per oz) | Not disclosed, confidential information | | | |
| CY | Gold Price (Per oz) | Not disclosed, confidential information | | | |
| CY | Lead Price (Per lb) | Not disclosed, confidential information | | | |
| CY | Zinc Price (Per lb) | Not disclosed, confidential information | | | |
| CY | Molybdenum Price (Per lb) | Not disclosed, confidential information | | | |
| CY | Palladium Price (Per oz) | Not disclosed, confidential information | | | |
| CY | Platinum Price (Per oz) | Not disclosed, confidential information | | | |
| CY | Nickel Price (Per lb) | Not disclosed, confidential information | | | |
| CY | Rhodium Price (Per oz) | Not disclosed, confidential information | | | |
| CY | Sapphire Price (Per oz) | Not disclosed, confidential information | | | |
| CY | Copper Sulfide Price (Per lb) | Not disclosed, confidential information | | | |
| CY | Effective Tax Rate (Percent) | Not disclosed, confidential information | | | |
| **Public Contractors Tax** | | | | | |
| FY | DOT Contracts (Millions) | $369.168 | $379.194 | $363.947 | $363.947 |

| | | | | | |
|---|---|---|---|---|---|
| FY | Other Contracts (Millions) | $137.636 | $360.186 | $360.186 | $360.186 |
| FY | Credits and Refunds (Millions) | $8.110 | $6.254 | $3.983 | $3.983 |
| **Wholesale Energy Transaction Tax** | | | | | |
| FY | Kilowatt Hours (Millions) | 23,182.689 | 27,762.064 | 28,461.344 | 28,992.297 |
| FY | Credits for Taxes Paid (Millions) | $0.000 | $0.000 | $0.000 | $0.000 |
| **Beer Tax** | | | | | |
| FY | Barrels of Beer (Millions) | 0.949 | 0.977 | 0.983 | 0.988 |
| FY | Tribal Distribution (Millions) | $0.063 | $0.058 | $0.060 | $0.060 |
| FY | Effective Tax Rate (Dollars Per Barrel) | $4.15 | $4.15 | $4.15 | $4.15 |
| **Driver's License Fees** | | | | | |
| FY | Driver's License Fees (Millions) | $3.259 | $2.846 | $3.313 | $2.896 |
| FY | Duplicate License Fees (Millions) | $0.295 | $0.258 | $0.300 | $0.262 |
| FY | Motorcycle Endorsement Fees (Millions) | $0.018 | $0.015 | $0.018 | $0.015 |
| FY | Commercial Vehicle Endorsement (Millions) | $0.689 | $0.689 | $0.689 | $0.689 |
| **Tobacco Tax** | | | | | |
| FY | Value of Tobacco Products (Millions) | $6.649 | $6.656 | $6.656 | $6.656 |
| FY | Snuff Ounces (Millions) | 10.398 | 10.806 | 11.258 | 11.736 |
| FY | Tribal Distribution (Millions) | $0.606 | $0.571 | $0.576 | $0.589 |
| **Railroad Car Tax** | | | | | |
| CY | Total MT Market Value of Fleets (Millions) | $123.766 | $117.899 | $126.558 | $131.583 |
| CY | Taxable Value Rate (Percent) | 3.45% | 3.45% | 3.45% | 3.45% |
| CY | 95% of Industrial and Commercial Mill Levy | 0.533 | 0.530 | 0.532 | 0.537 |
| **Wine Tax** | | | | | |
| FY | Wine Liters (Millions) | 11.515 | 11.735 | 12.130 | 12.531 |
| FY | Tribal Distribution (Millions) | $0.042 | $0.042 | $0.042 | $0.043 |

## SELECTED NONGENERAL FUND REVENUE

The estimates for selected nongeneral fund revenue for fiscal year 2013 and the 2014-2015 biennium are based on the assumption of a continuation of Montana law as existed on January 1, 2013. The revenue estimates contained in the following table are based on the assumptions listed in the tables that follow the nongeneral fund estimates and the assumptions for each nongeneral fund revenue source contained in the "Legislative Budget Analysis, 2015 Biennium, Volume 2 — Revenue Estimates" prepared by the Legislative Fiscal Division.

Current Law

Selected Nongeneral Fund Revenue Estimates

(In Millions of Dollars)

| Source of Revenue | Actual Fiscal 2012 | Estimated Fiscal 2013 | Estimated Fiscal 2014 | Estimated Fiscal 2015 |
|---|---|---|---|---|
| Diesel Tax | 71.349 | 73.278 | 75.258 | 77.291 |
| Federal Forest Receipts | 20.487 | 18.101 | 2.284 | 2.138 |

| | | | | |
|---|---|---|---|---|
| Gasoline Tax | 132.911 | 133.397 | 133.885 | 134.375 |
| GVW and Other Fees | 34.745 | 33.969 | 34.707 | 35.486 |
| Resource Indemnity Tax | 2.344 | 2.210 | 2.541 | 2.620 |
| Diesel Storage Tank Tax | 2.943 | 3.022 | 3.104 | 3.188 |
| Arts Trust Interest | 0.568 | 0.580 | 0.593 | 0.608 |
| Capital Land Grant Interest and Income | 0.610 | 0.232 | 0.664 | 1.022 |
| Deaf & Blind Interest and Income | 0.242 | 0.288 | 0.246 | 0.264 |
| Parks Trust Interest | 1.034 | 1.063 | 1.089 | 1.119 |
| Pine Hills Interest and Income | 0.393 | 0.302 | 0.370 | 0.392 |
| RIT Trust Interest | 5.064 | 4.661 | 4.661 | 4.662 |
| Gasoline Storage Tank Tax | 3.750 | 3.764 | 3.778 | 3.791 |
| TSE Trust Interest | 9.866 | 9.873 | 10.383 | 10.998 |
| Economic Development Trust | 2.731 | 2.858 | 3.113 | 3.419 |
| Tobacco Trust Interest | 6.701 | 6.825 | 7.298 | 7.821 |
| Regional Water Trust Interest | 2.937 | 3.032 | 3.287 | 3.591 |
| Property Tax: 6 Mill | 15.325 | 15.815 | 16.535 | 16.989 |
| Common School Interest and Income | 102.391 | 68.129 | 65.698 | 61.956 |
| Total Nongeneral Fund | 416.389 | 381.399 | 369.494 | 371.730 |

SELECTED ASSUMPTIONS FOR
NONGENERAL FUND REVENUE ESTIMATES

| Year | Assumption | 2012 | 2013 | 2014 | 2015 |
|---|---|---|---|---|---|
| **Gasoline Tax** | | | | | |
| FY | Taxable Gallons of Gasoline (Millions) | 504.105 | 505.949 | 507.799 | 509.656 |
| FY | Taxable Gallons of Gasoline — Storage Tank Cleanup (Millions) | 500.016 | 501.845 | 503.680 | 505.522 |
| FY | Refunds (Millions) | -$1.836 | -$1.843 | -$1.850 | -$1.856 |
| FY | Alcohol Incentive (Millions) | $0.000 | $0.000 | $0.000 | $0.000 |
| **Diesel Tax** | | | | | |
| FY | Taxable Gallons of Diesel (Millions) | 272.924 | 280.299 | 287.873 | 295.652 |
| FY | Taxable Gallons of Diesel — Storage Tank Cleanup (Millions) | 392.360 | 402.962 | 413.851 | 425.033 |
| FY | Refunds (Millions) | -$3.629 | -$3.727 | -$3.828 | -$3.932 |
| **GVW Fees** | | | | | |
| FY | GVW Fees (Millions) | $10.489 | $10.651 | $10.814 | $10.984 |
| FY | Form 3 GVW Fees (Millions) | $1.102 | $1.134 | $1.161 | $1.197 |
| FY | Trip Permit Fees (Millions) | $0.865 | $0.700 | $0.750 | $0.805 |
| FY | County GVW Fees (Millions) | $12.086 | $12.272 | $12.461 | $12.657 |
| FY | Overweight Trip Permit Fees (Millions) | $4.353 | $3.477 | $3.659 | $3.850 |
| FY | Special Permit Fees (Millions) | $1.422 | $1.240 | $1.300 | $1.361 |
| FY | Temporary Fuel Permits (Millions) | $0.254 | $0.263 | $0.274 | $0.284 |
| FY | Other Fees (Millions) | $4.174 | $4.231 | $4.289 | $4.349 |

**6-Mill Levy Property Tax Indicators (See General Fund Property Tax Assumptions for Other Detail)**

| | | | | | |
|---|---|---|---|---|---|
| FY | Taxable Value (Millions) | $2,442.522 | $2,490.066 | $2,580.701 | $2,656.509 |
| FY | Nonlevy Revenue (Millions) | $0.890 | $0.875 | $1.051 | $1.050 |
| FY | 6-Mill Adjustments (Millions) | $0.000 | $0.000 | $0.000 | $0.000 |

Adopted February 6, 2013

# SENATE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING A STUDY OF THE OPERATIONS OF THE MONTANA BOARD OF PARDONS AND PAROLE.

WHEREAS, the increase in the prison population in Montana prisons is well known and documented and has recently led the Montana Legislature to appropriate millions of dollars for increased capacity at Montana prisons for medium security inmates; and

WHEREAS, it costs over $90 per day to incarcerate an offender but only $5 per day to supervise an offender on parole, and according to the 2011 biennial report of the Board of Pardons and Parole, 72% of the correctional population is eligible for parole but 60% of those eligible for parole are denied parole on their initial appearance before the Board; and

WHEREAS, the Legislature has the responsibility to ensure that the statutes and policies administered by the Board do not contribute to prison overcrowding and unnecessary additional expense of housing prison inmates who may be safely paroled; and

WHEREAS, the Law and Justice Interim Committee heard testimony during the 2011-2012 interim from persons with loved ones appearing before the Board; and

WHEREAS, the testimony those persons gave to the Committee indicated strong dissatisfaction with the operation of the Board for many reasons, including inmate access to the inmates' own parole files and discrepancies between prison files and Board files; and

WHEREAS, the Board has more discretion than do most other agencies of state government in making administrative decisions and decisions regarding whether to release inmates on parole; and

WHEREAS, it has recently been determined that the Board is exempt from any of the standards contained in section 2-4-305, MCA, governing administrative rules of state agencies, including the prohibition contained in that section that rules may not contravene statutes; and

WHEREAS, as many as 15 states have eliminated their parole boards for various reasons, including monetary savings, but no such proposal has been recently considered by the Montana Legislature; and

WHEREAS, the operation of the Board has not been the subject of a study by an interim study committee of the Montana Legislature for many years; and

WHEREAS, it is appropriate for an interim committee of the Legislature to review the operation and rules of and the statutes governing the Montana Board of Pardons and Parole.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, to study the operation of the Montana Board of Pardons and Parole, including the parole philosophy of the Board, the statutes and rules administered by the Board, the degree to which the Board has prevented or contributed to the need for additional prison beds, the effect of the possible elimination of the Board, and other aspects of the Board's administration as appropriate.

BE IT FURTHER RESOLVED, that the study solicit the views of the law enforcement community, the Judicial Branch of state government, providers of community services, the Department of Corrections, and other appropriate stakeholders.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2014.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 64th Legislature.

Adopted March 13, 2013

## SENATE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF WAYS TO IMPROVE THE MARKETING, MANAGEMENT, OPERATION, MAINTENANCE, AND FUNDING OF STATE-OWNED SITES AT VIRGINIA CITY, NEVADA CITY, AND REEDER'S ALLEY IN HELENA.

WHEREAS, the state-owned historic sites at Virginia City and Nevada City are among the most valuable and fascinating historic sites in Montana and are a tremendous resource for all residents, families, schools, and surrounding communities and for Montana's economy; and

WHEREAS, the proximity of Virginia City and Nevada City to Yellowstone National Park make them ripe to capitalize on the millions of visitors that travel to or through the area each year; and

WHEREAS, the 1997 Legislature authorized the purchase of these properties in Virginia City and Nevada City, including 248 buildings, 160 acres, and over 1 million artifacts for $6.5 million dollars; and

WHEREAS, the 1997 Legislature stipulated that the state-owned sites in Virginia City and Nevada City must be managed to become self-sufficient and profitable and that no general fund money is to be given to them in the future; and

WHEREAS, in subsequent sessions, the Legislature has not altered that statutory directive; and

WHEREAS, the Montana Heritage Preservation and Development Commission, which manages the sites along with Reeder's Alley in Helena, has struggled to achieve that goal of self-sufficiency for many reasons, including extensive preservation, stabilization, and maintenance needs; and

WHEREAS, the Commission employs only two full-time maintenance workers and the Commission's repair and maintenance budget, as approved by the 2011 Legislature, was just $23,890 for fiscal years 2012 and 2013; and

WHEREAS, long-range building program money was not appropriated to the Commission by the 2011 Legislature; and

WHEREAS, the Commission reorganized in August 2011 due to a $400,000 budget shortfall, resulting in a reduction in force of five FTE; and

WHEREAS, the Commission, as part of that reorganization, is placing a greater emphasis on business planning and has hired a full-time business development manager; and

WHEREAS, the Legislative Environmental Quality Council reviewed the Commission and its work as part of the House Joint Resolution No. 32 study of state parks and outdoor recreation and heritage resource programs during the 2011-2012 interim; and

WHEREAS, the Council found much opportunity and greater need for state support to improve the Commission's marketing, operation, preservation, and maintenance of Virginia City, Nevada City, and Reeder's Alley; and

WHEREAS, the Council recognizes the changes and improvements that are being made under the Commission's new organizational structure and business plan; and

WHEREAS, the Council feels that while integrating the administration of Virginia City, Nevada City, and Reeder's Alley with other recreational and heritage resources, including state parks, might be desirable due to seemingly natural alliances between their missions, operations, and resource needs, it does not seem appropriate to do so at this time.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee or statutory committee, pursuant to 5-5-217, MCA, or direct sufficient staff resources to:

(1) provide continued oversight of the Montana Heritage Preservation and Development Commission and its management and operation of state-owned sites at Virginia City, Nevada City, and Reeder's Alley;

(2) review the implementation and impacts of the Commission's restructuring and newly adopted business plan;

(3) review in greater detail the myriad properties and artifacts the state purchased at Virginia City and Nevada City to determine whether the statutory mission for the sites should be redefined or whether recommendations should be made regarding the deaccession of any properties or artifacts;

(4) identify overall preservation needs at Virginia City, Nevada City, and Reeder's Alley and make recommendations regarding the scale and scope of those efforts based on available resources;

(5) review marketing efforts and identify other ways to make Virginia City, Nevada City, and Reeder's Alley better known to residents and nonresidents alike;

(6) review the Commission's funding and revenue and make recommendations for improving overall finances, especially funding for preservation and maintenance work;

(7) identify opportunities to integrate and better coordinate the administration of state-owned sites at Virginia City, Nevada City, and Reeder's Alley with other recreational and heritage resources, including state parks; and

(8) evaluate the makeup of the Commission and whether its membership, powers, and duties should be restructured or redefined, including whether some duties should be transferred to the Department of Commerce, to which the Commission is attached.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2014.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 64th Legislature.

Adopted March 14, 2013

## SENATE JOINT RESOLUTION NO. 6

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO ANALYZE THE IMPACTS OF THE MONTANA RENEWABLE POWER PRODUCTION AND RURAL ECONOMIC DEVELOPMENT ACT; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 64TH LEGISLATURE.

WHEREAS, the Montana Renewable Power Production and Rural Economic Development Act, Title 69, chapter 3, part 20, has required certain utilities to procure a percentage of their resources from renewable resources since 2008; and

WHEREAS, beginning in 2015, and in each succeeding year, a public utility and competitive electricity supplier are required to procure a minimum of 15% of its retail sales of electrical energy in Montana from renewable resources; and

WHEREAS, there are ongoing discussions about increasing the renewable portfolio standard or abolishing the requirement; and

WHEREAS, there has been limited analysis of the impact the Renewable Power Production and Rural Economic Development Act has had in Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) review the economic impacts of the renewable portfolio standard by analyzing:

(a) the renewable portfolio standard's contribution to new electrical generation in Montana;

(b) the short-term and long-term jobs created by the standard;

(c) industries working in Montana due in part to the standard;

(d) the use of renewable energy credits in Montana by the renewable energy industry; and

(e) how the standard has been used to leverage Montana's competitive advantages in developing new electric transmission;

(2) review the environmental benefits of the renewable portfolio standard by analyzing:

(a) the standard's contribution to diversified generation in Montana and to reduced dependence on fossil fuels;

(b) the types of renewable energy generation used in meeting the standard; and

(c) potential contributions to air quality improvements attributable to the standard; and

(3) review the impacts the renewable portfolio standard has had on Montana consumers by analyzing:

(a) whether the standard has mitigated or contributed to higher energy costs for consumers;

(b) how the standard has been used to hedge against volatility in fossil fuel prices; and

(c) whether the standard complements or hinders other efforts to help consumers.

BE IT FURTHER RESOLVED, that upon completion of the study, the committee make recommendations, if appropriate, to:

(1) revise Montana's Renewable Power Production and Rural Economic Development Act; and

(2) clarify existing law to ensure that the compliance costs do not outweigh the economic and environmental benefits.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2014.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 64th Legislature.

Adopted March 13, 2013

## SENATE JOINT RESOLUTION NO. 8

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOGNIZING THE MILITARY SERVICE OF MONTANANS IN THE ARMED FORCES OF THE UNITED STATES.

WHEREAS, all Americans have the right, by virtue of wearing the noble title of citizen, to great personal freedoms in the pursuit of life, liberty, and happiness; and

WHEREAS, the history of our young country demonstrates countless examples of bravery and personal sacrifice in order to preserve the freedoms and liberties of the collective citizenry; and

WHEREAS, since September 11, 2001, the nation has once again called upon those who have dedicated their lives to the defense of the nation to stand up against forces that wish ill upon the United States; and

WHEREAS, Montanans have always answered the call to defend the nation, and Montanans will continue to serve and lead in the global war on terror; and

WHEREAS, Montanans serving in every branch of service, both on active duty and in the National Guard and Reserves, have been deployed in the global war on terror at great personal sacrifice to themselves and their families; and

WHEREAS, a number of Montanans have made the ultimate sacrifice in Operation Enduring Freedom and Operation Iraqi Freedom; and

WHEREAS, we as Montanans will continue to support these heroes as they return home to face the challenge of rejoining family, friends, and community.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature recognize the dedication, professionalism, and bravery of all Montanans who have served and will serve in the armed forces of the United States as part of the global war on terror.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Montana Congressional Delegation, the respective Secretaries of the United States Army, Navy, and Air Force, the Commandant of the United States Marine Corps, the Commandant of the United States Coast Guard, and the Adjutant General of the Montana National Guard.

BE IT FURTHER RESOLVED, that the Secretary of State include with the copies sent to the respective Secretaries of the Army, Navy, and Air Force, the Commandant of the United States Marine Corps, the Commandant of the United States Coast Guard, and the Adjutant General of the Montana National Guard a request that the respective Secretaries and Commandants and the Adjutant General use every means available to provide a copy of this resolution to each member of the Armed Forces who hails from Montana.

BE IT FURTHER RESOLVED, that the purpose and intent of this resolution is to convey to Montana service personnel that the heartfelt thanks of all Montanans are extended to them, that we are proud of them, that they are in our prayers, and that we send them best wishes for a safe return.

Adopted March 14, 2013

## SENATE JOINT RESOLUTION NO. 11

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE GOVERNOR ESTABLISH AN ECONOMIC DEVELOPMENT CENTER IN CALGARY, ALBERTA.

WHEREAS, the contiguous states of the United States share a friendly northern border of 5,000 miles, and Montana's northern border consists of 525 miles of those total miles;

WHEREAS, Alberta and Montana bilaterally share the tribal heritage of the Blackfoot Confederacy, the Niits tapi, and recognize the importance of these "original people", including their First Nations' tribal land;

WHEREAS, Canada and the United States have diverse populations, permit dual citizenship, and share multicultural values;

WHEREAS, the Montana Legislature recognizes the cultural, educational, and economic benefits of establishing and maintaining international relations and commerce with Canada, and in particular with Alberta;

WHEREAS, the United States and Canada have similar interests in encouraging economic development, including agriculture, tourism, health care, and natural resource development;

WHEREAS, it is in the best interest of the Montana economy to work with Alberta to benefit the mutual exchange of goods and services.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Senate and House of Representatives of the State of Montana agree that Montana should maintain a physical presence in Canada to promote a cross-border partnership for economic development.

BE IT FURTHER RESOLVED, that the Montana Legislature calls upon the Governor to establish an economic development center located in Calgary, Alberta, for the mutual benefit of the Montana economy and its northern neighbors.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the Governor and to each member of the Montana Congressional Delegation.

Adopted April 8, 2013

## SENATE JOINT RESOLUTION NO. 13

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE MONTANA UNIVERSITY SYSTEM TO STUDY AND ADOPT GOALS AND PERFORMANCE MEASURES DIRECTED AT INCREASING COLLEGE COMPLETION RATES; REQUESTING THAT THE MONTANA UNIVERSITY SYSTEM WORK WITH THE GOVERNOR; PROVIDING THE PERFORMANCE MEASURES TO BE STUDIED; AND REQUESTING THAT REPORTS BE PROVIDED TO THE 64TH LEGISLATURE, THE GOVERNOR, AND THE BOARD OF REGENTS.

WHEREAS, less than half of the students nationally who enter a 4-year university, and even fewer who enter a 2-year college, finish with a degree or credential; and

WHEREAS, 60% of students entering 2-year colleges and 25% of students entering open-admissions universities are placed in some type of remedial education; and

WHEREAS, the Montana Legislature and the Montana University System agree on the importance of studying and reporting common measures of progress using consistent data; and

WHEREAS, the Montana Legislature and the Montana University System share a uniform desire to set and attain state completion goals that focus on significantly increasing the number of students that successfully complete college, with credentials that have value in the workplace.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana University System be requested to work in conjunction with the Governor to study and adopt a universal set of goals and performance

measures directed at increasing college completion rates. Measures to be studied include:

(1) outcome and progress metrics in degree production;

(2) graduation rates;

(3) transfer rates;

(4) time to complete a degree;

(5) enrollment in remedial education;

(6) success in remedial education;

(7) credit accumulation;

(8) retention rates; and

(9) course completion rates.

BE IT FURTHER RESOLVED, that the Montana University System be requested to set specific goals by July 1, 2014, to increase college completion rates and develop a state action plan for increasing completion rates.

BE IT FURTHER RESOLVED, that the data on which the study is based be collected in a manner that allows for comparisons across states and across institutions of higher education.

BE IT FURTHER RESOLVED, that the Montana University System report to the 64th Legislature, the Governor, and the Board of Regents on its progress in establishing the goals and the action plan and on the data gathered regarding the performance measures.

Adopted April 8, 2013

## SENATE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO IDENTIFY OPPORTUNITIES TO MAKE COMBINED PRIMARY AND SCHOOL ELECTIONS FEASIBLE.

WHEREAS, Senate Bill No. 140, which would have combined school and certain primary elections, was introduced in the 63rd Legislature and tabled by the Senate Local Government Standing Committee after the Committee agreed to request an interim study directed at identifying ways to make combined elections feasible; and

WHEREAS, an interim study would focus an appropriate interim committee on identifying the technical elements of election administration that would need to be reconciled to have combined elections, including varying deadlines, election dates, authorities responsible for conducting and paying for elections, and varying local government boundaries; and

WHEREAS, the goal of an interim study is to provide the 64th Legislature with a plan for implementation of combined elections and coordination among applicable government agencies.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to study local government and school district election laws and procedures to identify opportunities to combine elections.

BE IT FURTHER RESOLVED, that the study examine:

(1) existing dates, deadlines, and other procedures in Montana law that would require adjustment in order to conduct combined elections; and

(2) changes that election administrators would need to implement to combine primary and school elections, including:

(a) accommodating various administrative boundaries for jurisdictions holding elections, including state legislative, county, school district, city, and other district elections, and reducing voter confusion about these boundaries;

(b) administering the technical elements of combined elections, including the effects on overseas and military voters, different poll location and opening and closing times, and which local government authority is responsible for election costs; and

(c) determining the responsibility for conducting combined elections that involve county election administrators and school district officials.

BE IT FURTHER RESOLVED, that the committee request participation of stakeholders in the election process, including county election administrators, the Office of the Secretary of State, school administrators and officials, and other interested parties as determined by the committee.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2014.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 64th Legislature.

Adopted April 18, 2013

## SENATE JOINT RESOLUTION NO. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY EVALUATING THE MANAGEMENT OF CERTAIN FEDERAL LANDS, ASSESSING RISKS, AND IDENTIFYING SOLUTIONS.

WHEREAS, Article II, section 3, of the Montana Constitution provides that all persons have a constitutional right to a clean and healthful environment; and

WHEREAS, Article IX, section 1, of the Montana Constitution mandates that the state maintain and improve a clean and healthful environment for present and future generations; and

WHEREAS, over 25%, or 25 million acres, of land within Montana is managed by the United States Forest Service and the federal Bureau of Land Management; and

WHEREAS, management of Forest Service and Bureau of Land Management lands in Montana has a significant and direct bearing on Montana's environment, education funding, economy, culture, wildlife, and the health, safety, and welfare of our citizens; and

WHEREAS, federal funding and the capacity for responsible management of Forest Service and Bureau of Land Management lands are in serious jeopardy while critical threats such as beetle kills, invasive species, watershed

degradation, access restrictions, and catastrophic wildfires continue to escalate; and

WHEREAS, government officials have a vested interest and fundamental duty to ensure our abundant public lands and natural resources are managed responsibly and prudently.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee or statutory committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) identify measures that will help ensure that public lands within Montana are managed responsibly and prudently for present and future generations;

(2) evaluate public lands presently managed by the Forest Service and Bureau of Land Management; and

(3) prepare a report and recommendations to the Legislature, including:

(a) an assessment to analyze available information pertaining to the Forest Service and Bureau of Land Management lands within Montana and identify significant concerns or risks associated with these lands relative to:

(i) environmental quality;

(ii) economic productivity and sustainability;

(iii) public health, safety, and welfare;

(iv) consistency with state and local objectives;

(v) ownership and jurisdictional responsibilities; and

(vi) other aspects as considered appropriate by the assigned interim committee;

(b) a survey of county commissions whose counties contain 15% or more land area under the management of the Forest Service and/or Bureau of Land Management, incorporating their responses into the report;

(c) identification of solutions and goals to improve concerns or risks identified by subsection (3)(a);

(d) investigation of all lawful mechanisms, including actions implemented in other states, that may aid in achieving desired goals; and

(e) recommendations to agencies and the Legislature of necessary actions to achieve solutions and goals.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2014.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 64th Legislature.

Adopted April 18, 2013

# SENATE JOINT RESOLUTION NO. 18

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE MONTANA CONGRESSIONAL DELEGATION AND THE PRESIDENT OF THE UNITED STATES OF AMERICA TO INITIATE A PROCESS WHEREIN THE FEDERAL GOVERNMENT MUST ACCOMPLISH A BALANCED BUDGET WITHIN 10 YEARS AND LOWER ANNUAL FEDERAL DEFICIT SPENDING LEVELS.

WHEREAS, the fiscal policies of the United States federal government have placed our country on an untenable path and threaten future generations of Montanans; and

WHEREAS, high levels of debt directly threaten the ability of a government to control its own budget priorities; and

WHEREAS, our nation's fiscal crisis threatens our economy and national security, has contributed to a loss of trust in government, and exposes individual states to dire economic times; and

WHEREAS, the federal government has raised the debt ceiling 79 times since 1960 to prevent the United States from facing its first ever default; and

WHEREAS, the interest expense on our national debt exceeds $151 billion for fiscal year 2013, and by 2023, interest on the national debt is estimated to be nearly $900 billion; and

WHEREAS, payments on our nation's debt exceed $200 billion annually, and as a result, the credit rating of the United States in 2011 was lowered for the first time; and

WHEREAS, by borrowing revenue from the future and spending it today, our nation's debt is being passed on to future generations; and

WHEREAS, passing massive amounts of federal debt to the next generation is contradictory to the American principle of leaving our nation, states, and local communities in better shape than we found them; and

WHEREAS, the federal debt threatens the livelihood of Montana's veterans; and

WHEREAS, Montana and 48 other states are required by law to pass balanced budgets; and

WHEREAS, nearly all states are constitutionally required to produce balanced budgets, and although economic conditions vary and demand for government services may increase, leaders are required to make difficult decisions in accordance with the fundamental principles of fiscal prudence; and

WHEREAS, the people of Montana expect and demand the same of our federal government; and

WHEREAS, the federal government has failed to approve a budget since 2009 and has not produced a balanced budget since 2001; and

WHEREAS, that which cannot continue, will not.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature of the State of Montana hereby calls upon the Montana Congressional Delegation and the President of the United States of America to initiate a process wherein the federal government reduces annual deficit spending and accomplishes a balanced budget within 10 years.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to each member of the Montana Congressional Delegation and the President of the United States.

Adopted April 4, 2013

## SENATE JOINT RESOLUTION NO. 20

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF PRESCRIPTION DRUG ABUSE AND THE EFFECTS OF THE ABUSE ON MONTANANS.

WHEREAS, the Centers for Disease Control and Prevention report that prescription drug abuse is the fastest-growing problem in the United States; and

WHEREAS, the Centers for Disease Control and Prevention report that approximately 29,000 Americans died from unintentional drug overdoses in 2007 and the increase in unintentional deaths is due to increased use of opioid analgesics, which since 2003 have been responsible for more deaths than heroin and cocaine combined; and

WHEREAS, Montana Department of Justice statistics show that prescription drug abuse contributed to the deaths of more than 300 Montanans in 2008, outpacing motor vehicle crashes, homicides, methamphetamine, heroin, and cocaine deaths in Montana combined; and

WHEREAS, the Centers for Disease Control and Prevention report that prescription drug abuse and overdose deaths are highest among men, persons who are between the ages of 19 and 65, non-Hispanic white people, and poor and rural populations; and

WHEREAS, surveys have shown that the 9 million people who reported long-term medical use of opioids and the 5 million people who reported nonmedical use within a month of being surveyed are at the highest risk of prescription drug overdoses; and

WHEREAS, managed effectively, prescription drugs can provide effective relief for individuals with chronic pain; and

WHEREAS, 10% of Montana teens surveyed for the 2010 Montana Prevention Needs Assessment reported using prescription pain relievers at some point in their lives; and

WHEREAS, national data suggests that rural teens are more likely than urban teens to abuse prescription drugs; and

WHEREAS, 51% of teens in a national survey said they believe teens can obtain prescription drugs from the family medicine cabinet; and

WHEREAS, a 2011 study estimated that the total cost in the United States of nonmedical use of prescription opioids was $53.4 billion, of which $42 billion was attributable to lost productivity, $8.2 billion to criminal justice costs, $2.2 billion to drug abuse treatment, and $944 million to medical complications.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, to study strategies for reducing prescription drug abuse, particularly the use of opioid pain relievers

for the treatment of chronic pain caused by conditions other than cancer or the treatment of cancer.

BE IT FURTHER RESOLVED, that the study efforts include:

(1) compiling data on the major illicit sources of prescription drugs by using information from available sources, including the Montana prescription drug registry;

(2) evaluating the extent and impact of current efforts in Montana to prevent prescription drug abuse and to mitigate the effects of the abuse;

(3) identifying a comprehensive and coordinated statewide strategy that restricts access to prescription drugs for illicit use while ensuring access for individuals who have legitimate need for the drugs;

(4) identifying opportunities for collaboration among the public health, law enforcement, and medical communities at the state and local levels;

(5) identifying the communities most in need of prevention and mitigation efforts related to prescription drug abuse in order to prevent abuse and addiction and prevent or reduce the related need for chemical dependency treatment and the potential for an individual's involvement in the criminal justice system; and

(6) identifying appropriate steps that Montana policymakers may take to reduce prescription drug abuse in order to improve the health of Montanans.

BE IT FURTHER RESOLVED, that the study include representatives of the Department of Public Health and Human Services, the Department of Justice, the Board of Pharmacy, the Board of Medical Examiners, health care providers, and other parties interested in efforts to prevent prescription drug abuse.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2014.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 64th Legislature.

Adopted April 18, 2013

## SENATE JOINT RESOLUTION NO. 21

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA COMMEMORATING THE 163RD INFANTRY REGIMENT AND ITS SUCCESSORS ON THE 70TH ANNIVERSARY OF THE BATTLE OF SANANANDA, PAPUA NEW GUINEA.

WHEREAS, the 163rd Infantry Regiment (1917-1953) and its successor units, the 163rd Armored Cavalry Regiment (1953-1970), 1/163rd Infantry Battalion (Mechanized), 163rd Armored Brigade (1970-1995), and the 1/163rd Infantry Battalion, 116th Cavalry Regiment (1995-present) has served Montana and this nation in war and in peace for the past century; and

WHEREAS, the 163rd Infantry Regiment was ordered into active duty on September 16, 1940, with a force of 1,700 men, including nearly 200 representatives of Montana tribes and after training for 1 year became part of the initial American forces ordered into duty in the Pacific theater when the United States entered World War II in December 1941; and

WHEREAS, the 163rd Infantry Regiment earned numerous citations and letters of appreciation from Army headquarters during and after World War II,

in particular for what General Jacob Devers referred to as "76 days of unrelieved fighting, a record in jungle warfare," as the 163rd Infantry Regiment and the 41st Infantry Division to which it was assigned carried on a 1,000-mile campaign in the jungles of New Guinea; and

WHEREAS, the year 2013 is the occasion of the 70th anniversary of the 163rd Infantry Regiment's heroic efforts to help the allied forces win the Battle of Sanananda, Papua New Guinea, in World War II in the Southwest Pacific, a battle recognized as the first major land victory against the Japanese forces; and

WHEREAS, the 163rd Infantry Regiment battled enemy forces, fighting in Papua New Guinea, in the Battles of Aitape, Biak, Wadke, in the southern Philippines in the battle of Zamboanga, and in the Sulu Archipelago with amphibious landings on Tawi-Tawi, Jolo, Sanga-Sanga, and Bongao; and

WHEREAS, the 163rd Infantry Regiment was credited with winning three major battles, Sanananda, Biak, and Zamboanga, and three smaller battles, Wadke, Jolo, and Calinan; and

WHEREAS, the 163rd Infantry Regiment served as one of the initial occupation forces in Japan in World War II until being demobilized and sent home in January 1946; and

WHEREAS, the 163rd Infantry Regimental Combat Team, upon its return to Montana, became a major element of Montana's National Guard, serving as the basis for the Montana Army and Air National Guard, which continue to serve Montana today; and

WHEREAS, the 163rd Infantry Regiment is the successor to the following: volunteer troops known as the Montana Territorial Volunteers, who served from 1867 to 1887; the First Montana Infantry Regiment; the Montana National Guard formed in March 1887; the First Montana Infantry Regiment, United States Volunteers, which was formed to fight in the Spanish-American and Philippine-American Wars in 1898-1899 and which later became the 2nd Montana Infantry providing emergency services for Montana before being activated to serve on the U.S.-Mexican border in 1916 and being redesignated as the 163rd Infantry Regiment prior to being called to duty in World War I in 1917-1919; and

WHEREAS, more than 100,000 Montanans have served or are currently serving in units associated with the 163rd Infantry Regiment and deserve recognition for their accomplishments in serving the state and the country including in the Global War on Terror beginning in 2001 and continuing today.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the 63rd Legislature recognizes the 163rd Infantry Regiment and its successors on the 70th anniversary of the end of the Battle of Sanananda, Papua New Guinea, and tenders to every officer and to every man and woman of the 163rd Infantry Regiment and its successors and expresses deep gratitude of the whole body of citizens for this great victory, purchased with the blood of their bravest, hopeful that the Regiment and its successors will accept this expression as evidence of the love and devotion that we have for it, which sustains us on the home front and inspires us to dedicate each day to aid our men and women overseas and at home.

Adopted April 13, 2013

# SENATE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY EVALUATING CURRENT COURT PROCEDURES IN FAMILY LAW CASES AND IDENTIFYING ALTERNATIVE SOLUTIONS.

WHEREAS, Montana's district courts experienced a record number of filings in 2012, exceeding 50,000 new case filings statewide for the first time in history; and

WHEREAS, more than one in five of all cases filed in the district courts are domestic relations and family law cases, approximately 60% of which, more than 6,500 cases in 2012, have at least one party who is not represented by counsel; and

WHEREAS, the high percentage of the district courts' caseload and the attention the various issues in these filings require have the dual effect of overwhelming the bench and depriving litigants of the prompt, careful consideration they deserve; and

WHEREAS, children and families suffer in contested parenting cases, where the win-lose adversarial court system often escalates family conflict instead of working to find solutions that will create a healthy environment in which children may grow up without being caught in the middle of their parents' disagreements; and

WHEREAS, other states have created alternatives for handling family law matters, including early case management and early neutral evaluation programs, administrative law models that allow fact-gathering and processing of family cases prior to involvement by the court, and other alternative dispute resolution processes; and

WHEREAS, alternative dispute resolution methods would assist parties in resolving matters before significant financial and emotional resources are expended on litigation and would help avoid lengthy and expensive court battles, while at the same time freeing up the district courts to spend more time on the other areas of their growing caseloads.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) evaluate the cost and effectiveness of Montana's current court processes in addressing domestic relations matters;

(2) research family law models and approaches, legislative and otherwise, being used in other states; and

(3) identify measures that will help improve the administration of justice and promote the nonadversarial resolution of family law disputes.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2014.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 64th Legislature.

Adopted April 18, 2013

## SENATE JOINT RESOLUTION NO. 23

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF MONTANA'S TAX APPEALS AND HEARING PROCESS AND THE OPTIONS AVAILABLE FOR STREAMLINING AND IMPROVING THE APPEAL PROCESS.

WHEREAS, the tax laws in Montana include numerous complicated tax types, tax rates, and tax applications all of which are subject to an appeals process; and

WHEREAS, the Montana Constitution requires that the Legislature shall provide independent appeal procedures for taxpayer grievances with respect to appraisals, assessments, equalization, and taxes, including a review procedure at the local government level; and

WHEREAS, mediation can be an important component of the taxpayer appeal process; and

WHEREAS, appeals of centrally assessed properties and large industrial facility properties can be especially protracted and complicated, and require specific expertise in taxation; and

WHEREAS, it is in the interest of the state of Montana to ensure that taxpayer appeals are fair, time efficient, and equitable.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee or statutory committee, pursuant to section 5-5-217, MCA, to:

(1) review the current local government tax appeal process and state tax appeal process;

(2) analyze whether the current local government tax appeal process and state tax appeal process should be maintained;

(3) analyze whether there should be changes generally to the current local government tax appeal process and state tax appeal process to improve access and efficiency for taxpayer appeals;

(4) analyze the appropriateness and timeliness of formal mandatory or voluntary mediation processes as part of the taxpayer appeal process;

(5) analyze whether changes to the appeal process are necessary for appeal of centrally assessed properties and large industrial facility properties to ensure an efficient process that attempts to avoid costly and time-consuming appeals;

(6) determine whether to recommend an alternate process other than the current local government tax appeal process and state tax appeal process, including:

(a) consideration of specific education, experience, and continuing education of state tax appeal board members; and

(b) implementation of a tax court system; and

(c) implementation of a rotating district judge to handle direct appeals from centrally assessed and large industrial facility properties; and

(7) ensure that the resulting recommendations for tax appeals processes be in accordance with Article VIII, section 7, of the Montana Constitution.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation, review requirements, and recommendations, be concluded before September 15, 2014.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the committee, be reported to the 64th Legislature.

Adopted April 18, 2013

## SENATE JOINT RESOLUTION NO. 24

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING A STUDY OF HOW MILITARY TRAINING MAY APPLY TO PROFESSIONAL AND OCCUPATIONAL LICENSING AND OTHER CIVILIAN JOB CERTIFICATION REQUIREMENTS.

WHEREAS, extensive military training provided to military members in many cases is similar to or meets the requirements for professional and occupational licenses and certifications required for civilian and state or local government jobs; and

WHEREAS, military members of the National Guard and Reserves bring the attributes of discipline and a strong work ethic to the Montana job market; and

WHEREAS, military members and veterans may be more easily hired if professional and occupational licensing boards or other certification entities give due recognition to their extensive military training and the similarities of that training with professional and occupational licensing requirements or requirements for certification for other state or local government jobs.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) monitor work done by professional and occupational licensing boards regarding recognition of military training as equivalent to licensing requirements;

(2) identify and examine other certifications or licensing for civilian or state or local government jobs for which military training and skills may be acceptable equivalents; and

(3) identify statutes, if any, that may need to be amended to allow reciprocity for military training for licensure or certification.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2014.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 64th Legislature.

Adopted April 18, 2013

## SENATE JOINT RESOLUTION NO. 26

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE TRANSPORTING OF OVERSIZE LOADS THROUGH MONTANA.

WHEREAS, there are many compelling reasons to establish a predictable, timely, and cost-effective process that will allow numerous manufacturing firms, contractors, motor carriers, and others involved in commerce, both within and outside the state of Montana, to efficiently and in a cost-effective manner transport oversize and other loads through Montana; and

WHEREAS, the Legislature is committed to fostering the economic activity generated by transporting the loads, with substantial benefits accruing to Montana workers, small businesses, and local communities; and

WHEREAS, there are compelling reasons to reduce project costs and expedite the movement of people and goods by eliminating delays, reducing regulatory burdens, improving agencies' work practices, lowering costs, and accelerating completion of transportation projects; and

WHEREAS, Montana has an obligation to improve its portion and the whole of the national freight network, strengthen the ability of communities to access national and international trade markets, and support economic development; and

WHEREAS, in conjunction with other states and federal transportation authorities, Montana is committed to fostering actions that do not result in significant environmental impacts and, therefore, expediting the review processes and project delivery in furtherance of the objectives envisioned by the Moving Ahead for Progress in the 21st Century Act, Public Law 112-141, commonly referred to as MAP-21.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, to identify:

(1) any impediments in Montana law that preclude or discourage transporting oversize loads through the state; and

(2) options to remove or mitigate the impediments to efficiently and in a cost-effective manner transport oversize and other loads through Montana.

BE IT FURTHER RESOLVED, that the committee look to other states or Canadian provinces for legislative methods or means enacted to foster the transport of oversize loads through various public jurisdictions, including by establishing or authorizing the establishment of commerce corridors.

BE IT FURTHER RESOLVED, that the Senate and House of Representatives request that the Montana Department of Transportation, the Montana Department of Environmental Quality, local governments, appropriate highway user groups and, to the extent possible, U.S. Department

of Transportation officials make their respective staffs, information, and expertise available to the committee to advance the purposes of the study.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2014.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 64th Legislature.

Adopted April 20, 2013

# Senate Resolutions

## SENATE RESOLUTION NO. 1

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA ADOPTING THE SENATE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the following Senate Rules be adopted:

### RULES OF THE MONTANA SENATE

### CHAPTER 1

### Administration

**S10-10. Officers of the Senate.** The officers of the Senate are the officers listed and elected in accordance with Title 5, chapter 2, part 2, MCA.

**S10-20. Term of office.** The term of office for the officers and employees of the Senate established by law is until the succeeding Legislature is organized. This rule may not be construed to mean the staff will be full-time employees during an interim.

**S10-30. President, President pro tempore, and other officers.** (1) The Senate shall, at the beginning of each regular session, and at other times as may be necessary, elect a Senator as President and a Senator as President pro tempore.

(2) The Senate shall choose its other officers and is the judge of the elections, returns, and qualifications of the Senators.

**S10-40. Voting by presiding officer.** Any Senator, when acting as presiding officer of the Senate, shall vote as any other Senator.

**S10-50. Presiding officer and duties.** (1) The presiding officer of the Senate is the President of the Senate, who must be chosen in accordance with law.

(2) The President shall take the chair on every legislative day at the hour to which the Senate adjourned at the last sitting.

(3) The President may name a Senator to perform the duties of the President when the President pro tempore is not present in the Senate chamber. The Senator who is named is vested during that time with all the powers of the President.

(4) The President has general control over the assignment of rooms for the Senate and shall preserve order and decorum. The President may order the galleries and lobbies cleared in case of disturbance or disorderly conduct.

(5) The President shall sign all necessary certifications of the Senate, including enrolled bills and resolutions, journals, subpoenas, and payrolls. The President's signature must be attested by the Secretary of the Senate.

(6) The President shall approve the calendar for each legislative day.

(7) The President is the chief administrative officer of the Senate, with authority for the general supervision of all Senate employees. The President may seek the advice and counsel of the Legislative Administration Committee.

(8) The President of the Senate is the authorized approving authority of the Senate during the term of election to that office.

(9) The President shall refer bills to committee upon introduction or reception in the office of the Secretary of the Senate.

**S10-60. Succession.** (1) In case of the absence or disqualification of the President, the President pro tempore of the Senate shall perform the duties of the President until the vacancy is filled or the disability removed.

(2) Whenever the President pro tempore of the Senate is of the opposite political party from that of the President, the following procedure applies:

(a) If the President dies while in office, the members of the Senate have the right to immediately nominate and elect an acting President of the same party.

(b) If the President is absent for 2 or more legislative days or at any time after the 85th legislative day or at any time during special session of the Legislature and wants to appoint an acting President during the President's absence, the President may do so, or the members of the Senate have the right to immediately nominate and elect an acting President of the President's caucus.

(c) An acting President of the Senate has the powers of the President and supersedes the powers of the President pro tempore.

**S10-70. President-elect.** The President-elect nominated by the appropriate party caucus held in accordance with section 5-2-201, MCA, has the responsibility and authority to assume the duties of President of the Senate.

**S10-80. Legislative Administration Committee duties.** (1) The Legislative Administration Committee shall consider matters relating to legislative administration, staffing patterns, budgets, equipment, operations, and expenditures.

(2) The committee has authority to act in the interim to prepare for future legislative sessions.

(3) The committee shall approve contracts for purchase or lease of equipment and supplies for the Senate, subject to the approval of the President.

(4) The committee shall consider disputes or complaints involving the competency or decorum of legislative employees referred to it by the President and recommend dismissal, suspension, or retention of employees.

(5) The chair of the Legislative Administration Committee may, upon approval of the President, have purchase orders and requisitions prepared and forwarded to the accounting office in the Legislative Services Division.

**S10-90. Majority Leader.** The primary functions of the majority leader usually relate to floor duties. The duties of the majority leader may include but are not limited to:

(1) being the lead speaker for the majority party during floor debates;

(2) helping the President develop the calendar;

(3) assisting the President with program development, policy formation, and policy decisions;

(4) presiding over the majority caucus meetings; and

(5) other duties as assigned by the caucus.

**S10-100. Majority Whip.** The duties of the majority whip may include but are not limited to:

(1) assisting the majority leader;

(2) ensuring member attendance;

(3) counting votes;

(4) generally communicating the majority position; and

(5) other duties as assigned by the caucus.

**S10-110. Minority Leader.** The minority leader is the principal leader of the minority caucus. The duties of the minority leader may include but are not limited to:

(1) developing the minority position;

(2) negotiating with the majority party;

(3) directing minority caucus activities on the chamber floor;

(4) leading debate for the minority; and

(5) other duties as assigned by the caucus.

**S10-120. Minority Whip.** The major responsibilities for the minority whip may include but are not limited to:

(1) assisting the minority leader on the floor;

(2) counting votes;

(3) ensuring attendance of minority party members; and

(4) other duties as assigned by the caucus.

**S10-130. Senate employees.** (1) In addition to the employees appointed by the President in accordance with section 5-2-221, MCA, the Senate shall employ staff recommended by the leadership and the Legislative Administration Committee as necessary to perform the functions of the Senate.

(2) The Secretary of the Senate shall designate a secretary to take and prepare written minutes of committee meetings for each standing committee. A committee secretary is immediately responsible to the chair, but shall work under the overall direction of the Secretary of the Senate, subject to authority of the committee chair.

(3) The President, majority leader, and minority leader may each appoint a private secretary.

**S10-140. Secretary of the Senate and duties.** The Secretary of the Senate works under the direction of the President. The responsibilities of the Secretary of the Senate include:

(1) performing the duties prescribed by law or other provisions of these rules;

(2) serving as parliamentary advisor to the Senate;

(3) compiling and maintaining the calendar for approval by the President;

(4) keeping the leadership informed on the progress and workload of the Senate;

(5) transmitting bills with appropriate messages to the House of Representatives as instructed by action of the Senate;

(6) keeping and maintaining records of the Senate; and

(7) supervision of the Senate employees, except as otherwise provided.

**S10-150. Sergeant-at-Arms duties.** Under the direction of the President, the Sergeant-at-Arms shall:

(1) maintain order as directed by the President or chair of the Committee of the Whole;

(2) enforce the lobbying rules of the Senate;

(3) supervise the employees assigned to the Sergeant's office;

(4) receive, distribute, and maintain supplies, equipment, and other inventory of the Senate, along with records of purchase and disposal in accordance with law;

(5) perform duties as required by other rules and the Senate.

**S10-160. Legislative aides.** Each Senator may designate one person of legal age to serve as an aide during the session. Exceptions to this policy may be approved by the Rules Committee. The Senator shall register an aide with the Secretary of the Senate and arrange for the purchase of a name tag with the Sergeant-at-Arms.

**S10-170. Senate journal.** (1) The Senate shall keep and authenticate a journal of its proceedings as required by law and the rules.

(2) The Secretary of the Senate will supervise the preparation of the journal by the journal clerks trained by the Legislative Services Division under the direction of the President.

(3) In addition to the proceedings required by law to be recorded, the journal must include:

(a) committee reports;

(b) every motion, the name of the Senator presenting it, and its disposition;

(c) the introduction of legislation in the Senate;

(d) consideration of legislation subsequent to introduction;

(e) roll call votes;

(f) messages from the Governor and the House of Representatives;

(g) every amendment, the name of the Senator presenting it, and its disposition;

(h) the names of Senators and their votes on any question upon a request by two Senators before a vote is taken; and

(i) any other records the Senate directs by rule or action.

(4) The Secretary of the Senate shall provide information that may be necessary for the preparation of the daily journal for printing by the Legislative Services Division. Upon approval by the President, the daily journal must be reproduced and made available.

(5) Any Senator may examine the daily journal and propose corrections. Without objection by the Senate, the President may direct the correction to be made.

(6) The President shall authenticate the original daily journal, from time to time, and the Secretary of the Senate shall, as appropriate, deliver it to the Legislative Services Division to be prepared for publication and distribution in accordance with law.

## CHAPTER 2
## Decorum

**S20-10. Questions of order — appeal.** The President of the Senate shall decide all questions of order, subject to an appeal by any Senator seconded by two other Senators. A Senator may not speak more than once on an appeal without the consent of a majority of the Senate.

**S20-20. Violation of rules — call to order — appeal.** (1) If a Senator, in speaking or otherwise, violates the rules of the Senate, the President shall, or the majority leader or minority floor leader may, call the Senator to order, in which case the Senator called to order must be seated immediately.

(2) The Senator called to order may move for an appeal to the Senate, and if the motion is seconded by two Senators, the matter must be submitted to the Senate for determination by majority vote. The motion is nondebatable.

(3) If the decision of the Senate is in favor of the Senator called to order, the Senator may proceed. If the decision is against the Senator, the Senator may not proceed.

(4) If a Senator is called to order, the matter may be referred to the Rules Committee by the minority or majority leader. The Committee may recommend to the Senate that the Senator be censured or be subject to other action. Censure consists of an official public reprimand of a Senator for inappropriate behavior. The Senate shall act upon the recommendation of the Committee.

**S20-30. Questions of privilege — restrictions.** (1) Questions of privilege in order of precedence are those:

(a) affecting the collective rights, safety, dignity, or integrity of the proceedings of the Senate; and

(b) affecting the rights, reputation, or conduct of individual Senators in their capacity as Senators.

(2) A Senator may not address the Senate on a question of privilege between the time:

(a) an undebatable motion is offered and the vote is taken on the motion;

(b) the previous question is ordered and the vote is taken on the proposition included under the previous question; or

(c) a motion to lay on the table is offered and the vote is taken on the motion.

**S20-40. Recognition by chair.** A Senator desiring to speak shall rise and address the presiding officer and, once being recognized, shall speak standing in place. The presiding officer may grant permission for a speaker to speak from elsewhere in the chamber. When two or more Senators rise at the same time, the presiding officer shall name the order of the speakers.

**S20-50. Floor privileges.** (1) When the Senate is in session no person is permitted in the chambers except:

(a) legislators;

(b) legislative officers and employees whose presence is necessary for the conduct of business of the session;

(c) registered representatives of the media; and

(d) former legislators (not currently registered as lobbyists).

(2) The President may make exceptions for visiting dignitaries.

(3) Beginning 1 hour before and ending one-half hour after adjournment, no person is permitted in the chambers except those authorized as exceptions under subsection (1) or (2).

**S20-60. Communications to Senate.** A communication to the Senate must be addressed to the President and must bear the name of the person submitting it. The President shall decide if the communication bears including in the calendar.

**S20-70. Distribution of materials on floor — exception.** (1) Subject to subsection (2), material may not be distributed on the Senators' desks in the chamber unless the material bears the signature of the bearer and a Senator and has been approved by the President.

(2) Subsection (1) does not apply to material written by staff at the request of a Senator and placed on the Senator's desk.

## CHAPTER 3
## Committees

**S30-10. Committee appointments.** (1) There is a Committee on Committees consisting of six members. If the Senate is evenly divided between parties, the committee shall consist of six Senators, three from the majority party and three from the minority party.

(2) The Committee on Committees shall, with the approval of the Senate, appoint the members of Senate standing committees, select committees, and joint committees. Prior to making committee assignments, the Committee on Committees shall take into consideration the recommendations of the minority leader for minority committee assignments.

(3) The President of the Senate shall appoint all conference committees and special committees, with the advice of the majority leader and minority leader.

(4) The Senate may change the membership of any committee on 1 day's notice.

**S30-20. Standing committees — classification.** (1) The standing committees of the Senate are as follows:

(a) class one committees:

(i) Business, Labor, and Economic Affairs;

(ii) Finance and Claims;

(iii) Judiciary; and

(iv) Taxation;

(b) class two committees:

(i) Education and Cultural Resources;

(ii) Local Government;

(iii) Natural Resources;

(iv) Public Health, Welfare, and Safety; and

(v) State Administration;

(c) class three committees:

(i) Agriculture, Livestock, and Irrigation;

(ii) Energy and Telecommunications;

(iii) Fish and Game; and

(iv) Highways and Transportation; and

(d) on call committees:

(i) Ethics;

(ii) Legislative Administration; and

(iii) Rules.

(2) A class 1 committee is scheduled to meet Monday through Friday. A class 2 committee is scheduled to meet Monday, Wednesday, and Friday. A class 3 committee is scheduled to meet Tuesday and Thursday. Unless a class is prescribed for a committee, it meets upon the call of the chair.

(3) The Legislative Council shall review the workload of the standing committees to determine if any change is indicated in the class of a standing committee for the next legislative session. The Legislative Council's recommendations must be submitted to the leadership nominated or elected at the presession caucus provided for in 5-2-201.

**S30-40. Ex officio members — quorum.** (1) A quorum of a committee is a majority of the members of the committee. A quorum of a committee must be present at a meeting to act officially. A quorum of a committee may transact business, and a majority of the quorum, even though it is a minority of the committee, is sufficient for committee action.

(2) The majority leader and the minority leader are ex officio nonvoting members of all committees in order to establish a quorum.

**S30-50. Chair's duties.** (1) The chair of a committee is the presiding officer of that committee and is responsible for:

(a) maintaining order within the committee room and its environs;

(b) scheduling hearings and executive action;

(c) supervising committee work, including the appointment of subcommittees to act on a formal or informal basis; and

(d) authenticating committee reports by signing them and submitting them promptly to the Secretary of the Senate. The chair shall sign business reports reflecting action taken in each committee meeting that enable the preparation of committee minutes. The minutes must be printed on archival paper.

(2) The Secretary of the Senate shall arrange to have the minutes copied in an electronic format. An electronic copy will be provided to the Legislative Services Division and the State Law Library of Montana. The archival paper copy must be delivered to the Montana Historical Society.

**S30-60. Meetings — notice — purpose — minutes.** (1) All meetings of committees must be open to the public at all times, subject always to the power and authority of the chair to maintain safety, order, and decorum. The date, time, and place of committee meetings must be announced.

(2) Notice of a committee hearing must be made by posting the date, time, and subject of the hearing in a conspicuous public place not less than 3 legislative days in advance of the hearing. This 3-day notice requirement does not apply to hearings scheduled:

(a) prior to the third legislative day;

(b) less than 10 legislative days before the transmittal deadline applicable to the subject of the hearing;

(c) to consider confirmation of a gubernatorial appointment received less than 10 legislative days before the last scheduled day of a legislative session; or

(d) due to appropriate circumstances.

(3) When a committee hearing is scheduled with less than 3 days' notice, the committee chair shall use all practical means to disseminate notice of the hearing to the public.

(4) Notice of conference committee hearings must be given as provided in Joint Rule 30-30.

(5) A committee or subcommittee may be assembled for:

(a) a public hearing at which testimony is to be heard and at which official action may be taken on bills, resolutions, or other matters;

(b) a formal meeting at which the committees may discuss and take official action on bills, resolutions, or other matters without testimony; or

(c) a work session at which the committee may discuss bills, resolutions, or other matters but take no formal action.

(6) All committees meet at the call of the chair or upon the request of a majority of the members of the committee.

(7) A committee may not meet during the time the Senate is in session without leave of the President. Any Senator attending a meeting while the Senate is in session must be considered excused to attend business of the Senate subject to a call of the Senate.

(8) All meetings of committees must be recorded and the minutes must be available to the public within a reasonable time after the meeting. The official record must contain at least the following information:

(a) the time and place of each meeting of the committee;

(b) committee members present, excused, or absent;

(c) the names and addresses of persons appearing before the committee, whom each represents, and whether the person is a proponent, opponent, or other witness;

(d) all motions and their disposition;

(e) the results of all votes; and

(f) all testimony and exhibits.

(9) If a bill is heard in a joint committee, it must be referred to a standing committee. The standing committee is not required to hold an additional hearing but shall take executive action and may report the bill to the Committee of the Whole.

(10) A bill or resolution may not be considered or become a law unless referred to a committee and returned from a committee.

(11) A bill may be rereferred at any time before its passage.

**S30-70. Procedures — member privileges.** (1) The chair shall notify the sponsor of any bill pending before the committee of the time and place it will be considered.

(2) A standing or select committee may not hear legislation unless the sponsor or one of the cosponsors is present or unless the sponsor has given written consent.

(3) (a) Subject to subsection (3)(b), the committee shall act on each bill in its possession:

(i) by reporting the bill out of the committee:

(A) with the recommendation that it be referred to another committee;

(B) favorably as to passage; or

(C) unfavorably; or

(ii) by tabling the measure in committee.

(b) At the written request of the sponsor made at least 48 hours prior to a scheduled hearing, a committee shall finally dispose of a bill without a hearing. Except as provided in S30-60(9), a bill may not be reported from a committee without a hearing.

(4) The committee may not report a bill to the Senate without recommendation.

(5) In reporting a measure out of committee, a committee shall include in its report:

(a) the measure in the form reported out;

(b) the recommendation of the committee;

(c) an identification of all proposed changes; and

(d) a fiscal note, if required.

(6) If a measure is taken from a committee and brought to the Senate floor for debate on second reading on that day without a committee recommendation, the bill does not include amendments formally adopted by the committee because committee amendments are merely recommendations to the Senate that are formally adopted when the committee report is accepted by the Senate.

(7) A second to any motion offered in a committee is not required in order for the motion to be considered by the committee.

(8) The vote of each member on all committee actions must be recorded and reported in the committee minutes. All motions may be adopted only on the affirmative vote of a majority of the members voting.

(9) A motion to take a bill from the table may be adopted by the affirmative vote of a majority of the members present at any meeting of the committee.

(10) An action formally taken by a committee may not be altered in the committee except by reconsideration and further formal action of the committee.

(11) A committee may reconsider any action as long as the matter remains in the possession of the committee. A bill is in the possession of the committee until a report on the bill is made to the Committee of the Whole. A committee member need not have voted with the prevailing side in order to move reconsideration.

(12) The chair shall decide points of order.

(13) The privileges of committee members include the following:

(a) to participate freely in committee discussions and debate;

(b) to offer motions;

(c) to assert points of order and privilege;

(d) to question witnesses upon recognition by the chair;

(e) to offer any amendment to any bill; and

(f) to vote, either by being present or by proxy, using a standard form.

(14) Any meeting of a committee held through the use of telephone or other electronic communication must be conducted in accordance with Chapter 3 of the Senate Rules.

(15) A committee may consolidate into one bill any two or more related bills referred to it whenever legislation may be simplified by the consolidation.

(16) Committee procedure must be informal, but when any questions arise on committee procedure, the rules or practices of the Senate are applicable except as stated in the Senate Rules.

**S30-80. Public testimony — decorum — time restrictions.** (1) Testimony from proponents, opponents, and informational witnesses must be allowed on every bill or resolution before a standing or select committee. All persons, other than the sponsor, offering testimony shall register on the committee witness list.

(2) Any person wishing to offer testimony to a committee hearing a bill or resolution must be given a reasonable opportunity to do so, orally or in writing, subject to time constraints. Written testimony may not be required of any witness, but all witnesses must be encouraged to submit a statement in writing for the committee's official record.

(3) The chair may order the committee room cleared of visitors if there is disorderly conduct. During committee meetings, visitors may not speak unless called upon by the chair. Restrictions on time available for testimony may be announced.

(4) The number of people in a committee room may not exceed the maximum posted by the State Fire Marshall. The chair shall maintain that limit.

(5) In any committee meeting, the use of cameras, television, radio, or any form of telecommunication equipment is allowed, but the chair may designate the areas of the hearing room from which the equipment must be operated. Cell phone use is at the discretion of the chair.

**S30-100. Pairs prohibited — absentee or proxy voting.** Pairs in standing committee are prohibited. Standing and select committees may by a majority vote of the committee authorize Senators to vote in absentia. Authorization for absentee or proxy voting must be reflected in the committee minutes.

**S30-140. Reconsideration in committee.** A committee may at any time prior to submitting a report to the Secretary of the Senate reconsider its previous action on legislation.

**S30-150. Committee requested legislation.** (1) (a) Except as provided in subsection (1)(b), at least three-fourths of all the members of a standing committee must have voted in favor of the question to allow the committee to request the drafting and introduction of legislation.

(b) The Finance and Claims Committee may request the drafting and introduction of legislation by a majority vote of all of the members of the committee.

(2) The chair of a committee shall introduce, or shall designate a member of the committee to introduce, legislation requested by the committee. The introduced bill must be referred to the requesting committee.

**S30-160. Ethics Committee.** (1) The Ethics Committee shall meet only upon the call of the chair after the referral of an issue from the Rules Committee or to consider a request for a determination pursuant to subsection (4). The Rules Committee may be convened to consider the referral of a matter to the Ethics Committee upon the request of a Senator. The Rules Committee shall prepare a written statement of the specific question or issue to be addressed by the Ethics Committee. The issues referred to the Ethics Committee must be related to the actions of a Senator during a legislative session.

(2) The matters that may be referred to the Ethics Committee are:

(a) a violation of:

(i) 2-2-103;

(ii) 2-2-104;

(iii) 2-2-111;

(iv) 2-2-112;

(b) the use or threatened use of a Senator's position for personal or personal business benefit or advantage; or

(c) any other violation of law by a Senator while acting in the capacity of Senator.

(3) If there is a recommendation from the Ethics Committee, the recommendation is made to the Senate.

(4) As provided in 2-2-112, a Senator may seek a determination from the Ethics Committee concerning the possibility of a personal conflict of interest.

## CHAPTER 4
## Legislation

**S40-10. Types of legislation.** The only types of legislation that may be introduced in the Senate are those that have been drafted and approved by the Legislative Services Division and signed by a Senator as chief sponsor. The types of legislation allowed include:

(1) bills of any subject, except appropriations;

(2) joint resolutions, which may be used for any purpose specified in Joint Rule 40-60; and

(3) simple resolutions, which may:

(a) adopt or amend Senate rules;

(b) provide for the internal affairs of the Senate;

(c) express confirmation of the Governor's appointments; or

(d) make recommendations concerning the districting and apportionment plan as provided by Article V, section 14(4), of the Montana Constitution.

**S40-20. Introduction — first reading.** (1) Upon receiving a bill or resolution from a Senator, the Secretary of the Senate shall assign an appropriate sequential number, which constitutes introduction of the legislation. Legislation properly introduced or received in the Senate must be announced across the rostrum and public notice provided. This announcement constitutes first reading, and no debate or motion is in order except that a Senator may question adherence to rules. Acknowledgment by the Secretary of the Senate of receipt of legislation transmitted from the House commences the time limit for consideration of the legislation. All legislation received by the Senate may be referred to a committee prior to being read across the rostrum.

(2) Bills and resolutions preintroduced as provided in Joint Rule 40-40 may be assigned to committee and printed prior to the legislative session. The Legislative Services Division is responsible for ensuring the preintroduction intent from each Senator and presenting the preintroduced legislation to the Secretary of the Senate.

(3) Upon referral to committee, the Secretary of the Senate shall publicly post a listing of the bill or resolution by a summary of its title, together with a notation of the committee to which it has been assigned.

(4) The sponsor may ask the Legislative Services Division to change or correct a short title used on the bill status system.

**S40-30. Additional sponsors.** (1) Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill or resolution. Forms for adding sponsors will be supplied on request by the Secretary of the Senate.

(2) Upon passage of the motion, the names of the additional sponsors will be printed in the journal and the form containing the signatures of the additional sponsors will be forwarded to the Legislative Services Division with the original bill for the inclusion of the names in subsequent printings of the bill or resolution.

**S40-40. Reading limitations.** (1) Every bill must be read three times prior to passage, either by title or by summary of title as provided in these rules.

(2) A bill or resolution may not have more than one reading on the same day except the last legislative day.

(3) An amendment may not be offered on third reading.

**S40-60. Scheduling for second reading.** (1) All bills and resolutions that have been reported by a committee or withdrawn from a committee by motion, accepted by the Senate, and reproduced must be scheduled for consideration by Committee of the Whole.

(2) Until the 50th legislative day, 1 day must elapse between receiving the legislation from printing and scheduling for second reading for consideration by Committee of the Whole unless a printed version of an unamended bill is available.

(3) The majority leader shall arrange legislation on the agenda in the order in which the bills will be considered, unless otherwise ordered by the Senate or Committee of the Whole.

## CHAPTER 5
## Floor Action

**S50-10. Attendance — mandatory voting — quorum.** (1) Unless excused, Senators must be present at every sitting of the Senate and shall vote on questions put before the Senate.

(2) A majority of the Senate shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent Senators, in the manner and under penalties as the Senate may prescribe (Montana Constitution, Art. V, sec. 10(2)).

**S50-20. Orders of business.** After prayer, roll call, and report on the journal, the order of business of the Senate is as follows:

(1) communications and petitions;

(2) reports of standing committees;

(3) reports of select committees;

(4) messages from the Governor;

(5) messages from the House of Representatives;

(6) motions;

(7) first reading and commitment of bills;

(8) second reading of bills (Committee of the Whole);

(9) third reading of bills;

(10) unfinished business;

(11) special orders of the day; and

(12) announcement of committee meetings.

To revert to or pass to a new order of business requires only a majority vote. Unless otherwise specified in the motion to recess, the Senate shall revert to Order of Business No. 1 when reconvening after a recess.

**S50-30. Limitations on debate.** A Senator may not speak more than twice on any one motion or question without unanimous consent of the Senate, unless the Senator has introduced or proposed the motion or question under debate, in which case the Senator may speak twice and also close the debate. However, a Senator who has spoken may not speak again on the same motion or question to the exclusion of a Senator who has not spoken.

**S50-40. Procedure upon offering a motion.** (1) When a motion is offered it must be restated by the presiding officer. If requested by the presiding officer or a Senator, it must be reduced to writing, presented at the rostrum, and read aloud by the Secretary.

(2) A motion may be withdrawn by the Senator offering it at any time before it is amended or voted upon.

**S50-50. Precedence of motions.** (1) When a question is under debate only the following privileged and subsidiary motions may be made:

(a) to adjourn (nondebatable S50-60);

(b) for a call of the Senate (nondebatable S50-60);

(c) to recess (nondebatable S50-60);

(d) question of privilege;

(e) to lay on the table (nondebatable S50-60);

(f) for the previous question (nondebatable S50-60);

(g) to postpone to a certain day;

(h) to refer or commit;

(i) to amend; and

(j) to postpone indefinitely.

(2) The motions listed in subsection (1) have precedence in the order listed.

(3) A question may be indefinitely postponed by a majority roll call of all Senators present and voting. When a bill or resolution is postponed indefinitely, it is finally rejected and may not be acted upon again except upon a motion of reconsideration as provided in S50-90.

(4) A motion or proposition on a subject different from that under consideration may not be accepted unless a substitute motion is in order.

**S50-60. Nondebatable motions.** The following motions are not debatable:

(1) to adjourn;

(2) for a call of the Senate;

(3) to recess or rise;

(4) for parliamentary inquiry;

(5) for suspension of the rules;

(6) to lay on the table;

(7) for the previous question;

(8) to limit, extend the limits of, or to close debate;

(9) to amend an undebatable motion;

(10) to change a vote (S50-200);

(11) to pass business in Committee of the Whole;

(12) to take from the table;

(13) a decision of the presiding officer, unless appealed or unless the presiding officer submits the question to the Senate for advice or decision; and

(14) all incidental motions, such as motions relating to voting or other questions of a general procedural nature.

**S50-70. Amending motions — restrictions.** (1) Subject to subsection (2), no more than one amendment and no more than one substitute motion may be made to a motion. This rule permits the main motion and two modifying motions.

(2) A motion for a call of the Senate, for the previous question, to table, or to take from the table may not be amended.

**S50-80. Previous question.** (1) Except as provided in subsection (2), the effect of calling for the previous question, if adopted, is to close debate immediately, to prevent the offering of amendments or other subsidiary motions, and to bring to vote promptly the immediately pending main question and the adhering subsidiary motions, whether on appeal or otherwise. The motion for the previous question is nondebatable as provided in S50-60(7).

(2) When the previous question is ordered on any debatable question on which there has been no debate, the question may be debated for one-half hour, one-half of that time to be given to the proponents and one-half to the opponents. The sponsor of the main motion on which the previous question is adopted may close on the motion regardless of whether debate on the main motion has occurred.

(3) A call of the Senate is not in order after the previous question is ordered unless it appears upon an actual count by the presiding officer that a quorum is not present.

**S50-90. Reconsideration — time restrictions.** (1) Subject to subsection (6), any Senator may, on the day the vote was taken or on the next day the Senate is in session, move to reconsider the question. A motion to reconsider is a debatable motion, but the debate is limited to the motion. The debate on a motion to reconsider may not address the substance of the matter for which reconsideration is sought. However, an inquiry may be made concerning the purpose of the motion to reconsider.

(2) A motion to reconsider must be disposed of when made unless a proper substitute motion is made and adopted.

(3) A motion to recall a bill from the House of Representatives constitutes notice to reconsider and must be acted on as a motion to reconsider. A motion to reconsider or to recall a bill from the House of Representatives may be made only under Order of Business No. 6 and, under that order of business, takes precedence over all motions except motions to recess or adjourn.

(4) When a motion to reconsider is laid on the table, a two-thirds majority is required to take it from the table. When a motion to reconsider fails, the question is finally and conclusively settled.

(5) If a motion to reconsider third reading action is carried, there may not be further action until the succeeding legislative day.

(6) If the Senate has adjourned for more than 2 days, then a motion to reconsider action taken on the last day the Senate was in session is in order on the day the Senate reconvenes or on the following legislative day.

**S50-100. Dividing a question — segregation excluded.** A Senator may request to divide a question if it includes two or more propositions so distinct in substance that if one thing is taken away a substantive question will remain. A vote is not required on a request to divide a question, but the chair may rule that a question is not divisible. The ruling of the chair may be appealed as provided in S20-10 and S20-20. For an appeal of a ruling of the presiding officer, the question for the Senate must be stated as, "Shall the ruling of the chair be upheld?". A motion to segregate pursuant to S50-140(4) is not a request to divide a question.

**S50-110. Rules for questions or bills requiring other than a majority vote.** (1) Except as provided in subsection (2), a question or bill requires more

than a majority vote for final passage, a majority vote is sufficient to decide any question relating to the question or bill prior to third reading.

(2) Any vote in the Senate on a bill proposing an amendment to the Montana Constitution under circumstances in which there exists the mathematical possibility of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote. This rule does not prevent a committee from indefinitely postponing or tabling a bill proposing an amendment to the Montana Constitution.

(3) If a bill has been amended in the House of Representatives and the amendments are accepted by the Senate, the bill must again be placed on third reading in the Senate to determine if the required number of votes has been cast.

**S50-120. Committee reports to Senate — reconsideration.** (1) Reports of standing committees must be read on Order of Business No. 2, and, subject to subsection (4), debate may not be had on any report.

(2) On an adverse committee report, the sponsor may respond to the chair of the committee making the report.

(3) Any Senator seeking a reconsideration of the Senate's action on the adoption of a committee report shall do so on Order of Business No. 6 by motion to reconsider as provided in S50-90. Any Senator may make the reconsideration motion and need not have voted on the prevailing side. This rule applies notwithstanding any joint rule to the contrary. Subject to S50-90(6), the reconsideration motion must be made within 1 legislative day of the adoption of the committee report and is not in order if the bill has been considered in Committee of the Whole.

(4) (a) Subject to subsection (4)(b), the Rules Committee and conference committees may report at any time, except during a call of the Senate, when a vote is being taken, or during Committee of the Whole.

(b) The Rules Committee may report during Committee of the Whole on matters referred to the Committee by the Committee of the Whole.

**S50-130. Conference committee — reports.** (1) When a conference committee report is filed with the Secretary of the Senate, the report must be read under Order of Business No. 3, select committees, and placed on the calendar the succeeding legislative day for consideration on second reading. If recommended favorably by the Committee of the Whole, it may be considered on third reading the same legislative day.

(2) If both the Senate and the House of Representatives adopt the same conference committee report on legislation requiring more than a majority vote for final passage, the Senate, following approval of the conference committee report on third reading, shall place the final form of the legislation on third reading to determine if the required vote is obtained.

(3) If the Senate rejects a conference committee report, the committee continues to exist unless dissolved by the President or by motion. The committee may file a subsequent report.

(4) A Senate conference committee may confer regarding matters assigned to it with any House conference committee with like jurisdiction and submit recommendations for consideration of the Senate.

**S50-140. Second reading — Committee of the Whole report — segregation — rejection.** (1) The Senate may resolve itself into a Committee of the Whole for consideration of business on second reading, by approval of a motion for that purpose.

(2) After a Committee of the Whole has been formed, the President shall appoint a chair to preside.

(3) All legislation considered in the Committee of the Whole must be read by a summary of its title. The sponsor shall make an opening statement, proposed amendments must be considered, and then the bill must be considered in its entirety.

(4) Prior to adoption of the Committee of the Whole report, a Senator may move to segregate legislation. If the motion prevails, the legislation remains on second reading.

(5) When a Committee of the Whole report on legislation is rejected, the legislation remains on second reading.

**S50-150. Committee of the Whole amendments.** (1) All Committee of the Whole amendments must be prepared by the staff of the Legislative Services Division, stipulating the date and time of preparation and staff approval, and delivered to the Secretary of the Senate for reading before the amendment is voted on.

(2) Each amendment, rejected or adopted, must be printed in the journal, along with the name of the sponsor and the vote on each.

**S50-160. Motions in Committee of the Whole.** (1) All proper motions on second reading are debatable unless specified in S50-60.

(2) The only motions in order during Committee of the Whole are to:

(a) recommend passage or nonpassage;

(b) recommend concurrence or nonconcurrence (House amendments to Senate legislation);

(c) amend;

(d) indefinitely postpone;

(e) pass consideration;

(f) change the order in which legislation is placed on the agenda (nondebatable S50-60(14));

(g) rise (nondebatable S50-60(3));

(h) rise and report progress and ask leave to sit again (nondebatable S50-60(3)); or

(i) rise and report (nondebatable S50-60(3)).

(3) The motions listed in subsection (2) may be made in descending order as listed.

**S50-170. Committee of the Whole — generally.** (1) The Committee of the Whole may not appoint subcommittees.

(2) The Committee of the Whole may not punish its members for misconduct, but may report disorder to the Senate.

**S50-180. Voting on second reading — positive disposition of motions.** (1) On Order of Business No. 8, in addition to other methods, a recorded vote may be made in the following manner: the chair may call for a voice vote to accept or reject a question. If the vote is other than unanimous, the chair may ask that the lesser number on the question indicate their vote by standing. The Secretary will then record the vote of those standing. The chair may then rule that unless excused those not standing and present have voted on the prevailing side of the question and that their vote be recorded as voting on the prevailing side. If there was a unanimous voice vote, all those present will be recorded as having voted for the question.

(2) A motion on second reading must be disposed of by a positive vote.

**S50-190. Third reading procedure.** (1) Unless rereferred to a committee by a majority vote after the adoption of the Committee of the Whole report but before moving to another order of business, all legislation passing second reading must be placed on third reading the day following the receipt of the engrossing or other appropriate printing report.

(2) On Order of Business No. 9 the Secretary shall read the title and the President shall state the question as follows: "Senate bill number (or other appropriate identification)..... having been read three several times, the question is, shall the bill (or other appropriate identification) pass the Senate?"

(3) If an electronic voting system is used, the President shall state "Those in favor vote yes and those opposed vote no" and the Secretary will sound the signal and open the board for voting. After a reasonable pause the presiding officer asks "Has every member voted?" (reasonable pause), "Does any member wish to change his or her vote?" (reasonable pause), "The Secretary will record the vote."

**S50-200. Senate voting — changing a vote — objection.** (1) A roll call vote must be taken on the request of two Senators, if the request occurs before the vote is taken.

(2) On a roll call vote the names of the Senators must be called alphabetically, unless an electronic voting system is used. A Senator may not vote after the decision is announced from the chair. A Senator may not explain a vote until after the decision is announced from the chair.

(3) A Senator may move to change the Senator's vote, on any recorded vote, within 1 legislative day of the vote. The Senator making the motion shall first specify the bill number, the date of the vote, and the original vote tally. A vote may not be changed if it would affect the outcome of legislation. The motion is nondebatable. If none of the Senators present object, the change must be entered into the journal.

(4) If any Senator objects to the request in subsection (3), the Senator making the request may move to suspend the rules to allow the Senator to change the Senator's vote.

(5) An error caused by a malfunction of the voting system may be corrected without a vote within 10 minutes of the malfunction.

**S50-210. Pairs — Committee of the Whole.** (1) Two Senators may pair on a question that will be determined by a majority vote. On a question requiring a two-thirds vote for adoption, three Senators may pair, with two Senators for the question and one Senator against. Pairing is permitted only when one of the paired Senators is excused when the vote is taken.

(2) An agreement to pair must be in writing and dated and signed by the Senators agreeing to be bound and must specify the duration of the pair. When an agreement to pair is filed with the Secretary of the Senate, it binds the Senators signing until the expiration of time for which it was signed, unless the paired Senators sooner appear and ask that the agreement be canceled.

**S50-220. Call of the Senate.** (1) In the absence of a quorum, a majority of Senators present may compel the attendance of absent Senators by ordering a call of the Senate.

(2) If a quorum is present, five Senators may order a call of the Senate.

(3) On a call of the Senate, a Senator who refuses to attend may be arrested by the Sergeant-at-Arms or any other person, as the majority of the Senators present direct. When the attendance of an absent Senator is secured and the Senate refuses to excuse the Senator's absence, the Senator may not be paid any

expense payments while absent and is liable for the expenses incurred in procuring the Senator's attendance.

(4) During a call of the Senate, all business must be suspended. After a call has been ordered, no motion is in order except a motion to adjourn or remove the call. The call may be removed by a two-thirds vote of the members present.

**S50-230. House amendments to Senate legislation.** (1) When the House has properly returned Senate legislation with House amendments, the Senate shall announce the amendments on Order of Business No. 5 and the President shall place them on second reading for debate. The President may rerefer Senate legislation with House amendments to a committee for a hearing if the House amendments constitute a significant change in the Senate legislation. The second reading vote is limited to consideration of the House amendments.

(2) If the Senate accepts House amendments, the Senate shall place the final form of the legislation on third reading to determine if the legislation, as amended, is passed or if the required vote is obtained.

(3) If the Senate rejects the House amendments, the Senate may request the House to recede from its amendments or may direct appointment of a conference committee and request the House to appoint a like committee.

**S50-240. Governor's amendments.** (1) When the Governor returns a bill with recommended amendments, the Senate shall announce the amendments under Order of Business No. 4.

(2) The Senate may debate and adopt or reject the Governor's recommended amendments on second reading on any legislative day.

(3) If both the Senate and the House of Representatives accept the Governor's recommended amendments on a bill that requires more than a majority vote for final passage, the Senate shall place the final form of the legislation on third reading to determine if the required vote is obtained.

**S50-250. Governor's veto.** (1) When the Governor returns a bill with a veto, the Senate shall announce the veto under Order of Business No. 4.

(2) On any legislative day, a Senator may move to override the Governor's veto by a two-thirds vote under Order of Business No. 6.

## CHAPTER 6

## Rules

**S60-10. Senate rules — amendment — adoption — suspension.** (1) A motion to amend or adopt a rule of the Senate must be referred to the Rules Committee without debate. A rule of the Senate may be amended or adopted only with the concurrence of a majority of the Senate and after 1 day's notice.

(2) A rule may be suspended temporarily by a two-thirds vote.

**S60-20. Mason's Manual of Legislative Procedure.** Mason's Manual of Legislative Procedure (2010) governs the proceedings of the Senate in all cases not covered by these rules.

## CHAPTER 7

## Nominations from the Governor

**S70-10. Nominations.** (1) The Governor shall nominate and, by and with the consent of the Senate, appoint all officers whose offices are established by the Montana Constitution or which may be created by law and for whom appointment or election is not otherwise provided.

(2) If during a recess of the Senate a vacancy occurs in any office subject to Senate confirmation, the Governor shall appoint some fit person to discharge

the duties of the office until the next meeting of the Senate, when the Governor shall nominate a person to fill the office.

**S70-20. Introduction and first reading of nominations.** (1) Nominations received from the Governor must be:

(a) received by the President;

(b) delivered to the Secretary of the Senate;

(c) read under Order of Business No. 4, messages from the Governor; and

(d) referred to committee. The President of the Senate may refer any individual nomination contained in a list received from the Governor to any standing committee.

(2) The procedure in subsection (1) constitutes introduction and first reading of the nominations.

(3) The Secretary shall distribute a copy of the list of nominations to each Senator.

**S70-30. Committee process — preliminary reports — separate consideration.** (1) (a) The committee shall research each nominee and may request biographical information from the Governor for each nominee if none has been provided.

(b) The committee chair shall submit a bill draft request on behalf of the committee for a simple resolution to include the nominee submitted to the committee or a group of nominees, the group of nominees being specified by the committee chair. These bill draft requests will not count against any bill draft request limit imposed on members. When the resolution has been prepared and introduced, the committee shall hold a hearing on the resolution after appropriate public notice has been given.

(2) Following the hearings for a group of nominees, the committee shall issue preliminary standing committee reports to be distributed to each Senator, stating the committee's recommendations concerning the nominees. A preliminary standing committee report is not required for a resolution for a single nominee pursuant to subsection (5).

(3) (a) If a Senator wishes to have an individual nominee or group of nominees considered by the Senate separately from the group of nominees recommended by the committee, the Senator may request of the chair of the committee that the nominee or nominees be considered by a separate resolution.

(b) A Senator shall request separate consideration of a nominee within 3 days of receipt of the preliminary standing committee report. The committee chair shall honor this request.

(4) After waiting 3 days from the day of distribution of the preliminary standing committee report, the committee chair shall issue a final standing committee report and deliver the report to the Secretary of the Senate.

(a) If a nominee is to be separated from the resolution, the final standing committee report must include an amendment deleting that nominee.

(b) When a nominee has been separated at the request of a Senator or when a single nomination has been submitted to a committee, the committee chair shall submit a bill draft request on behalf of the committee for a simple resolution to include only the single or separated nominee. When the resolution has been prepared and introduced, the committee shall take executive action on the resolution. When a hearing on the separated nomination was held prior to the committee's preliminary standing committee report, an additional hearing is not required to be held before the committee takes action on the separate

resolution. After the committee's executive action, the committee chair shall issue a standing committee report.

(5) If a resolution contains only one nominee, the committee shall dispense with the preliminary standing committee report and shall issue a final standing committee report to be distributed to each Senator stating the committee's recommendation concerning the nominee.

(6) The Secretary will read the reports under Order of Business No. 2, reports of standing committees.

(7) After the report has been read, the resolution must be placed on Order of Business No. 11 the next legislative day for consideration by the Senate. Motions to approve or disapprove of the resolution are in order and may be debated.

**Appendix A**

List of Questions Requiring Other Than a Majority Vote

The following questions require the vote specified:

(1) a call of the Senate with a quorum pursuant to S50-220(2) (five Senators);

(2) a motion to lift a call of the Senate pursuant to S50-220(4) (two-thirds of the members present);

(3) a motion to amend or suspend rules pursuant to S60-10 (two-thirds);

(4) a motion to override the Governor's veto pursuant to S50-250 and Article VI, section 10(3), of the Montana Constitution (two-thirds);

(5) a motion to approve a bill to appropriate the principal of the coal trust fund pursuant to Article IX, section 5, of the Montana Constitution (three-fourths of each house);

(6) a motion to approve a bill to appropriate highway revenue as described in Article VIII, section 6, of the Montana Constitution for purposes other than those described in that section (three-fifths of each house);

(7) a motion to approve a bill proposing to amend the Montana Constitution pursuant to Article XIV, section 8, of the Montana Constitution (two-thirds of the entire Legislature);

(8) an appeal of the ruling of the presiding officer pursuant to S20-10 (one Senator, seconded by two other Senators);

(9) a motion to approve a bill conferring immunity from suit as described in Article II, section 18, of the Montana Constitution (two-thirds);

(10) a motion to approve a bill to appropriate the principal of the tobacco settlement trust fund pursuant to Article XII, section 4, of the Montana Constitution (two-thirds); and

(11) a motion to appropriate the principal of the noxious weed management trust fund pursuant to Article IX, section 6, of the Montana Constitution (three-fourths).

Adopted January 10, 2013

## SENATE RESOLUTION NO. 2

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA RAISING CONCERNS ABOUT POTENTIAL CHANGES TO THE OPERATION AND ADMINISTRATION OF FEDERAL POWER MARKETING ADMINISTRATIONS.

WHEREAS, the Montana Senate is concerned about outcomes resulting from Department of Energy Secretary Steven Chu's March 16, 2012, memorandum that may affect Western Area Power Administration and Bonneville Power Administration and its Montana electricity customers; and

WHEREAS, the memo states there will be directives issued to the federal Power Marketing Administration administrators related to the broadly stated initiatives contained in the memorandum; and

WHEREAS, these directives could harm the nearly 50% of Montanans whose electric bills are based on the underlying preference power from federal Power Marketing Administrations and the Montana Legislature has a stake in the outcome of this initiative; and

WHEREAS, the federal Department of Energy asserts it has conducted a "robust" process of public involvement in the development of recommendations to implement the initiatives by holding five public 1-day workshops and six listening sessions in cities across the western United States; and

WHEREAS, a committee composed of Western Area Power Administration and Department of Energy employees, known as the Joint Outreach Team, met in nonpublic work sessions to develop its draft recommendations; and

WHEREAS, the Montana Senate does not consider these nonpublic Joint Outreach Team meetings either robust or public; and

WHEREAS, the Western Area Power Administration has an outstanding history of being an electric industry leader; and

WHEREAS, the Montana Senate is appreciative that the Western Area Power Administration and Department of Energy Joint Outreach Team leaders attended a joint session of the Montana House and Senate energy committees on January 9, 2013, to share the outcomes of their report; and

WHEREAS, the Joint Outreach Team is planning to make final recommendations to the Secretary of Energy in January 2013.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That if the final recommendations are consistent with what the Joint Outreach Team leaders shared during their January 9, 2013, visit to Montana, these recommendations would:

(1) be much narrower in scope than the present draft report;

(2) contain greater recognition of the superb job Western Area Power Administration has done and is doing in the areas covered in the report;

(3) ensure change is incremental, not wholesale; and

(4) most important, provide economic protections to Montana preference customers.

BE IT FURTHER RESOLVED, that although the Montana Senate supports actions to increase efficiency, actions that create cost shifts to Montana preference customers who have paid their way are unacceptable.

BE IT FURTHER RESOLVED, that the Montana Senate requests that, in the future, the Department of Energy make a greater effort to notify the Legislature of actions impacting Montana citizens in advance of public hearings rather than leaving the Legislature to first hear about these Department of Energy actions from its constituents.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the members of Montana's Congressional Delegation and to the U.S. Secretary of Energy.

Adopted January 19, 2013

## SENATE RESOLUTION NO. 3

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA PROVIDING RECOMMENDATIONS ON THE LEGISLATIVE REDISTRICTING PLAN TO THE MONTANA DISTRICTING AND APPORTIONMENT COMMISSION.

WHEREAS, the Montana Districting and Apportionment Commission submitted its legislative redistricting plan to the Legislature on January 8, 2013, as required by Article V, section 14, of the Montana Constitution; and

WHEREAS, the Commission adopted criteria to guide the drawing of district lines that preserve the principle of "one person, one vote"; and

WHEREAS, the Senate recognizes that the Commission established a maximum 3% population deviation, which surpasses the standard of a 5% population deviation, and commends the Commission for accomplishing a deviation of less than 1% for both House and Senate Districts; and

WHEREAS, the Commission formed districts that successfully comply with all requirements of the federal Voting Rights Act and that protect the voting rights of minority populations; and

WHEREAS, the Senate contends that criteria directing the creation of compact and contiguous districts that preserve communities of interest and, when possible, follow the lines of political and geographic boundaries have not been satisfactorily adhered to; and

WHEREAS, the Senate contends that pairings of House Districts made to form Senate Districts fracture communities of interest, particularly the assignments of House Districts 73, 74, 75, 76, 77, and 79 in Deer Lodge, Jefferson, and Silver Bow Counties; and

WHEREAS, pairing House Districts 75 and 78 results in a Senate District that is primarily rural in nature and pairing House Districts 73 and 76 and House Districts 74 and 77 results in two Senate Districts that are tied together by common interests, including the historical copper mining industry; and

WHEREAS, the Senate contends that the Commission split Lake County into four different Senate Districts, ignoring communities of interest and county political boundaries; and

WHEREAS, the Senate contends that holdover Senator Webb has been assigned to a Senate District predominantly composed of citizens who have never had the opportunity to vote for him, when it is possible to assign him to a district that includes more than 80% of the population from his original Senate District; and

WHEREAS, the Legislature is required to return the plan to the Commission with its recommendations on or before February 7, 2013.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate urges the passage of amendments necessary for the Legislative Redistricting Plan to conform to the Commission's established

criteria. To this end, the Senate recommends that the Commission consider the following amendments:

(1) preserve both compactness and communities of interest by reassigning the following House Districts into Senate District pairings: House Districts 73 and 76, House Districts 74 and 77, and House Districts 75 and 78. The House District lines for Districts 74 and 77 should be moved together in order to meet the contiguous standard in the Commission's criteria.

(2) reassign Senator Webb from Senate District 23 to Senate District 22, which includes the communities from which he was originally elected.

BE IT FURTHER RESOLVED, that a copy of this resolution be kept on file by the Secretary of State and that copies be sent by the Secretary of State to the presiding officer and each member of the Montana Districting and Apportionment Commission.

Adopted February 7, 2013

## SENATE RESOLUTION NO. 5

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT MADE BY THE CHIEF JUSTICE OF THE MONTANA SUPREME COURT AND SUBMITTED TO THE SENATE OF THE HONORABLE WILLIAM RUSSELL MCELYEA AS ASSOCIATE WATER JUDGE OF THE STATE OF MONTANA.

WHEREAS, Chief Justice Mike McGrath of the Montana Supreme Court made the appointment, below designated, pursuant to an Order of the Court, dated May 29, 2012; and

WHEREAS, the following appointment has been submitted to the Senate:

William Russell McElyea as Associate Water Judge of the State of Montana, to serve a 4-year term commencing July 1, 2012, and ending June 30, 2016.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment.

BE IT FURTHER RESOLVED, that the Secretary of the Senate immediately deliver a copy of this resolution, certified by the President and Secretary of the Senate, to the Secretary of State and a copy, certified by the Secretary of the Senate, to the Governor pursuant to section 5-5-303, MCA.

Adopted March 26, 2013

## SENATE RESOLUTION NO. 6

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT AS THE WORKERS' COMPENSATION JUDGE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Workers' Compensation Court Judge of the State of Montana, in accordance with section 2-15-1702, MCA:

Mr. James Shea, Helena, Montana, appointed to a 6-year term commencing September 6, 2011, and ending September 6, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 26, 2013

## SENATE RESOLUTION NO. 7

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF CRIME CONTROL, THE BOARD OF PRIVATE SECURITY, AND THE PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As a member of the Board of Crime Control, in accordance with section 2-15-2006, MCA:

Tara Jensen, Missoula, Montana, appointed to a term ending January 1, 2015.

(2) As members of the Board of Private Security, in accordance with section 2-15-1781, MCA:

Raymond Murray, Missoula, Montana, appointed to a term ending August 1, 2014;

Holly Dershem-Bruce, Glendive, Montana, appointed to a term ending August 1, 2014;

Daniel Taylor, Glasgow, Montana, appointed to a term ending August 1, 2015;

Leo C. Dutton, Helena, Montana, appointed to a term ending August 1, 2015;

Tom Mangan, Helena, Montana, appointed to a term ending August 1, 2015;

(3) As members of the Public Safety Officer Standards and Training Council, in accordance with section 44-4-402, MCA:

Mike Anderson, Montana City, Montana, appointed to a term ending January 1, 2015;

Hal Harper, Helena, Montana, appointed to a term ending January 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this

resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 4, 2013

## SENATE RESOLUTION NO. 8

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Alternative Health Care Board, in accordance with section 2-15-1730, MCA:

Anne Camber, Libby, Montana, for a term ending September 1, 2015.

Christine White Deeble, Missoula, Montana, for a term ending September 1, 2016.

Phyllis Lefon, Clancy, Montana, for a term ending September 1, 2014.

Nancy Patterson, Great Falls, Montana, for a term ending September 1, 2015.

(2) As members of the Board of Chiropractors, in accordance with section 2-15-1737, MCA:

Lee S. Hudson, Great Falls, Montana, for a term ending January 1, 2015.

Alice Whiteman, Missoula, Montana, for a term ending January 1, 2015.

(3) As members of the Board of Clinical Laboratory Science Practitioners, in accordance with section 2-15-1753, MCA:

Carl Donovan, Great Falls, Montana, for a term ending April 16, 2015.

Sarah Kolar, Lewistown, Montana, for a term ending April 16, 2015.

Troy Krieger, Billings, Montana, for a term ending April 16, 2016.

Vicki Rice, Helena, Montana, for a term ending April 16, 2015.

(4) As members of the Board of Dentistry, in accordance with section 2-15-1732, MCA:

Clifford Christenot, Libby, Montana, for a term ending March 29, 2017.

David W. Johnson, Great Falls, Montana, for a term ending March 29, 2017.

James Madison, Jefferson City, Montana, for a term ending March 29, 2017.

Lorraine Merrick, Helena, Montana, for a term ending March 29, 2017.

(5) As members of the Board of Hearing Aid Dispensers, in accordance with section 2-15-1740, MCA:

Wyman McDonald, Ronan, Montana, for a term ending July 1, 2014.

Alfred McLees, Billings, Montana, for a term ending July 1, 2015.

Mary Eve Tolbert, Saint Ignatius, Montana, for a term ending July 1, 2014.

Rebecca Wisnoskie, Helena, Montana, for a term ending July 1, 2015.

(6) As members of the Board of Massage Therapy, in accordance with section 2-15-1782, MCA:

Stacy J. Baird, East Helena, Montana, for a term ending May 6, 2016.

Carole Love, Billings, Montana, for a term ending May 6, 2013.

Lyndsay Schott, Whitefish, Montana, for a term ending May 6, 2015.

(7) As members of the Board of Medical Examiners, in accordance with section 2-15-1731, MCA:

Tanja A. Brekke, Bozeman, Montana, for a term ending September 1, 2015.

Dean Center, Bozeman, Montana, for a term ending September 1, 2016.

Charles Farmer, Cut Bank, Montana, for a term ending September 1, 2013.

Mary Anne Guggenheim, Helena, Montana, for a term ending September 1, 2015.

James Upchurch, Hardin, Montana, for a term ending September 1, 2015.

(8) As members of the Board of Nursing, in accordance with section 2-15-1734, MCA:

Heather O'Hara, Helena, Montana, for a term ending July 1, 2016.

Patsy Reece, Rexford, Montana, for a term ending July 1, 2015.

Tammy Talley, Missoula, Montana, for a term ending July 1, 2016.

Laura Weiss, Great Falls, Montana, for a term ending July 1, 2015.

(9) As members of the Board of Nursing Home Administrators, in accordance with section 2-15-1735, MCA:

Joshua Brown, Bozeman, Montana, for a term ending May 28, 2017.

Carla Neiman, Plains, Montana, for a term ending May 28, 2017.

(10) As members of the Board of Pharmacy, in accordance with section 2-15-1733, MCA:

Shirley Baumgartner, Glasgow, Montana, for a term ending July 1, 2016.

Marian Jensen, Butte, Montana, for a term ending July 1, 2017.

(11) As members of the Board of Physical Therapy Examiners, in accordance with section 2-15-1748, MCA:

Christian Appel, Bozeman, Montana, for a term ending July 1, 2015.

Dana Hughes, Conrad, Montana, for a term ending July 1, 2015.

Brian Miller, Kalispell, Montana, for a term ending July 1, 2014.

Kathy van Hook, Helena, Montana, for a term ending July 1, 2015.

(12) As a member of the Board of Plumbers, in accordance with 2-15-1765, MCA:

Jeffrey Gruizenga, Billings, Montana, for a term ending May 4, 2016.

(13) As members of the Board of Psychologists, in accordance with section 2-15-1741, MCA:

Linda Holden, Valier, Montana, for a term ending September 1, 2017.

Marla Lemons, Butte, Montana, for a term ending September 1, 2016.

(14) As members of the Board of Radiologic Technologists, in accordance with section 2-15-1738, MCA:

Kelli Bush, Butte, Montana, for a term ending July 1, 2015.

Sharlett Dale, Harlowton, Montana, for a term ending July 1, 2015.

(15) As members of the Board of Sanitarians, in accordance with section 2-15-1751, MCA:

Susan K. Brueggeman, Polson, Montana, for a term ending July 1, 2014.

Rodney Fink, Columbus, Montana, for a term ending July 1, 2015.

Eugene Pizzini, East Helena, Montana, for a term ending July 1, 2014.

Gene Townsend, Three Forks, Montana, for a term ending July 1, 2014.

(16) As members of the Board of Speech-Language Pathologists and Audiologists, in accordance with section 2-15-1739, MCA:

Lynn Harris, Missoula, Montana, for a term ending December 31, 2014.

Tina Hoagland, Billings, Montana, for a term ending December 31, 2014.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 18, 2013

## SENATE RESOLUTION NO. 9

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA ACKNOWLEDGING THE IDLE NO MORE MOVEMENT IN CANADA.

WHEREAS, the Idle No More movement began with four women in Saskatchewan, Canada, who shared a vision of bringing people together to recognize and honor indigenous sovereignty and to protect the land, water, and environment for the future, and sparked a global grassroots movement; and

WHEREAS, the goals of Idle No More are ongoing education and the revitalization of indigenous peoples' cultures, languages, and human rights and research and education about sustainable development; and

WHEREAS, treaties have been in place between the Queen of England and the First Nations of Canada that predate the existing 1982 Constitution of Canada and the Idle No More movement is seeking to have Canada respect those treaties; and

WHEREAS, indigenous peoples and tribes in Montana have close ties with the First Nations, support their relations in Canada, and share similar experiences; and

WHEREAS, the Montana Senate supports the individual and collective rights of indigenous peoples, as well as their rights to culture, identity, language, employment, health, and education; and

WHEREAS, the Montana Senate supports the rights of indigenous peoples to maintain and strengthen their own institutions, cultures, and traditions and to pursue their development in keeping with their own needs and aspirations; and

WHEREAS, the Montana Senate strongly disapproves of any discrimination against indigenous peoples and promotes full and effective participation in all matters that concern them and the right to remain distinct and to pursue their own visions of economic and social development.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

(1) That the Montana Senate acknowledges the Idle No More movement in Canada and around the world.

(2) That the Montana Senate is committed to improved relationships with tribes and tribal leaders and all indigenous individuals and communities in the United States.

(3) That the Secretary of State send a copy of this resolution to the United States Secretary of State John F. Kerry, the United States Permanent Representative to the United Nations Susan Rice, and the Montana Congressional Delegation of Senator Max Baucus, Senator Jon Tester, and Representative Steve Daines.

Adopted March 6, 2013

## SENATE RESOLUTION NO. 10

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF WATER WELL CONTRACTORS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Board of Water Well Contractors, in accordance with section 2-15-3307, MCA:

Mr. Kevin Haggerty, Bozeman, Montana, appointed to a term ending July 1, 2015.

Mr. Pat Byrne, Great Falls, Montana, appointed to a term ending July 1, 2013.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 15, 2013

## SENATE RESOLUTION NO. 11

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF VETERINARY MEDICINE, BOARD OF HAIL INSURANCE, AND BOARD OF HORSERACING MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of Veterinary Medicine, in accordance with section 2-15-1742, MCA:

Rebecca Mattix, Bozeman, Montana, appointed to a term ending July 31, 2016.

Barbara Calm, Kila, Montana, appointed to a term ending July 31, 2017.

(2) As a member of the Board of Hail Insurance, in accordance with section 2-15-3003, MCA:

Trudy Laas Skari, Big Arm, Montana, appointed to a term ending April 18, 2015.

(3) As members of the Board of Horseracing, in accordance with section 2-15-3106, MCA:

Allen Fisher, Ashland, Montana, appointed to a term ending January 20, 2015.

John Hayes, Great Falls, Montana, appointed to a term ending January 20, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 26, 2013

## SENATE RESOLUTION NO. 12

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 22, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Pacific Northwest Electric Power and Conservation Planning Council, in accordance with section 90-4-402, MCA:

Mr. Pat Smith, Arlee, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 12, 2013

## SENATE RESOLUTION NO. 13

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL MADE BY THE GOVERNOR AND

SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 22, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Pacific Northwest Electric Power and Conservation Planning Council, in accordance with section 90-4-402, MCA:

Ms. Jennifer Anders, Clancy, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 12, 2013

## SENATE RESOLUTION NO. 14

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE DIRECTOR OF AGRICULTURE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 22, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA.

As Director of Agriculture, in accordance with sections 2-15-111 and 2-15-3001, MCA:

Mr. Ron de Yong, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 22, 2013

## SENATE RESOLUTION NO. 15

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE DIRECTOR OF THE DEPARTMENT OF TRANSPORTATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 22, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As the Director of the Department of Transportation, in accordance with sections 2-15-111 and 2-15-2501, MCA:

Michael T. Tooley, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 16, 2013

## SENATE RESOLUTION NO. 16

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE DIRECTOR OF REVENUE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 22, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of Revenue, in accordance with sections 2-15-111 and 2-15-1302, MCA:

Mr. Mike Kadas, Missoula, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 16, 2013

## SENATE RESOLUTION NO. 17

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO AN APPOINTMENT TO THE BOARD OF FUNERAL SERVICE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Funeral Service, in accordance with section 2-15-1743, MCA:

Mr. John Tarr, Helena, Montana, appointed to a term ending July 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 26, 2013

## SENATE RESOLUTION NO. 18

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE COMMISSIONER OF THE DEPARTMENT OF LABOR AND INDUSTRY MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 22, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Commissioner of the Department of Labor and Industry, in accordance with sections 2-15-111 and 2-15-1701, MCA:

Ms. Pam Bucy, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 13, 2013

## SENATE RESOLUTION NO. 19

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE DIRECTOR OF THE DEPARTMENT OF COMMERCE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 22, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Commerce, in accordance with sections 2-15-111 and 2-15-1801, MCA:

Ms. Meg O'Leary, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 13, 2013

## SENATE RESOLUTION NO. 20

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE STATE TAX APPEAL BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 26, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the State Tax Appeal Board, in accordance with section 15-2-101, MCA:

Mr. Dave McAlpin, Missoula, Montana, appointed to a term ending January 1, 2019.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 22, 2013

## SENATE RESOLUTION NO. 21

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 22, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA.

As Director of the Department of Public Health and Human Services, in accordance with sections 2-15-111 and 2-15-2201, MCA:

Mr. Richard Opper, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 20, 2013

## SENATE RESOLUTION NO. 22

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE PUBLIC EMPLOYEES' RETIREMENT BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Public Employees' Retirement Board, in accordance with section 2-15-1009, MCA:

Mr. Bob Bugni, East Helena, Montana, appointed to a term ending April 1, 2014;

Ms. Melissa Strecker, Missoula, Montana, appointed to a term ending April 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 8, 2013

## SENATE RESOLUTION NO. 23

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF VETERANS' AFFAIRS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Board of Veterans' Affairs, in accordance with section 2-15-1205, MCA:

Mr. Joseph Tropila, Great Falls, Montana, appointed to a term ending August 1, 2015;

Mr. David E. Boyd, Poplar, Montana, appointed to a term ending August 1, 2015;

Mr. Gary Sorensen, Missoula, Montana, appointed to a term ending August 1, 2015;

Mr. William Willing, Anaconda, Montana, appointed to a term ending August 1, 2015;

Ms. Sarah Price, Helena, Montana, appointed to a term ending August 1, 2014;

Ms. Anita Oldbull Big Man, Billings, Montana, appointed to a term ending August 1, 2015;

Mr. Peter Olson, Culbertson, Montana, appointed to a term ending August 1, 2016.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 2, 2013

## SENATE RESOLUTION NO. 25

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE DIRECTOR OF THE DEPARTMENT OF MILITARY AFFAIRS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 22, 2013.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As the Director of the Department of Military Affairs, Adjutant General, in accordance with sections 2-15-111 and 2-15-1202, MCA:

Major General Matthew Quinn, Missoula, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 26, 2013

## SENATE RESOLUTION NO. 26

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE DIRECTOR OF THE DEPARTMENT OF

ADMINISTRATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 22, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the following appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As director of the Department of Administration, in accordance with sections 2-15-111 and 2-15-1001, MCA:

Ms. Sheila Hogan, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 22, 2013

## SENATE RESOLUTION NO. 27

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 22, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As the Director of the Department of Corrections, in accordance with sections 2-15-111 and 2-15-2301, MCA:

Mike Batista, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 26, 2013

## SENATE RESOLUTION NO. 28

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE DIRECTOR OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS MADE BY THE GOVERNOR AND SUBMITTED BY

WRITTEN COMMUNICATION DATED FEBRUARY 22, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Fish, Wildlife, and Parks, in accordance with sections 2-15-111 and 2-15-3401, MCA:

Mr. M. Jeff Hagener, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 23, 2013

## SENATE RESOLUTION NO. 29

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO APPOINTMENTS TO THE MONTANA HISTORICAL SOCIETY BOARD OF TRUSTEES MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Montana Historical Society Board of Trustees, in accordance with section 22-3-104, MCA:

Ms. B. Leslie Halligan, Missoula, Montana, appointed to a term ending July 1, 2017.

Mr. Kent Kleinkopf, Missoula, Montana, appointed to a term ending July 1, 2017.

Mr. Stephen Lozar, Polson, Montana, appointed to a term ending July 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 2, 2013

## SENATE RESOLUTION NO. 30

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO APPOINTMENT

TO THE BOARD OF PUBLIC EDUCATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Public Education in accordance with section 2-15-1508, MCA:

Ms. Sharon Carroll, Ekalaka, Montana, appointed to a term ending February 1, 2019.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 4, 2013

## SENATE RESOLUTION NO. 31

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Board of Private Alternative Adolescent Residential or Outdoor Programs, in accordance with section 2-15-1745, MCA:

Mr. Tim Callahan, Great Falls, Montana, appointed to a term ending April 19, 2014.

Ms. Penny James, Trout Creek, Montana, appointed to a term ending April 19, 2014.

Ms. Darcie Kelly, Helena, Montana, appointed to a term ending April 19, 2014.

Mr. John Santa, Marion, Montana, appointed to a term ending April 19, 2014.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 19, 2013

## SENATE RESOLUTION NO. 32

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE MONTANA ARTS COUNCIL MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Montana Arts Council, in accordance with section 22-2-102, MCA:

Ms. Cynthia Andrus, Bozeman, Montana, appointed to a term ending February 1, 2017.

Ms. Jane Waggoner Deschner, Billings, Montana, appointed to a term ending February 1, 2017.

Mr. J.P. Gabriel, Bozeman, Montana, appointed to a term ending February 1, 2017.

Mr. Allen Secher, Whitefish, Montana, appointed to a term ending February 1, 2017.

Ms. Judy Ulrich, Dillon, Montana, appointed to a term ending February 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 2, 2013

## SENATE RESOLUTION NO. 34

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA INVITING FIREARMS MANUFACTURERS AND FIREARMS ACCESSORY MANUFACTURERS THREATENED BY HOSTILE LAWS IN OTHER STATES TO MOVE TO MONTANA.

WHEREAS, some states have enacted laws or are considering enacting laws that would prohibit the possession of certain firearms or of certain firearms accessories; and

WHEREAS, these laws may make it impossible for existing manufacturers to remain in or legally do business in those states; and

WHEREAS, many firearms and firearms accessory manufacturers are examining options for relocating their manufacturing to a more firearms-friendly location; and

WHEREAS, Montana is a firearms-friendly state with a good legal infrastructure for firearms possession, use, and manufacture; and

WHEREAS, Montana has a well-educated workforce of people with a strong work ethic and with a culture of firearms knowledge and tolerance; and

WHEREAS, Montana offers space, beauty, and a great place to live and work.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That Montana says to threatened firearms manufacturers and firearms accessory manufacturers: "Come to Montana. We want you here!"; and

BE IT FURTHER RESOLVED, that Montana says: "Montana is open for business for manufacturers of firearms and firearm accessories"; and

BE IT FURTHER RESOLVED, that the Secretary of State is encouraged to coordinate with firearm-related groups and businesses existing in Montana to develop contacts with manufacturers of firearms and firearm accessories in other states and deliver this resolution to them; and

BE IT FURTHER RESOLVED, that Governor Steve Bullock is urged to actively seek out any manufacturers of firearms and firearms accessories to encourage them to move to Montana and to aid these manufacturers in relocation in whatever way may be possible.

Adopted April 13, 2013

## SENATE RESOLUTION NO. 35

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF PERSONNEL APPEALS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Governor pursuant to section 5-5-302, MCA:

As members of the Board of Personnel Appeals, in accordance with section 2-15-1705, MCA:

Mr. Richard Parish, Helena, Montana, as a substitute member, appointed to a term ending January 1, 2015.

Ms. Anne L. MacIntyre, East Helena, Montana, as chairperson, appointed to a term ending January 1, 2016.

Mr. Max Hallfrisch, Great Falls, Montana, as a substitute member, appointed to a term ending January 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 2, 2013

## SENATE RESOLUTION NO. 36

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE

APPOINTMENTS TO CERTAIN PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Architects and Landscape Architects, in accordance with section 2-15-1761, MCA:

Mr. Dale Nelson, Great Falls, Montana, appointed to a term ending March 27, 2015.

As members of the State Electrical Board, in accordance with section 2-15-1764, MCA:

Ms. Dawn Achten, Billings, Montana, appointed to a term ending July 1, 2016.

Mr. Keith Simendinger, Helena, Montana, appointed to a term ending July 1, 2017.

As a member of the Board of Occupational Therapy Practice, in accordance with section 2-15-1749, MCA:

Ms. Sanna Beerman, Black Eagle, Montana, appointed to a term ending December 31, 2015.

As a member of the Board of Optometry, in accordance with section 2-15-1736, MCA:

Mr. Randall Hoch, Lewistown, Montana, appointed to a term ending April 3, 2016.

As members of the Board of Professional Engineers and Professional Land Surveyors, in accordance with section 2-15-1763, MCA:

Mr. Casey E. Johnston, Butte, Montana, appointed to a term ending July 1, 2015.

Mr. Ruhul Amin, Bozeman, Montana, appointed to a term ending July 1, 2015.

Ms. Ingrid Clare Lovitt-Abramson, Missoula, Montana, appointed to a term ending July 1, 2015.

Ms. Jane L. Eby, Kalispell, Montana, appointed to a term ending July 1, 2015.

As members of the Board of Public Accountants, in accordance with section 2-15-1756, MCA:

Mr. Wayne Hintz, Helena, Montana, appointed to a term ending July 1, 2014.

Ms. Beatrice Rosenleaf, Anaconda, Montana, appointed to a term ending July 1, 2016.

Mr. Jack Meyer, Missoula, Montana, appointed to a term ending July 1, 2016.

As members of the Board of Real Estate Appraisers, in accordance with section 2-15-1758, MCA:

Mr. Thomas G. Stevens, Missoula, Montana, appointed to a term ending May 1, 2014.

Ms. Julie Forbes, Jefferson City, Montana, appointed to a term ending May 1, 2015.

Ms. Lori Christophersen, Bozeman, Montana, appointed to a term ending May 1, 2015.

Mr. George Simek, Billings, Montana, appointed to a term ending May 1, 2014.

As a member of the Board of Realty Regulation, in accordance with section 2-15-1757, MCA:

Mr. Pat M. Goodover II, Great Falls, Montana, appointed to a term ending May 9, 2016.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 2, 2013

## SENATE RESOLUTION NO. 37

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF RESEARCH AND COMMERCIALIZATION TECHNOLOGY MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Governor pursuant to section 5-5-302, MCA:

As members of the Board of Research and Commercialization Technology, in accordance with section 2-15-1819, MCA:

Mr. Tom Tanner, Arlee, Montana, appointed to a term ending July 1, 2014.

Mr. Jim Davison, Anaconda, Montana, appointed to a term ending July 1, 2013.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 2, 2013

## SENATE RESOLUTION NO. 38

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE STATE BANKING BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Governor pursuant to section 5-5-302, MCA:

As members of the State Banking Board, in accordance with section 2-15-1025, MCA:

Mr. Josh Webber, Denton, Montana, appointed to a term ending July 1, 2014.

Ms. Maureen Fleming, Missoula, Montana, appointed to a term ending July 1, 2014.

Mr. Jack Johnson, Billings, Montana, appointed to a term ending July 1, 2015.

Mr. Phil G. Gaglia, Billings, Montana, appointed to a term ending July 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 2, 2013

## SENATE RESOLUTION NO. 39

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF BARBERS AND COSMETOLOGISTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Governor pursuant to section 5-5-302, MCA:

As members of the Board of Barbers and Cosmetologists, in accordance with section 2-15-1747, MCA:

Ms. Juanita Mace, Billings, Montana, appointed to a term ending October 1, 2016.

Ms. Darlene Battaiola, Butte, Montana, appointed to a term ending October 1, 2016.

Ms. Angela Printz, Livingston, Montana, appointed to a term ending October 1, 2017.

Mr. Thayne Orton, Florence, Montana, appointed to a term ending October 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this

resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 2, 2013

## SENATE RESOLUTION NO. 40

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF DEPARTMENT OF ENVIRONMENTAL QUALITY DIRECTOR TRACY STONE-MANNING MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 22, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Environmental Quality, in accordance with sections 2-15-111 and 2-15-3501, MCA:

Ms. Tracy Stone-Manning, Missoula, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 22, 2013

## SENATE RESOLUTION NO. 41

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 22, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Natural Resources and Conservation, in accordance with sections 2-15-111 and 2-15-3301, MCA:

Mr. John Tubbs, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this

resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 12, 2013

## SENATE RESOLUTION NO. 43

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF LIVESTOCK AND THE LIVESTOCK LOSS BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 26, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As a member of the Board of Livestock, in accordance with section 2-15-3102, MCA:

Mr. John Lehfeldt, Lavina, Montana, appointed to a term ending January 1, 2019.

Mr. John Scully, Ennis, Montana, appointed to a term ending January 1, 2019.

(2) As a member of the Livestock Loss Board, in accordance with section 2-15-3110, MCA:

Mrs. Whitney Klasna, Lambert, Montana, appointed to a term ending January 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby

concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 18, 2013

## SENATE RESOLUTION NO. 44

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO AN APPOINTMENT TO THE BOARD OF REGENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Regents, in accordance with section 2-15-1508, MCA:

Mr. Jeffrey K. Krauss, Bozeman, Montana, appointed to a term ending February 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 12, 2013

## SENATE RESOLUTION NO. 45

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO AN APPOINTMENT TO THE BOARD OF REGENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Regents, in accordance with section 2-15-1508, MCA:

Mr. Joseph Thiel, Bozeman, Montana, appointed to a term ending June 30, 2013.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 12, 2013

## SENATE RESOLUTION NO. 46

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO AN APPOINTMENT TO THE BOARD OF PUBLIC EDUCATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 6, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Public Education in accordance with section 2-15-1508, MCA:

Mr. Paul Andersen, Bozeman, Montana, appointed to a term ending February 1, 2020.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this

resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 18, 2013

## SENATE RESOLUTION NO. 48

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO APPOINTMENTS TO THE BOARD OF REGENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 6, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Board of Regents in accordance with section 2-15-1508, MCA:

Mr. Major Robinson, Billings, Montana, appointed to a term ending February 1, 2018.

Mr. Paul Tuss, Havre, Montana, appointed to a term ending February 1, 2020.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 18, 2013

## SENATE RESOLUTION NO. 49

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO CERTAIN BOARDS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 15, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As a member of the Board of Clinical Laboratory Science Practitioners, in accordance with section 2-15-1753, MCA:

Mrs. Alison Mizner, Kalispell, Montana, appointed to a term ending April 16, 2017.

(2) As a member of the Board of Chiropractors, in accordance with section 2-15-1737, MCA:

Ms. Cathleen Fellows, Billings, Montana, appointed to a term ending January 1, 2016.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 22, 2013

## SENATE RESOLUTION NO. 50

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF DENTISTRY MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 26, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Dentistry, in accordance with 2-15-1732, MCA:

Mrs. Aimee Ameline, Great Falls, Montana, appointed to a term ending March 29, 2018.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 12, 2013

## SENATE RESOLUTION NO. 51

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE MONTANA FACILITY FINANCE AUTHORITY MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 15, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Montana Facility Finance Authority, in accordance with section 2-15-1815, MCA:

Mr. James Kearns, Townsend, Montana, appointed to a term ending January 1, 2017.

Mr. Richard King, Missoula, Montana, appointed to a term ending January 1, 2017.

Mr. Jon Marchi, Polson, Montana, appointed to a term ending January 1, 2017.

Mr. Larry Putnam, Helena, Montana, appointed to a term ending January 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 18, 2013

## SENATE RESOLUTION NO. 52

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF INVESTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 26, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Board of Investments, in accordance with section 2-15-1808, MCA:

Mrs. Kathy Bessette, Havre, Montana, appointed to a term ending January 1, 2017.

Mr. Mark Noennig, Billings, Montana, appointed to a term ending January 1, 2017, to be board chairman.

Mr. Jack Prothero, Great Falls, Montana, appointed to a term ending January 1, 2017.

Mrs. Marilyn Ryan, Missoula, Montana, appointed to a term ending January 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 18, 2013

## SENATE RESOLUTION NO. 53

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE PUBLIC EMPLOYEES' RETIREMENT BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 26, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Public Employees' Retirement Board, in accordance with section 2-15-1009, MCA:

Mr. Mike McGinley, Dillon, Montana, appointed to a term ending April 1, 2018.

Ms. Sheena Wilson, Helena, Montana, appointed to a term ending April 1, 2018.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 18, 2013

## SENATE RESOLUTION NO. 54

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF INVESTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 26, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Investments, in accordance with section 2-15-1808, MCA:

Ms. Sheena Wilson, Helena, Montana, appointed to a term ending January 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 12, 2013

## SENATE RESOLUTION NO. 55

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA URGING THE INTERNATIONAL OLYMPIC COMMITTEE TO KEEP WRESTLING AS PART OF THE SUMMER OLYMPICS PROGRAM; AND URGING THE UNITED STATES OLYMPIC COMMITTEE TO CONTINUE SUPPORTING THE EFFORT.

WHEREAS, the executive board of the International Olympic Committee has proposed eliminating the sport of wrestling from the Summer Olympic Games beginning in 2020, a proposal that will be approved or disapproved by the full International Olympic Committee at its September 2013 general assembly; and

WHEREAS, wrestling was one of the original sports of the ancient Greek Olympic Games and of the first modern Olympic Games; and

WHEREAS, wrestling has been a traditional strength of the United States Olympic team, with 124 medals having been awarded to the United States throughout history; and

WHEREAS, the State of Montana has a proud wrestling tradition that has produced Olympians and many celebrated wrestlers, including Kendall Cross, gold medalist in the 1996 Olympics Games; Gene Davis, bronze medalist in the 1976 Olympic Games; Mike Zadick, 2008 Olympic Games participant and 2006 World Silver Medalist; Bill Zadick, 2006 World Champion and 1996 NCAA Champion; and Brandon Eggum, 2001 World Silver Medalist; and

WHEREAS, the sport of wrestling builds great strength not only of body but also of character, including the virtues of self-confidence, self-discipline, courage, and sportsmanship; and

WHEREAS, wrestling has produced many outstanding national leaders, including United States presidents, United States Supreme Court justices, United States senators, members of the United States Congress, and business and military leaders, as well as many outstanding leaders in the State of Montana; and

WHEREAS, there are thousands of student athletes in the State of Montana that participate in wrestling; and

WHEREAS, the opportunity to win an Olympic gold medal is the motivation and drive for many wrestlers at different levels of competition, and without that ultimate goal, the sport will suffer at all levels, including high school.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate hereby urges the International Olympic Committee to keep wrestling as a core sport of the Summer Olympic Games.

BE IT FURTHER RESOLVED, that the Senate thanks the United States Olympic Committee for its continued support of wrestling and urges it to work actively toward retaining wrestling as an Olympic sport.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the International Olympic Committee, the United States Olympic Committee, and Richard Bender, Executive Director of USA Wrestling.

Adopted April 19, 2013

## SENATE RESOLUTION NO. 56

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO AN APPOINTMENT TO THE BOARD OF OIL AND GAS CONSERVATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 29, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Oil and Gas Conservation in accordance with section 2-15-3303, MCA:

Mr. John Evans, Butte, Montana, appointed to a term ending January 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 18, 2013

## SENATE RESOLUTION NO. 57

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO AN APPOINTMENT TO THE BOARD OF OIL AND GAS CONSERVATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 29, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Oil and Gas Conservation in accordance with section 2-15-3303, MCA:

Ms. Linda Nelson, Medicine Lake, Montana, appointed to a term ending January 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 18, 2013

## SENATE RESOLUTION NO. 59

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO AN APPOINTMENT TO THE BOARD OF OIL AND GAS CONSERVATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 29, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Oil and Gas Conservation in accordance with section 2-15-3303, MCA:

Mr. Wayne Smith, Valier, Montana, appointed to a term ending January 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 18, 2013

## SENATE RESOLUTION NO. 60

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF HAIL INSURANCE AND THE BOARD OF HORSERACING MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 29, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As a member of the Board of Hail Insurance, in accordance with section 2-15-3003, MCA:

Mr. Jim Schillinger, Baker, Montana, appointed to a term ending April 18, 2016.

(2) As members of the Board of Horseracing, in accordance with section 2-15-3106, MCA:

Ms. Susan Austin, Kalispell, Montana, appointed to a term ending January 1, 2017.

Mr. Dale Mahlum, Missoula, Montana, appointed to a term ending January 1, 2017.

Mr. Shawn Real Bird, Hardin, Montana, appointed to a term ending January 1, 2017.

Mr. Ralph Young, Columbus, Montana, appointed to a term ending January 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 18, 2013

## SENATE RESOLUTION NO. 61

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF AERONAUTICS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 29, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Board of Aeronautics, in accordance with section 2-15-2506, MCA:

Mr. Bill Hunt, Shelby, Montana, appointed to a term ending January 1, 2017.

Mrs. Tricia McKenna, Bozeman, Montana, appointed to a term ending January 1, 2017.

Mr. Fred Leistiko, Kalispell, Montana, appointed to a term ending January 1, 2017.

Mr. Roger Lincoln, Gildford, Montana, appointed to a term ending January 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 19, 2013

## SENATE RESOLUTION NO. 62

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE TRANSPORTATION COMMISSION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 29, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Transportation Commission in accordance with section 2-15-2502, MCA:

Mr. John Cobb, Augusta, Montana, appointed to a term ending January 1, 2017.

Mr. Rick Griffith, Butte, Montana, appointed to a term ending January 1, 2017.

Ms. Barb Skelton, Billings, Montana, appointed to a term ending January 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 19, 2013

# SENATE RESOLUTION NO. 63

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA URGING CONGRESS TO SUBMIT TO THE STATES FOR RATIFICATION A BALANCED BUDGET AMENDMENT TO THE UNITED STATES CONSTITUTION.

WHEREAS, with each passing year this nation becomes deeper in debt as federal government expenditures repeatedly exceed available revenue, so that the public debt of the United States is now approximately $16.6 trillion, or almost $53,000 for each man, woman, and child; and

WHEREAS, the last balanced budget presented was in 1998 by President Clinton, who presented the first balanced federal budget since 1969; and

WHEREAS, knowledgeable planning, fiscal prudence, and plain good sense require that the federal budget should not be manipulated to present the appearance of being in balance while, in fact, federal indebtedness continues to grow; and

WHEREAS, believing that fiscal irresponsibility at the federal level is the greatest threat that faces our nation, resulting in a lower standard of living, endangering economic opportunity, and jeopardizing national security now and for the next generation; and

WHEREAS, the principal functions of the United States Constitution include promoting the broadest principles of a government of, by, and for the people; setting forth the most fundamental responsibilities of government; and enumerating and limiting the powers of the government to protect the basic rights of the people; and

WHEREAS, the federal government's unlimited ability to borrow involves decisions of such magnitude, with such potentially profound consequences for the nation and its people, today and in the future, that it is an appropriate subject for limitation by the United States Constitution; and

WHEREAS, Article V of the United States Constitution vests the ultimate responsibility to approve or disapprove of amendments to the United States Constitution with the people of the several states, as represented by their elected legislatures; and

WHEREAS, many states have asked Congress to pass a balanced budget amendment to the United States Constitution to be submitted to the states for ratification, but Congress continues to fail to act.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the members of the Senate of the State of Montana request the members of the Congress of the United States to expeditiously pass, and to propose to the legislatures of the several states for ratification, an amendment to the United States Constitution requiring, in the absence of a national emergency, that the total of all federal appropriations made by the Congress for any fiscal year not exceed the total of all estimated federal revenue for that fiscal year.

BE IT FURTHER RESOLVED, that the legislatures of each of the several states comprising the United States be urged to apply to the Congress requesting the proposal for ratification of a balanced budget amendment to the United States Constitution.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Majority Leader of the United States Senate, the Speaker

of the United States House of Representatives, the members of Montana's Congressional delegation, and the presiding officers of each house of the legislatures of each of the other states.

Adopted April 16, 2013

## SENATE RESOLUTION NO. 64

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF HOUSING MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED FEBRUARY 26, 2013, AND MARCH 29, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Governor pursuant to section 5-5-302, MCA:

As members of the Board of Housing, in accordance with section 2-15-1814, MCA:

Mr. JP Crowley, Helena, Montana, appointed to a term ending January 1, 2017.

Ms. Ingrid FireMoon, Wolf Point, Montana, appointed to a term ending January 1, 2017.

Mr. Doug Kaercher, Havre, Montana, appointed to a term ending January 1, 2017.

Mr. Pat Melby, Helena, Montana, appointed to a term ending January 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to 5-5-303, MCA.

Adopted April 22, 2013

## SENATE RESOLUTION NO. 65

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF PERSONNEL APPEALS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 22, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate pursuant to section 5-5-302, MCA:

As members of the Board of Personnel Appeals, in accordance with section 2-15-1705, MCA:

Mr. James Reardon, Helena, Montana, reappointed to a term ending January 1, 2017.

Mr. Quinton Nyman, Helena, Montana, reappointed to a term ending January 1, 2017.

Ms. Rina Fontana Moore, Great Falls, Montana, appointed to a term ending January 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 22, 2013

## SENATE RESOLUTION NO. 66

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO CERTAIN PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 29, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate pursuant to section 5-5-302, MCA:

As a member of the Board of Optometry, in accordance with section 2-15-1736, MCA:

Dr. Marcus Kelley, Helena, Montana, appointed to a term ending April 3, 2017.

As members of the Board of Occupational Therapy Practice, in accordance with section 2-15-1749, MCA:

Ms. Caryn Kallay, Ronan, Montana, appointed to a term ending December 31, 2014.

Ms. Brenda Toner, Missoula, Montana, appointed to a term ending December 31, 2016.

Ms. Lora Wier, Choteau, Montana, appointed to a term ending December 31, 2016.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 22, 2013

## SENATE RESOLUTION NO. 67

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF CRIME CONTROL, THE PUBLIC

SAFETY OFFICER STANDARDS AND TRAINING COUNCIL, AND THE BOARD OF PARDONS AND PAROLE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED MARCH 15, 2013, AND MARCH 26, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of Crime Control, in accordance with section 2-15-2006, MCA:

Beth McLaughlin, Helena, Montana, appointed to a term ending January 1, 2015;

Nick Murnion, Fort Peck, Montana, appointed to a term ending January 1, 2017;

Pam Carbonari, Kalispell, Montana, appointed to a term ending January 1, 2017;

Curtis Harper, Billings, Montana, appointed to a term ending January 1, 2017;

Michelle Miller, Butte, Montana, appointed to a term ending January 1, 2017;

Leo Dutton, Helena, Montana, appointed to a term ending January 1, 2017;

William Dial, Whitefish, Montana, appointed to a term ending January 1, 2017;

James Cashell, Bozeman, Montana, appointed to a term ending January 1, 2017;

Laura Obert, Townsend, Montana, appointed to a term ending January 1, 2017;

Stephen McArthur, Butte, Montana, appointed to a term ending January 1, 2017;

William Hooks, Helena, Montana, appointed to a term ending January 1, 2015;

Mike Batista, Helena, Montana, appointed to a term ending January 1, 2015.

(2) As members of the Public Safety Officer Standards and Training Council, in accordance with section 44-4-402, MCA:

Tony Harbaugh, Miles City, Montana, appointed to a term ending January 1, 2017;

Mike Batista, Helena, Montana, appointed to a term ending January 1, 2017;

Laurel Bulson, Helena, Montana, appointed to a term ending January 1, 2017;

Jim Thomas, Canyon Creek, Montana, appointed to a term ending January 1, 2017;

Kimberly Burdick, Fort Benton, Montana, appointed to a term ending January 1, 2017;

William Dial, Whitefish, Montana, appointed to a term ending January 1, 2015;

James Cashell, Bozeman, Montana, appointed to a term ending January 1, 2017;

John Strandell, Helena, Montana, appointed to a term ending January 1, 2017.

(3) As members of the Board of Pardons and Parole in accordance with section 2-15-2302;

Pete Lawrenson, Missoula, Montana, appointed to a term ending January 1, 2017;

Coleen Magera, Plains, Montana, appointed to a term ending January 1, 2017;

Mary Kay Puckett, Helena, Montana, appointed to a term ending January 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 22, 2013

## SENATE RESOLUTION NO. 68

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE FISH, WILDLIFE, AND PARKS COMMISSION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 11, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Fish, Wildlife, and Parks Commission, in accordance with section 2-15-3402, MCA:

Mr. Matthew Tourtlotte, Billings, Montana, appointed to a term ending January 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 24, 2013

## SENATE RESOLUTION NO. 69

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE FISH, WILDLIFE, AND PARKS COMMISSION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 11, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Fish, Wildlife, and Parks Commission, in accordance with section 2-15-3402, MCA:

Mr. Richard Stuker, Chinook, Montana, appointed to a term ending January 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 24, 2013

## SENATE RESOLUTION NO. 70

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE FISH, WILDLIFE, AND PARKS COMMISSION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 11, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Fish, Wildlife, and Parks Commission, in accordance with section 2-15-3402, MCA:

Mr. Lawrence Wetsit, Wolf Point, Montana, appointed to a term ending January 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 24, 2013

## SENATE RESOLUTION NO. 72

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 12, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Private Alternative Adolescent Residential or Outdoor Programs, in accordance with section 2-15-1745, MCA:

Mr. Rick Johnson, Kalispell, Montana, appointed to a term ending April 19, 2014.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 19, 2013

## SENATE RESOLUTION NO. 73

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE MONTANA ARTS COUNCIL MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 12, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Montana Arts Council, in accordance with section 22-2-102, MCA:

Ms. Karen Bohlinger, Helena, Montana, appointed to a term ending February 2, 2018.

Mr. Corwin "Corky" Clairmont, Ronan, Montana, appointed to a term ending February 2, 2018.

Mr. Thomas Cordingley, Helena, Montana, appointed to a term ending February 2, 2018.

Ms. Arlene Parisot, Helena, Montana, appointed to a term ending February 2, 2018.

Mr. Jason "Jay" Pyette, Havre, Montana, appointed to a term ending February 2, 2018.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 23, 2013

## SENATE RESOLUTION NO. 74

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF PUBLIC ASSISTANCE MADE BY

THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 12, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Board of Public Assistance, in accordance with section 2-15-2203, MCA:

Ms. Amy Christensen, Helena, Montana, appointed to a term ending January 1, 2017.

Ms. Laura John, Missoula, Montana, appointed to a term ending January 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 23, 2013

## SENATE RESOLUTION NO. 75

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF AERONAUTICS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 12, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Aeronautics, in accordance with section 2-15-2506, MCA:

Mr. Walter McNutt, Sidney, Montana, appointed to a term ending January 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 22, 2013

## SENATE RESOLUTION NO. 76

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF ARCHITECTS AND LANDSCAPE

ARCHITECTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 12, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate pursuant to section 5-5-302, MCA:

As members of the Board of Architects and Landscape Architects, in accordance with section 2-15-1761, MCA:

Ms. Janet Cornish, Butte, Montana, reappointed to a term ending March 27, 2016.

Ms. Shelly Engler, Bozeman, Montana, reappointed to a term ending March 27, 2016.

Ms. Maire O'Neill, Bozeman, Montana, reappointed to a term ending March 27, 2016.

Mr. Nathan Steiner, appointed to a term ending March 27, 2016.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 23, 2013

## SENATE RESOLUTION NO. 77

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO CERTAIN BOARDS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 12, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As a member of the Board of Medical Examiners, in accordance with section 2-15-1731, MCA:

Mrs. Ana Diaz, Billings, Montana, appointed to a term ending September 1, 2013.

(2) As members of the Board of Respiratory Care Practitioners, in accordance with section 2-15-1750, MCA:

Mr. Leonard Bates, Wolf Creek, Montana, appointed to a term ending January 1, 2017.

Ms. Maria Clemons, Libby, Montana, appointed to a term ending January 1, 2017.

Mr. Rusty Davies, Billings, Montana, appointed to a term ending January 1, 2017.

Mr. Tony Jay Miller, Joplin, Montana, appointed to a term ending January 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 63rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 24, 2013

# 2012 BALLOT ISSUES

## Approved by Voters in the November 2012 General Election

# LEGISLATIVE REFERENDUM NO. 120

AN ACT REFERRED BY THE LEGISLATURE

AN ACT REQUIRING PARENTAL NOTIFICATION PRIOR TO AN ABORTION FOR A MINOR; PROVIDING FOR A JUDICIAL WAIVER OF NOTIFICATION; PROVIDING PENALTIES; REPEALING PRIOR STATUTES RELATING TO PARENTAL NOTIFICATION; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AMENDING SECTIONS 41-1-405 AND 47-1-104, MCA; REPEALING SECTIONS 50-20-201, 50-20-202, 50-20-203, 50-20-204, 50-20-205, 50-20-208, 50-20-209, 50-20-211, 50-20-212, AND 50-20-215, MCA; AND PROVIDING AN EFFECTIVE DATE.

LR-120 prohibits a physician from performing an abortion on a minor under 16 years of age unless a physician notifies a parent or legal guardian of the minor at least 48 hours prior to the procedure. Notice is not required if: (1) there is a medical emergency; (2) it is waived by a youth court in a sealed proceeding; or (3) it is waived by the parent or guardian. A person who performs an abortion in violation of the act, or who coerces a minor to have an abortion, is subject to criminal prosecution and civil liability.

THE COMPLETE TEXT OF HOUSE BILL NO. 627 (CH. 307, L. 2011), REFERRED BY LR-120

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 9] may be cited as the "Parental Notice of Abortion Act of 2011".

**Section 2. Legislative purpose and findings.** (1) The legislature finds that:

(a) immature minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences;

(b) the medical, emotional, and psychological consequences of abortion are sometimes serious and can be lasting, particularly when the patient is immature;

(c) the capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an abortion are not necessarily related;

(d) parents ordinarily possess information essential to a physician in the exercise of the physician's best medical judgment concerning the minor;

(e) parents who are aware that their minor daughter has had an abortion may better ensure that the daughter receives adequate medical care after the abortion; and

(f) parental consultation is usually desirable and in the best interests of the minor.

(2) The purpose of [sections 1 through 9] is to further the important and compelling state interests of:

(a) protecting minors against their own immaturity;

(b) fostering family unity and preserving the family as a viable social unit;

(c) protecting the constitutional rights of parents to rear children who are members of their household; and

(d) reducing teenage pregnancy and unnecessary abortion.

**Section 3. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Actual notice" means the giving of notice directly in person or by telephone.

(2) "Coerce" means to restrain or dominate the choice of a minor female by force, threat of force, or deprivation of food and shelter.

(3) "Emancipated minor" means a person under 18 years of age who is or has been married or who has been granted an order of limited emancipation by a court as provided in 41-3-438.

(4) "Medical emergency" means a condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of the woman's pregnancy to avert the woman's death or a condition for which a delay in treatment will create serious risk of substantial and irreversible impairment of a major bodily function.

(5) "Minor" means a female under 16 years of age who is not an emancipated minor.

(6) "Physical abuse" means any physical injury intentionally inflicted by a parent or legal guardian on a child.

(7) "Physician" means a person licensed to practice medicine under Title 37, chapter 3.

(8) "Sexual abuse" has the meaning given in 41-3-102.

**Section 4. Notice of parent required.** A physician may not perform an abortion upon a minor unless the physician has given at least 48 hours' actual notice to one parent or to the legal guardian of the pregnant minor of the physician's intention to perform the abortion. The actual notice may be given by a referring physician. The physician who performs the abortion must receive the written statement of the referring physician certifying that the referring physician has given actual notice. If actual notice is not possible after a reasonable effort, the physician or the physician's agent shall give alternate notice as provided in [section 5].

**Section 5. Alternative notification.** In lieu of the actual notice required by [section 4], notice may be made by certified mail addressed to the parent at the usual place of residence of the parent with return receipt requested and delivery restricted to the addressee, which means a postal employee may deliver the mail only to the authorized addressee. Time of delivery is considered to occur at noon on the next day on which regular mail delivery takes place after mailing.

**Section 6. Exceptions.** Notice is not required under [section 4 or 5] if:

(1) the attending physician certifies in the patient's medical record that a medical emergency exists and there is insufficient time to provide notice;

(2) notice is waived, in writing, by the person entitled to notice; or

(3) notice is waived under [section 8].

**Section 7. Coercion prohibited.** A parent, a guardian, or any other person may not coerce a minor to have an abortion. If a minor is denied financial support by the minor's parents, guardian, or custodian because of the minor's refusal to have an abortion, the minor must be considered an emancipated minor for the purposes of eligibility for public assistance benefits. The public assistance benefits may not be used to obtain an abortion.

**Section 8. Procedure for judicial waiver of notice.** (1) The requirements and procedures under this section are available to minors whether or not they are residents of this state.

(2) The minor may petition the youth court for a waiver of the notice requirement and may participate in the proceedings on the person's own behalf. The petition must include a statement that the petitioner is pregnant and is not emancipated. The court may appoint a guardian ad litem for the petitioner. A guardian ad litem is required to maintain the confidentiality of the proceedings. The youth court shall advise the petitioner of the right to assigned counsel and shall order the office of state public defender, provided for in 47-1-201, to assign counsel upon request.

(3) Proceedings under this section are confidential and must ensure the anonymity of the petitioner. All proceedings under this section must be sealed. The petitioner may file the petition using a pseudonym or using the petitioner's initials. All documents related to the petition are confidential and are not available to the public. The proceedings on the petition must be given preference over other pending matters to the extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings of fact and conclusions of law and rule within 48 hours of the time that the petition is filed unless the time is extended at the request of the petitioner. If the court fails to rule within 48 hours and the time is not extended, the petition is granted and the notice requirement is waived.

(4) If the court finds that the petitioner is competent to decide whether to have an abortion, the court shall issue an order authorizing the minor to consent to the performance or inducement of an abortion without the notification of a parent or guardian.

(5) The court shall issue an order authorizing the petitioner to consent to an abortion without the notification of a parent or guardian if the court finds that:

(a) there is evidence of physical abuse, sexual abuse, or emotional abuse of the petitioner by one or both parents, a guardian, or a custodian; or

(b) the notification of a parent or guardian is not in the best interests of the petitioner.

(6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss the petition.

(7) A court that conducts proceedings under this section shall issue written and specific findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence, findings, and conclusions be maintained.

(8) The supreme court may adopt rules providing an expedited confidential appeal by a petitioner if the youth court denies a petition. An order authorizing an abortion without notice is not subject to appeal.

(9) Filing fees may not be required of a pregnant minor who petitions a court for a waiver of parental notification or appeals a denial of a petition.

**Section 9. Criminal and civil penalties.** (1) A person convicted of performing an abortion in violation of [section 4 or 5] shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(2) Failure to provide the notice required under [section 4 or 5] is prima facie evidence in an appropriate civil action for a violation of a professional obligation. The evidence does not apply to issues other than failure to notify the parents or guardian. A civil action may be based on a claim that the failure to notify was the

result of a violation of the appropriate legal standard of care. Failure to provide notice is presumed to be actual malice pursuant to the provisions of 27-1-221. [Sections 1 through 9] do not limit the common-law rights of parents.

(3) A person who coerces a minor to have an abortion is guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. On a second or subsequent conviction, the person shall be fined an amount not less than $500 and not more than $50,000 and be imprisoned in the state prison for a term not less than 10 days and not more than 5 years, or both.

(4) A person not authorized to receive notice under [section 5] who signs a notice of waiver as provided in [section 6(2)] is guilty of a misdemeanor.

**Section 10.** Section 41-1-405, MCA, is amended to read:

**"41-1-405. Emergencies and special situations.** (1) A health professional may render or attempt to render emergency service or first aid, medical, surgical, dental, or psychiatric treatment, without compensation, to any injured person or any person regardless of age who is in need of immediate health care when, in good faith, the professional believes that the giving of aid is the only alternative to probable death or serious physical or mental damage.

(2) A health professional may render nonemergency services to minors for conditions that will endanger the health or life of the minor if services would be delayed by obtaining consent from spouse, parent, parents, or legal guardian.

(3) Consent may not be required of a minor who does not possess the mental capacity or who has a physical disability that renders the minor incapable of giving consent and who has no known relatives or legal guardians, if a physician determines that the health service should be given.

(4) Self-consent of minors does not apply to sterilization or abortion, except as provided in ~~Title 50, chapter 20, part 2~~ *[sections 1 through 9]*."

**Section 11.** Section 47-1-104, MCA, is amended to read:

**"47-1-104. Statewide system — structure and scope of services — assignment of counsel at public expense.** (1) There is a statewide public defender system, which must deliver public defender services in all courts in this state. The system is supervised by the commission and administered by the office.

(2) The commission shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The commission may establish a regional office to provide public defender services in each region, as provided in 47-1-215, establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

(3) ~~Beginning July 1, 2006, when~~ *When* a court orders the office to assign counsel, the office shall immediately assign a public defender qualified to provide the required services. The commission shall establish protocols to ensure that the office makes appropriate assignments in a timely manner.

(4) ~~Beginning July 1, 2006, a~~ *A* court may order the office to assign counsel under this chapter in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child Welfare Act, as provided in 41-3-425;

(iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

(v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

(vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

(vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116;

(ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and

(x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.

(b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:

(i) as provided for in 41-3-425;

(ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;

(iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;

(iv) for a minor who petitions for a waiver of parental notification requirements under the Parental Notice of Abortion Act, as provided in ~~50-20-212~~ *[section 8]*;

(v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; and

(c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a court-appointed special advocate or guardian ad litem in a

proceeding under the Montana Youth Court Act, Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of 47-1-216 to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest."

**Section 12. Repealer.** The following sections of the Montana Code Annotated are repealed:

50-20-201. Short title.

50-20-202. Legislative purpose and findings.

50-20-203. Definitions.

50-20-204. Notice of parent required.

50-20-205. Alternate notification.

50-20-208. Exceptions.

50-20-209. Coercion prohibited.

50-20-211. Reports.

50-20-212. Procedure for judicial waiver of notice.

50-20-215. Criminal and civil penalties.

**Section 13. Codification instruction.** [Sections 1 through 9] are intended to be codified as an integral part of Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to [sections 1 through 9].

**Section 14. Coordination instruction.** If both Senate Bill No. 97 and [this act] are passed and approved, then [this act] is void.

**Section 15. Effective date.** If approved by the electorate, [this act] is effective January 1, 2013.

**Section 16. Submission to electorate.** [This act] shall be submitted to the qualified electors of Montana at the general election to be held in November 2012 by printing on the ballot the full title of [this act] and the following:

☐ FOR requiring parental notification prior to abortion for a minor, providing for judicial waiver of notification, repealing prior statutes, and providing penalties.

☐ AGAINST requiring parental notification prior to abortion for a minor, providing for judicial waiver of notification, repealing prior statutes, and providing penalties.

Legislative Referendum No. 120 was approved by the following vote at the General Election held November 6, 2012:

| | |
|---|---|
| For: | 334,416 |
| Against: | 139,598 |

# LEGISLATIVE REFERENDUM NO. 121

AN ACT REFERRED BY THE LEGISLATURE

AN ACT DENYING CERTAIN STATE-FUNDED SERVICES TO ILLEGAL ALIENS; ESTABLISHING PROCEDURES FOR DETERMINING A PERSON'S CITIZENSHIP STATUS; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

LR-121 prohibits providing state services to people who are not U.S. citizens and who have unlawfully entered or unlawfully remained in the United States. Under LR-121, every individual seeking a state service, such as applying for any state licenses, state employment, unemployment or disability benefits, or aid for university students, must provide evidence of U.S. citizenship or lawful alien status, and/or have their status verified through federal databases. State agencies must notify the U.S. Department of Homeland Security of noncitizens who have unlawfully entered or remained in the U.S. and who have applied for state services.

The costs associated with verifying U.S. citizenship or lawful alien status will vary by agency and cannot be precisely determined. However, on-going costs may include: hiring and training state personnel to use various federal databases; software, hardware and search charges; and information assessment and management costs.

THE COMPLETE TEXT OF HOUSE BILL NO. 638 (CH. 308, L. 2011), REFERRED BY LR-121

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Certain state services denied to illegal aliens.** (1) To the extent allowed by federal law and the Montana constitution and notwithstanding any other state law, a state agency may not provide a state service to an illegal alien and shall comply with the requirements of this section.

(2) To determine whether an applicant for a state service is an illegal alien, the agency may use the systematic alien verification for entitlements program provided by the United States department of homeland security or any other lawful method of making the determination.

(3) A state agency shall notify appropriate personnel in immigration and customs enforcement under the United States department of homeland security or its successor of any illegal alien applying for a state service.

(4) An agency shall require a person seeking a state service to provide proof of United States citizenship or legal alien status.

(5) A state agency shall execute any written agreement required by federal law to implement this section.

(6) As used in this section, the following definitions apply:

(a) "Agency" means a department, board, commission, committee, authority, or office of the legislative or executive branches of state government, including a unit of the Montana university system.

(b) "Illegal alien" means an individual who is not a citizen of the United States and who has unlawfully entered or remains unlawfully in the United States.

(c) "State service" means a payment of money, the grant of a state license or permit, or the provision of another valuable item or service under any of the following programs and provisions of law:

(i) employment with a state agency;

(ii) qualification as a student in the university system for the purposes of a public education, as provided in 20-25-502;

(iii) student financial assistance, as provided in Title 20, chapter 26;

(iv) issuance of a state license or permit to practice a trade or profession, as provided in Title 37;

(v) unemployment insurance benefits, as provided in Title 39, chapter 51;

(vi) vocational rehabilitation, as provided in Title 53, chapter 7;

(vii) services for victims of crime, as provided in Title 53, chapter 9;

(viii) services for the physically disabled, as provided in Title 53, chapter 19, parts 3 and 4;

(ix) a grant, as provided in Title 90.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 1, chapter 1, part 4, and the provisions of Title 1, chapter 1, part 4, apply to [section 1].

**Section 3. Coordination instruction.** If House Bill No. 534 is passed and approved, then [this act] is void.

**Section 4. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 5. Effective date.** If approved by the electorate, [this act] is effective January 1, 2013.

**Section 6. Applicability.** [This act] applies to the provision of a state service, as defined in [section 1], applied for or intended to be made on or after January 1, 2013.

**Section 7. Submission to the electorate.** [This act] shall be submitted to the qualified electors of Montana at the general election to be held in November 2012 by printing on the ballot the full title of [this act] and the following:

☐ FOR denying certain state services to illegal aliens.

☐ AGAINST denying certain state services to illegal aliens.

Legislative Referendum No. 121 was approved by the following vote at the General Election held November 6, 2012:

| | |
|---|---|
| For: | 378,563 |
| Against: | 97,528 |

# LEGISLATIVE REFERENDUM NO. 122

AN ACT REFERRED BY THE LEGISLATURE

AN ACT PROHIBITING THE STATE OR FEDERAL GOVERNMENT FROM MANDATING THE PURCHASE OF HEALTH INSURANCE COVERAGE OR IMPOSING PENALTIES FOR DECISIONS RELATED TO THE PURCHASE

OF HEALTH INSURANCE COVERAGE; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AND PROVIDING AN EFFECTIVE DATE.

LR-122 prohibits the state and federal governments from requiring the purchase of health insurance or imposing any penalty, tax, fee or fine on those who do not purchase health insurance. The prohibition does not apply to: (1) a court which orders the purchase of insurance when an individual or entity is a named party in a judicial dispute; (2) the state department of public health and human services as part of a child support enforcement action; or (3) the Montana university system as a requirement for students.

THE COMPLETE TEXT OF SENATE BILL NO. 418 (CH. 310, L. 2011), REFERRED BY LR-122

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 and 2] may be cited as the "Montana Health Care Freedom Act".

**Section 2. Health insurance purchase mandate prohibited — exceptions.** (1) The state or federal government may not:

(a) mandate or require a person or entity to purchase health insurance coverage as defined in 33-22-140; or

(b) impose a penalty, tax, fee, or fine of any type if a person or entity declines to purchase health insurance coverage.

(2) This section does not apply to a requirement to purchase health insurance coverage that is imposed by:

(a) a court when an individual or entity is a named party in a judicial dispute;

(b) the department of public health and human services as part of a child support enforcement action; or

(c) the Montana university system as a requirement for students.

**Section 3. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 50, chapter 4, and the provisions of Title 50, chapter 4, apply to [sections 1 and 2].

**Section 4. Effective date.** If approved by the electorate, [this act] is effective January 1, 2013.

**Section 5. Submission to electorate.** [This act] shall be submitted to the qualified electors of Montana at the general election to be held in November 2012 by printing on the ballot the full title of [this act] and the following:

☐ FOR prohibiting the state or federal government from mandating the purchase of health insurance or imposing penalties for decisions related to purchasing health insurance.

☐ AGAINST prohibiting the state or federal government from mandating the purchase of health insurance or imposing penalties for decisions related to purchasing health insurance.

Legislative Referendum No. 122 was approved by the following vote at the General Election held November 6, 2012:

| | |
|---|---|
| For: | 318,612 |
| Against: | 155,536 |

# INITIATIVE REFERENDUM NO. 124

AN ACT OF THE LEGISLATURE
REFERRED BY REFERENDUM PETITION

In 2004, Montana voters approved I-148, creating a medical marijuana program for patients with debilitating medical conditions. Senate Bill 423, passed by the 2011 Legislature, repeals I-148 and enacts a new medical marijuana program, which includes: permitting patients to grow marijuana or designate a provider; limiting each marijuana provider to three patients; prohibiting marijuana providers from accepting anything of value in exchange for services or products; granting local governments authority to regulate marijuana providers; establishing specific standards for demonstrating chronic pain; and reviewing the practices of doctors who certify marijuana use for 25 or more patients in a 12-month period.

If Senate Bill 423 is affirmed by the voters, there will be no fiscal impact because the legislature has funded the costs of its implementation. If Senate Bill 423 is rejected by the voters, there may be a small savings to the State.

THE COMPLETE TEXT OF SENATE BILL NO. 423 (CH. 419, L. 2011)

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title — purpose.** (1) [Sections 1 through 23] may be cited as the "Montana Marijuana Act".

(2) The purpose of [sections 1 through 23] is to:

(a) provide legal protections to persons with debilitating medical conditions who engage in the use of marijuana to alleviate the symptoms of the debilitating medical condition;

(b) allow for the limited cultivation, manufacture, delivery, and possession of marijuana as permitted by [sections 1 through 23] by persons who obtain registry identification cards;

(c) allow individuals to assist a limited number of registered cardholders with the cultivation and manufacture of marijuana or marijuana-infused products;

(d) establish reporting requirements for production of marijuana and marijuana-infused products and inspection requirements for premises; and

(e) give local governments a role in establishing standards for the cultivation, manufacture, and use of marijuana that protect the public health, safety, and welfare of residents within their jurisdictions.

**Section 2. Definitions.** As used in [sections 1 through 23], the following definitions apply:

(1) "Correctional facility or program" means a facility or program that is described in 53-1-202 and to which a person may be ordered by any court of competent jurisdiction.

(2) "Debilitating medical condition" means:

(a) cancer, glaucoma, positive status for human immunodeficiency virus, or acquired immune deficiency syndrome when the condition or disease results in symptoms that seriously and adversely affect the patient's health status;

(b) cachexia or wasting syndrome;

(c) severe chronic pain that is persistent pain of severe intensity that significantly interferes with daily activities as documented by the patient's treating physician and by:

(i) objective proof of the etiology of the pain, including relevant and necessary diagnostic tests that may include but are not limited to the results of an x-ray, computerized tomography scan, or magnetic resonance imaging; or

(ii) confirmation of that diagnosis from a second physician who is independent of the treating physician and who conducts a physical examination;

(d) intractable nausea or vomiting;

(e) epilepsy or an intractable seizure disorder;

(f) multiple sclerosis;

(g) Crohn's disease;

(h) painful peripheral neuropathy;

(i) a central nervous system disorder resulting in chronic, painful spasticity or muscle spasms;

(j) admittance into hospice care in accordance with rules adopted by the department; or

(k) any other medical condition or treatment for a medical condition approved by the legislature.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Local government" means a county, a consolidated government, or an incorporated city or town.

(5) "Marijuana" has the meaning provided in 50-32-101.

(6) (a) "Marijuana-infused product" means a product that contains marijuana and is intended for use by a registered cardholder by a means other than smoking.

(b) The term includes but is not limited to edible products, ointments, and tinctures.

(7) (a) "Marijuana-infused products provider" means a Montana resident who meets the requirements of [sections 1 through 23] and who has applied for and received a registry identification card to manufacture and provide marijuana-infused products for a registered cardholder.

(b) The term does not include the cardholder's treating or referral physician.

(8) "Mature marijuana plant" means a harvestable female marijuana plant that is flowering.

(9) "Paraphernalia" has the meaning provided in 45-10-101.

(10) (a) "Provider" means a Montana resident 18 years of age or older who is authorized by the department to assist a registered cardholder as allowed under [sections 1 through 23].

(b) The term does not include the cardholder's treating physician or referral physician.

(11) "Referral physician" means a person who:

(a) is licensed under Title 37, chapter 3;

(b) has an established office in Montana; and

(c) is the physician to whom a patient's treating physician has referred the patient for physical examination and medical assessment.

(12) "Registered cardholder" or "cardholder" means a Montana resident with a debilitating medical condition who has received and maintains a valid registry identification card.

(13) "Registered premises" means the location at which a provider or marijuana-infused products provider has indicated the person will cultivate or manufacture marijuana for a registered cardholder.

(14) "Registry identification card" means a document issued by the department pursuant to [section 3] that identifies a person as a registered cardholder, provider, or marijuana-infused products provider.

(15) (a) "Resident" means an individual who meets the requirements of 1-1-215.

(b) An individual is not considered a resident for the purposes of [sections 1 through 23] if the individual:

(i) claims residence in another state or country for any purpose; or

(ii) is an absentee property owner paying property tax on property in Montana.

(16) "Second degree of kinship by blood or marriage" means a mother, father, brother, sister, son, daughter, spouse, grandparent, grandchild, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandparent-in-law, grandchild-in-law, stepfather, stepmother, stepbrother, stepsister, stepson, stepdaughter, stepgrandparent, or stepgrandchild.

(17) "Seedling" means a marijuana plant that has no flowers and is less than 12 inches in height and 12 inches in diameter.

(18) "Standard of care" means, at a minimum, the following activities when undertaken by a patient's treating physician or referral physician if the treating physician or referral physician is providing written certification for a patient with a debilitating medical condition:

(a) obtaining the patient's medical history;

(b) performing a relevant and necessary physical examination;

(c) reviewing prior treatment and treatment response for the debilitating medical condition;

(d) obtaining and reviewing any relevant and necessary diagnostic test results related to the debilitating medical condition;

(e) discussing with the patient and ensuring that the patient understands the advantages, disadvantages, alternatives, potential adverse effects, and expected response to the recommended treatment;

(f) monitoring the response to treatment and possible adverse effects; and

(g) creating and maintaining patient records that remain with the physician.

(19) "Treating physician" means a person who:

(a) is licensed under Title 37, chapter 3;

(b) has an established office in Montana; and

(c) has a bona fide professional relationship with the person applying to be a registered cardholder.

(20) (a) "Usable marijuana" means the dried leaves and flowers of the marijuana plant and any mixtures or preparations of the dried leaves and flowers that are appropriate for the use of marijuana by a person with a debilitating medical condition.

(b) The term does not include the seeds, stalks, and roots of the plant.

(21) "Written certification" means a statement signed by a treating physician or referral physician that meets the requirements of [section 7] and is provided in a manner that meets the standard of care.

**Section 3. Department responsibilities — issuance of cards — confidentiality — reports.** (1) (a) The department shall establish and maintain a program for the issuance of registry identification cards to Montana residents who:

(i) have debilitating medical conditions and who submit applications meeting the requirements of [sections 1 through 23]; and

(ii) are named as providers or marijuana-infused products providers by persons who obtain registry identification cards for their debilitating medical conditions.

(b) Persons who obtain registry identification cards are authorized to cultivate, manufacture, possess, and transport marijuana as allowed by [sections 1 through 23].

(2) The department shall conduct criminal history background checks as required by [sections 4 and 5] before issuing a registry identification card for a person named as a provider or marijuana-infused products provider.

(3) Registry identification cards issued pursuant to [sections 1 through 23] must:

(a) be laminated and produced on a material capable of lasting for the duration of the time period for which the card is valid;

(b) state the name, address, and date of birth of the registered cardholder and of the cardholder's provider or marijuana-infused products provider, if any;

(c) state the date of issuance and the expiration date of the registry identification card;

(d) contain a unique identification number;

(e) easily identify whether the card is for a person with a debilitating medical condition, a provider, or a marijuana-infused products provider; and

(f) contain other information that the department may specify by rule.

(4) (a) The department shall review the information contained in an application or renewal submitted pursuant to [sections 1 through 23] and shall approve or deny an application or renewal within 30 days of receiving the application or renewal and all related application materials.

(b) The department shall issue a registry identification card within 5 days of approving an application or renewal.

(5) Rejection of an application or renewal is considered a final department action, subject to judicial review.

(6) (a) Registry identification cards expire 1 year after the date of issuance unless:

(i) a physician has provided a written certification stating that a card is valid for a shorter period of time; or

(ii) a registered cardholder changes providers or marijuana-infused products providers.

(b) A provider's or marijuana-infused products provider's registry identification card expires at the time the department issues a card to a new provider or new marijuana-infused products providers named by a registered cardholder.

(7) A registered cardholder shall notify the department of any change in the cardholder's name, address, physician, provider, or marijuana-infused products providers or change in the status of the cardholder's debilitating medical condition within 10 days of the change. If a change occurs and is not reported to the department, the registry identification card is void.

(8) The department shall maintain a confidential list of persons to whom the department has issued registry identification cards. Except as provided in subsection (9), individual names and other identifying information on the list must be confidential and are not subject to disclosure, except to:

(a) authorized employees of the department as necessary to perform the official duties of the department; and

(b) authorized employees of state or local government agencies, including law enforcement agencies, only as necessary to verify that an individual is a lawful possessor of a registry identification card.

(9) The department shall provide the names of providers and marijuana-infused products providers to the local law enforcement agency having jurisdiction in the area in which the providers or marijuana-infused products providers are located. The law enforcement agency and its employees are subject to the confidentiality requirements of [section 17].

(10) (a) The department shall provide the board of medical examiners with the name of any physician who provides written certification for 25 or more patients within a 12-month period. The board of medical examiners shall review the physician's practices in order to determine whether the practices meet the standard of care.

(b) The physician whose practices are under review shall pay the costs of the board's review activities.

(11) The department shall report biannually to the legislature the number of applications for registry identification cards, the number of registered cardholders approved, the nature of the debilitating medical conditions of the cardholders, the number of providers and marijuana-infused products providers approved, the number of registry identification cards revoked, the number of physicians providing written certification for registered cardholders, and the number of written certifications each physician has provided. The report may not provide any identifying information of cardholders, physicians, providers, or marijuana-infused products providers.

(12) The board of medical examiners shall report annually to the legislature on:

(a) the number and types of complaints the board has received involving physician practices in providing written certification for the use of marijuana, pursuant to 37-3-203; and

(b) the number of physicians whose names were provided to the board by the department as required under subsection (10). The report must include information on whether a physician whose practices were reviewed by the board pursuant to subsection (10) met the standard of care when providing written certifications.

**Section 4. Persons with debilitating medical conditions — requirements — minors — limitations.** (1) Except as provided in subsections (2) through (4), the department shall issue a registry identification card to a person with a debilitating medical condition who submits the following, in accordance with department rules:

(a) an application on a form prescribed by the department;

(b) an application fee or a renewal fee;

(c) the person's name, street address, and date of birth;

(d) proof of Montana residency;

(e) a statement that the person will be cultivating and manufacturing marijuana for the person's use or will be obtaining marijuana from a provider or a marijuana-infused products provider;

(f) a statement, on a form prescribed by the department, that the person will not divert to any other person the marijuana that the person cultivates, manufactures, or obtains for the person's debilitating medical condition;

(g) the name of the person's treating physician or referral physician and the street address and telephone number of the physician's office;

(h) the street address where the person is cultivating or manufacturing marijuana if the person is cultivating or manufacturing marijuana for the person's own use;

(i) the name, date of birth, and street address of the individual the person has selected as a provider or marijuana-infused products provider, if any; and

(j) the written certification and accompanying statements from the person's treating physician or referral physician as required pursuant to [section 7].

(2) The department shall issue a registry identification card to a minor if the materials required under subsection (1) are submitted and the minor's custodial parent or legal guardian with responsibility for health care decisions:

(a) provides proof of legal guardianship and responsibility for health care decisions if the person is submitting an application as the minor's legal guardian with responsibility for health care decisions; and

(b) signs and submits a written statement that:

(i) the minor's treating physician or referral physician has explained to the minor and to the minor's custodial parent or legal guardian with responsibility for health care decisions the potential risks and benefits of the use of marijuana; and

(ii) the minor's custodial parent or legal guardian with responsibility for health care decisions:

(A) consents to the use of marijuana by the minor;

(B) agrees to serve as the minor's marijuana-infused products provider;

(C) agrees to control the acquisition of marijuana and the dosage and frequency of the use of marijuana by the minor;

(D) agrees that the minor will use only marijuana-infused products and will not smoke marijuana;

(c) submits fingerprints to facilitate a fingerprint and background check by the department of justice and federal bureau of investigation. The parent or legal guardian shall pay the costs of the background check and may not obtain a registry identification card as a marijuana-infused products provider if the parent or legal guardian does not meet the requirements of [section 5].

(d) pledges, on a form prescribed by the department, not to divert to any person any marijuana cultivated or manufactured for the minor's use in a marijuana-infused product.

(3) An application for a registry identification card for a minor must be accompanied by the written certification and accompanying statements required pursuant to [section 7] from a second physician in addition to the minor's treating physician or referral physician.

(4) A person may not be a registered cardholder if the person is in the custody of or under the supervision of the department of corrections or a youth court.

(5) A registered cardholder who elects to obtain marijuana from a provider or marijuana-infused products provider may not cultivate or manufacture marijuana for the cardholder's use unless the registered cardholder is the provider or marijuana-infused products provider.

(6) A registered cardholder may cultivate or manufacture marijuana as allowed under [section 10] only:

(a) at a property that is owned by the cardholder; or

(b) with written permission of the landlord, at a property that is rented or leased by the cardholder.

(7) No portion of the property used for cultivation and manufacture of marijuana for use by the registered cardholder may be shared with or rented or leased to a provider, a marijuana-infused products provider, or a registered cardholder unless the property is owned, rented, or leased by cardholders who are related to each other by the second degree of kinship by blood or marriage.

**Section 5. Provider types — requirements — limitations — activities.** (1) The department shall issue a registry identification card to or renew a card for the person who is named as a provider or marijuana-infused products provider in a registered cardholder's approved application if the person submits to the department:

(a) the person's name, date of birth, and street address on a form prescribed by the department;

(b) proof that the person is a Montana resident;

(c) fingerprints to facilitate a fingerprint and background check by the department of justice and the federal bureau of investigation;

(d) a written agreement signed by the registered cardholder that indicates whether the person will act as the cardholder's provider or marijuana-infused products provider;

(e) a statement, on a form prescribed by the department, that the person will not divert to any other person the marijuana that the person cultivates or manufactures for a registered cardholder;

(f) a statement acknowledging that the person will cultivate and manufacture marijuana for the registered cardholder at only one location as provided in subsection (7). The location must be identified by street address.

(g) a fee as determined by the department to cover the costs of the fingerprint and background check and associated administrative costs of processing the registration.

(2) The department may not register a person under this section if the person:

(a) has a felony conviction or a conviction for a drug offense;

(b) is in the custody of or under the supervision of the department of corrections or a youth court;

(c) has been convicted of a violation under [section 16];

(d) has failed to:

(i) pay any taxes, interest, penalties, or judgments due to a government agency;

(ii) stay out of default on a government-issued student loan;

(iii) pay child support; or

(iv) remedy an outstanding delinquency for child support or for taxes or judgments owed to a government agency; or

(e) is a registered cardholder who has designated a provider or marijuana-infused products provider in the person's application for a card issued under [section 4].

(3) (a) (i) A provider or marijuana-infused products provider may assist a maximum of three registered cardholders.

(ii) A person who is registered as both a provider and a marijuana-infused products provider may assist no more than three registered cardholders.

(b) If the provider or marijuana-infused products provider is a registered cardholder, the provider or marijuana-infused products provider may assist a maximum of two registered cardholders other than the provider or marijuana-infused products provider.

(4) A provider or marijuana-infused products provider may accept reimbursement from a cardholder only for the provider's application or renewal fee for a registry identification card issued under this section.

(5) Marijuana for use pursuant to [sections 1 through 23] must be cultivated and manufactured in Montana.

(6) A provider or marijuana-infused products provider may not:

(a) accept anything of value, including monetary remuneration, for any services or products provided to a registered cardholder;

(b) buy or sell mature marijuana plants, seedlings, cuttings, clones, usable marijuana, or marijuana-infused products; or

(c) use marijuana unless the person is also a registered cardholder.

(7) (a) A person registered under this section may cultivate and manufacture marijuana for use by a registered cardholder only at one of the following locations:

(i) a property that is owned by the provider or marijuana-infused products provider;

(ii) with written permission of the landlord, a property that is rented or leased by the provider or marijuana-infused products provider; or

(iii) a property owned, leased, or rented by the registered cardholder pursuant to the provisions of [section 4].

(b) No portion of the property used for cultivation and manufacture of marijuana may be shared with or rented or leased to another provider or marijuana-infused products provider or another registered cardholder.

**Section 6. Marijuana-infused products provider — requirements — allowable activities.** (1) An individual registered as a marijuana-infused products provider shall:

(a) prepare marijuana-infused products at a premises registered with the department that is used for the manufacture and preparation of marijuana-infused products; and

(b) use equipment that is used exclusively for the manufacture and preparation of marijuana-infused products.

(2) A marijuana-infused products provider:

(a) may cultivate marijuana only for the purpose of making marijuana-infused products; and

(b) may not provide a cardholder with marijuana in a form that may be used for smoking unless the marijuana-infused products provider is also a registered provider and is providing the marijuana to a registered cardholder who has selected the person as the person's registered provider.

(3) All registered premises on which marijuana-infused products are manufactured must meet any applicable standards set by a local board of health for a food service establishment as defined in 50-50-102.

(4) Marijuana-infused products may not be considered a food or drug for the purposes of Title 50, chapter 31.

**Section 7. Written certification — accompanying statements.** (1) The written certification provided by a physician must be made on a form prescribed by the department and signed and dated by the physician. The written certification must:

(a) include the physician's name, license number, and office address and telephone number on file with the board of medical examiners and the physician's business e-mail address, if any; and

(b) the name, date of birth, and debilitating medical condition of the person for whom the physician is providing written certification.

(2) A treating physician or referral physician who is providing written certification for a patient shall provide a statement initialed by the physician that must:

(a) confirm that the physician is:

(i) the person's treating physician and that the person has been under the physician's ongoing medical care as part of a bona fide professional relationship with the person; or

(ii) the person's referral physician;

(b) confirm that the person suffers from a debilitating medical condition;

(c) describe the debilitating medical condition, why the condition is debilitating, and the extent to which it is debilitating;

(d) confirm that the physician has assumed primary responsibility for providing management and routine care of the person's debilitating medical condition after obtaining a comprehensive medical history and conducting a physical examination that included a personal review of any medical records maintained by other physicians and that may have included the person's reaction and response to conventional medical therapies;

(e) describe the medications, procedures, and other medical options used to treat the condition;

(f) state that the medications, procedures, or other medical options have not been effective;

(g) confirm that the physician has reviewed all prescription and nonprescription medications and supplements used by the person and has considered the potential drug interaction with marijuana;

(h) state that the physician has a reasonable degree of certainty that the person's debilitating medical condition would be alleviated by the use of marijuana and that, as a result, the patient would be likely to benefit from the use of marijuana;

(i) confirm that the physician has explained the potential risks and benefits of the use of marijuana to the person;

(j) list restrictions on the person's activities due to the use of marijuana;

(k) specify the time period for which the use of marijuana would be appropriate, up to a maximum of 1 year;

(l) state that the physician will:

(i) continue to serve as the person's treating physician or referral physician; and

(ii) monitor the person's response to the use of marijuana and evaluate the efficacy of the treatment; and

(m) contain an attestation that the information provided in the written certification and accompanying statements is true and correct.

(3) A physician who is the second physician recommending marijuana for use by a minor shall submit:

(a) a statement initialed by the physician that the physician conducted a comprehensive review of the minor's medical records as maintained by the treating physician or referral physician;

(b) a statement that in the physician's professional opinion, the potential benefits of the use of marijuana would likely outweigh the health risks for the minor; and

(c) an attestation that the information provided in the written certification and accompanying statements is true and correct.

(4) If the written certification states that marijuana should be used for less than 1 year, the department shall issue a registry identification card that is valid for the period specified in the written certification.

**Section 8. Registry card to be carried and exhibited on demand — photo identification required.** A registered cardholder, provider, or marijuana-infused products provider shall keep the person's registry identification card in the person's immediate possession at all times. The person shall display the registry identification card and a valid photo identification upon demand of a law enforcement officer, justice of the peace, or city or municipal judge.

**Section 9. Health care facility procedures for patients with marijuana for use.** (1) (a) Except for hospices and residential care facilities that allow the use of marijuana as provided in [section 11], a health care facility as defined in 50-5-101 shall take the following measures when a patient who is a registered cardholder has marijuana in the patient's possession upon admission to the health care facility:

(i) require the patient to remove the marijuana from the premises before the patient is admitted if the patient is able to do so; or

(ii) make a reasonable effort to contact the patient's provider, marijuana-infused products provider, court-appointed guardian, or person with a power of attorney, if any.

(b) If a patient is unable to remove the marijuana or the health care facility is unable to contact an individual as provided in subsection (1)(a), the facility shall contact the local law enforcement agency having jurisdiction in the area where the facility is located.

(2) A provider, marijuana-infused products provider, court-appointed guardian, or person with a power of attorney, if any, contacted by a health care facility shall remove the marijuana and deliver it to the patient's residence.

(3) A law enforcement agency contacted by a health care facility shall respond by removing and destroying the marijuana.

(4) A health care facility may not be charged for costs related to removal of the marijuana from the facility's premises.

**Section 10. Legal protections — allowable amounts.** (1) (a) A registered cardholder may possess up to 4 mature plants, 12 seedlings, and 1 ounce of usable marijuana.

(b) A provider or marijuana-infused products provider may possess 4 mature plants, 12 seedlings, and 1 ounce of usable marijuana for each registered cardholder who has named the person as the registered cardholder's provider.

(2) Except as provided in [section 11] and subject to the provisions of subsection (7), an individual who possesses a registry identification card issued pursuant to [sections 1 through 23] may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry, solely because:

(a) the individual cultivates, manufactures, possesses, or transports marijuana in the amounts allowed under this section; or

(b) the registered cardholder acquires or uses marijuana.

(3) A physician may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by the board of medical examiners or the department of labor and industry, solely for providing written certification for a patient with a debilitating medical condition.

(4) Nothing in this section prevents the imposition of a civil penalty or a disciplinary action by a professional licensing board or the department of labor and industry if:

(a) a registered cardholder's use of marijuana impairs the cardholder's job-related performance; or

(b) a physician violates the standard of care or other requirements of [sections 1 through 23].

(5) (a) An individual may not be arrested or prosecuted for constructive possession, conspiracy as provided in 45-4-102, or other provisions of law or any other offense solely for being in the presence or vicinity of the use of marijuana as permitted under [sections 1 through 23].

(b) This subsection (5) does not prevent the arrest or prosecution of an individual who is in the vicinity of a registered cardholder's use of marijuana if the individual is in possession of or is using marijuana and is not a registered cardholder.

(6) Except as provided in [section 14], possession of or application for a registry identification card does not alone constitute probable cause to search the individual or the property of the individual possessing or applying for the registry identification card or otherwise subject the individual or property of the individual possessing or applying for the card to inspection by any governmental agency, including a law enforcement agency.

(7) The provisions of this section relating to protection from arrest or prosecution do not apply to an individual unless the individual has obtained a registry identification card prior to an arrest or the filing of a criminal charge. It is not a defense to a criminal charge that an individual obtains a registry identification card after an arrest or the filing of a criminal charge.

(8) (a) A registered cardholder, a provider, or a marijuana-infused products provider is presumed to be engaged in the use of marijuana as allowed by [sections 1 through 23] if the person:

(i) is in possession of a valid registry identification card; and

(ii) is in possession of an amount of marijuana that does not exceed the amount permitted under [sections 1 through 23].

(b) The presumption may be rebutted by evidence that the possession of marijuana was not for the purpose of alleviating the symptoms or effects of a registered cardholder's debilitating medical condition.

**Section 11. Limitations of the act.** (1) [Sections 1 through 23] do not permit:

(a) any person, including a registered cardholder, to operate, navigate, or be in actual physical control of a motor vehicle, aircraft, or motorboat while under the influence of marijuana; or

(b) except as provided in subsection (3), the use of marijuana by a registered cardholder:

(i) in a health care facility as defined in 50-5-101;

(ii) in a school or a postsecondary school as defined in 20-5-402;

(iii) on or in any property owned by a school district or a postsecondary school;

(iv) on or in any property leased by a school district or a postsecondary school when the property is being used for school-related purposes;

(v) in a school bus or other form of public transportation;

(vi) when ordered by any court of competent jurisdiction into a correctional facility or program;

(vii) if a court has imposed restrictions on the cardholder's use pursuant to 46-18-202;

(viii) at a public park, public beach, public recreation center, or youth center;

(ix) in or on the property of any church, synagogue, or other place of worship;

(x) in plain view of or in a place open to the general public; or

(xi) where exposure to the marijuana smoke significantly adversely affects the health, safety, or welfare of children.

(2) A registered cardholder, provider, or marijuana-infused products provider may not cultivate or manufacture marijuana for use by a registered cardholder in a manner that is visible from the street or other public area.

(3) A hospice or residential care facility licensed under Title 50, chapter 5, may adopt a policy that allows use of marijuana by a registered cardholder.

(4) Nothing in [sections 1 through 23] may be construed to require:

(a) a government medical assistance program, a group benefit plan that is covered by the provisions of Title 2, chapter 18, an insurer covered by the provisions of Title 33, or an insurer as defined in 39-71-116 to reimburse a person for costs associated with the use of marijuana by a registered cardholder;

(b) an employer to accommodate the use of marijuana by a registered cardholder;

(c) a school or postsecondary school to allow a registered cardholder to participate in extracurricular activities; or

(d) a landlord to allow a tenant who is a registered cardholder, provider, or marijuana-infused products provider to cultivate or manufacture marijuana or to allow a registered cardholder to use marijuana.

(5) Nothing in [sections 1 through 23] may be construed to:

(a) prohibit an employer from including in any contract a provision prohibiting the use of marijuana for a debilitating medical condition; or

(b) permit a cause of action against an employer for wrongful discharge pursuant to 39-2-904 or discrimination pursuant to 49-1-102.

(6) Nothing in [sections 1 through 23] may be construed to allow a provider or marijuana-infused products provider to use marijuana or to prevent criminal prosecution of a provider or marijuana-infused products provider who uses marijuana or paraphernalia for personal use.

(7) (a) A law enforcement officer who has reasonable cause to believe that a person with a valid registry identification card is driving under the influence of marijuana may apply for a search warrant to require the person to provide a sample of the person's blood for testing pursuant to the provisions of 61-8-405. A person with a tetrahydrocannabinol (THC) level of 5 ng/ml may be charged with a violation of 61-8-401.

(b) A registered cardholder, provider, or marijuana-infused products provider who violates subsection (1)(a) is subject to revocation of the person's registry identification card if the individual is convicted of or pleads guilty to any offense related to driving under the influence of alcohol or drugs when the initial offense with which the individual was charged was a violation of 61-8-401, 61-8-406, or 61-8-410. A revocation under this section must be for the period of suspension or revocation set forth:

(i) in 61-5-208 for a violation of 61-8-401 or 61-8-406; or

(ii) in 61-8-410 for a violation of 61-8-410.

(c) If a person's registry identification card is subject to renewal during the revocation period, the person may not renew the card until the full revocation period has elapsed. The card may be renewed only if the person submits all materials required for renewal.

**Section 12. Prohibitions on physician affiliation with providers and marijuana-infused products providers — sanctions.** (1) (a) A physician who provides written certifications may not:

(i) accept or solicit anything of value, including monetary remuneration, from a provider or marijuana-infused products provider;

(ii) offer a discount or any other thing of value to a person who uses or agrees to use a particular provider or marijuana-infused products provider; or

(iii) examine a patient for the purposes of diagnosing a debilitating medical condition at a location where medical marijuana is cultivated or manufactured or where marijuana-infused products are made.

(b) Subsection (1)(a) does not prevent a physician from accepting a fee for providing medical care to a provider or marijuana-infused products provider if the physician charges the person the same fee that the physician charges other patients for providing a similar level of medical care.

(2) If the department has cause to believe that a physician has violated this section, has violated a provision of rules adopted pursuant to this chapter, or has not met the standard of care required under this chapter, the department may refer the matter to the board of medical examiners provided for in 2-15-1731 for review pursuant to 37-1-308.

(3) A violation of this section constitutes unprofessional conduct under 37-1-316. If the board of medical examiners finds that a physician has violated this section, the board shall restrict the physician's authority to provide written certification for the use of marijuana. The board of medical examiners shall notify the department of the sanction.

(4) If the board of medical examiners believes a physician's practices may harm the public health, safety, or welfare, the board may summarily restrict a physician's authority to provide written certification for the medical use of marijuana.

**Section 13. Local government authority to regulate.** (1) To protect the public health, safety, or welfare, a local government may by ordinance or resolution regulate a provider or marijuana-infused products provider that operates within the local government's jurisdictional area. The regulations may include but are not limited to inspections of locations where marijuana is cultivated or manufactured in order to ensure compliance with any public health, safety, and welfare requirements established by the department or the local government.

(2) A local government may adopt an ordinance or resolution prohibiting providers and marijuana-infused products providers from operating as storefront businesses.

**Section 14. Inspection procedures.** (1) The department and state or local law enforcement agencies may conduct unannounced inspections of registered premises.

(2) (a) Each provider and marijuana-infused products provider shall keep a complete set of records necessary to show all transactions with registered cardholders. The records must be open for inspection by the department and state or local law enforcement agencies during normal business hours.

(b) The department may require a provider or marijuana-infused products provider to furnish information that the department considers necessary for the proper administration of [sections 1 through 23].

(3) (a) A registered premises, including any places of storage, where marijuana is cultivated, manufactured, or stored is subject to entry by the department or state or local law enforcement agencies for the purpose of inspection or investigation during normal business hours.

(b) If any part of the registered premises consists of a locked area, the provider or marijuana-infused products provider shall make the area available for inspection without delay upon request of the department or state or local law enforcement officials.

(4) A provider or marijuana-infused products provider shall maintain records showing the names and registry identification numbers of registered cardholders to whom mature plants, seedlings, usable marijuana, or marijuana-infused products were transferred and the quantities transferred to each cardholder.

**Section 15. Unlawful conduct by cardholders — penalties.** (1) The department shall revoke and may not reissue the registry identification card of a person who:

(a) is convicted of a drug offense;

(b) allows another person to be in possession of the person's:

(i) registry identification card; or

(ii) mature marijuana plants, seedlings, usable marijuana, or marijuana-infused products; or

(c) fails to cooperate with the department concerning an investigation or inspection if the person is registered and cultivating or manufacturing marijuana.

(2) A registered cardholder, provider, or marijuana-infused products provider who violates [sections 1 through 23] is punishable by a fine not to exceed $500 or by imprisonment in a county jail for a term not to exceed 6 months, or both, unless otherwise provided in [sections 1 through 23] or unless the violation would constitute a violation of Title 45. An offense constituting a violation of Title 45 must be charged and prosecuted pursuant to the provisions of Title 45.

**Section 16. Fraudulent representation — penalties.** (1) In addition to any other penalties provided by law, a person who fraudulently represents to a law enforcement official that the person is a registered cardholder, provider, or marijuana-infused products provider is guilty of a misdemeanor punishable by imprisonment in a county jail for a term not to exceed 1 year or a fine not to exceed $1,000, or both.

(2) A physician who purposely and knowingly misrepresents any information required under [section 7] is guilty of a misdemeanor punishable by imprisonment in a county jail for a term not to exceed 1 year or a fine not to exceed $1,000, or both.

(3) A person convicted under this section may not be registered as a provider or marijuana-infused products provider under [section 5].

**Section 17. Confidentiality of registry information — penalty.** (1) Except as provided in 37-3-203, a person, including an employee or official of the department of public health and human services, commits the offense of disclosure of confidential information related to registry information if the person knowingly or purposely discloses confidential information in violation of [sections 1 through 23].

(2) A person convicted of a violation of this section shall be fined not to exceed $1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both.

**Section 18. Law enforcement authority.** Nothing in this chapter may be construed to limit a law enforcement agency's ability to investigate unlawful activity in relation to a person with a registry identification card.

**Section 19. Forfeiture.** (1) Marijuana, paraphernalia relating to marijuana, or other property seized by a law enforcement official from a person claiming the protections of [sections 1 through 23] in connection with the cultivation, manufacture, possession, transportation, distribution, or use of marijuana must be returned to the person immediately upon a determination that the person is in compliance with the provisions of [sections 1 through 23].

(2) A law enforcement agency in possession of mature marijuana plants or seedlings seized as evidence is not responsible for the care and maintenance of the plants or seedlings.

**Section 20. Advertising prohibited.** Persons with valid registry identification cards may not advertise marijuana or marijuana-related products in any medium, including electronic media.

**Section 21. Hotline.** (1) The department shall create and maintain a hotline to receive reports of suspected abuse of the provisions of [sections 1 through 23].

(2) The department may:

(a) investigate reports of suspected abuse of the provisions of [sections 1 through 23]; or

(b) refer reports of suspected abuse to the law enforcement agency having jurisdiction in the area where the suspected abuse is occurring.

**Section 22. Legislative monitoring.** (1) The children, families, health, and human services interim committee shall provide oversight of the department's activities related to registering individuals pursuant to [sections 1 through 23] and of issues related to the cultivation, manufacture, and use of marijuana pursuant to [sections 1 through 23].

(2) The committee shall identify issues likely to require future legislative attention and develop legislation to present to the next regular session of the legislature.

**Section 23. Rulemaking authority — fees.** (1) The department shall adopt rules necessary for the implementation and administration of [sections 1 through 23]. The rules must include but are not limited to:

(a) the manner in which the department will consider applications for registry identification cards for providers and marijuana-infused products providers and for persons with debilitating medical conditions and renewal of registry identification cards;

(b) the acceptable forms of proof of Montana residency;

(c) the procedures for obtaining fingerprints for the fingerprint and background check required under [sections 4 and 5];

(d) other rules necessary to implement the purposes of [sections 1 through 23].

(2) The department's rules must establish application and renewal fees that generate revenue sufficient to offset all expenses of implementing and administering [sections 1 through 23].

**Section 24.** Section 37-1-316, MCA, is amended to read:

**"37-1-316. Unprofessional conduct.** The following is unprofessional conduct for a licensee or license applicant governed by this part:

(1) conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;

(2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

(3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

(4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

(5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or

Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied;

(8) failure to comply with a term, condition, or limitation of a license by final order of a board;

(9) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;

(10) use of alcohol, a habit-forming drug, or a controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally in the performance of licensed professional duties;

(11) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(12) engaging in conduct in the course of one's practice while suffering from a contagious or infectious disease involving serious risk to public health or without taking adequate precautions, including but not limited to informed consent, protective gear, or cessation of practice;

(13) misappropriating property or funds from a client or workplace or failing to comply with a board rule regarding the accounting and distribution of a client's property or funds;

(14) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(15) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license;

(16) failing to report the institution of or final action on a malpractice action, including a final decision on appeal, against the licensee or of an action against the licensee by a:

(a) peer review committee;

(b) professional association; or

(c) local, state, federal, territorial, provincial, or Indian tribal government;

(17) failure of a health care provider, as defined in 27-6-103, to comply with a policy or practice implementing 28-10-103(3)(a);

(18) conduct that does not meet the generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring during the scope and course of the practice is conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards*;*

*(19) the sole use of any electronic means, including teleconferencing, to obtain the information required for the written certification and accompanying statements used to apply for a registry identification card pursuant to [sections 1 through 23].*"

**Section 25.** Section 37-3-343, MCA, is amended to read:

**"37-3-343. Practice of telemedicine prohibited without license — scope of practice limitations — violations and penalty.** (1) A physician may not practice telemedicine in this state without a telemedicine license issued pursuant to 37-3-301, 37-3-341 through 37-3-345, and 37-3-347 through 37-3-349.

(2) A telemedicine license authorizes an out-of-state physician to practice telemedicine only with respect to the specialty in which the physician is board-certified or meets the current requirements to take the examination to become board-certified and on which the physician bases the physician's application for a telemedicine license pursuant to 37-3-345(2).

(3) A telemedicine license authorizes an out-of-state physician to practice only telemedicine. A telemedicine license does not authorize the physician to engage in the practice of medicine while physically present within the state.

*(4) A telemedicine license may not be used by a physician as a means to obtain the information required for the written certification and accompanying statements used to apply for a registry identification card pursuant to [sections 1 through 23].*

~~(4)~~*(5)* A physician who practices telemedicine in this state without a telemedicine license issued pursuant to 37-3-301, 37-3-341 through 37-3-345, and 37-3-347 through 37-3-349, in violation of the terms or conditions of that license, in violation of the scope of practice allowed by the license, or without a physician's license issued pursuant to 37-3-301, is guilty of a misdemeanor and on conviction shall be sentenced as provided in 37-3-325."

**Section 26.** Section 37-3-347, MCA, is amended to read:

**"37-3-347. Reasons for denial of license — alternative route to licensed practice.** (1) The board may deny an application for a telemedicine license if the applicant:

(a) fails to demonstrate that the applicant possesses the qualifications for a license required by 37-3-341 through 37-3-345 and 37-3-347 through 37-3-349 and the rules of the board;

*(b) plans to use telemedicine as a means to obtain the information required for the written certification and accompanying statements used to apply for a registry identification card pursuant to [sections 1 through 23];*

~~(b)~~*(c)* fails to pay a required fee;

~~(c)~~*(d)* does not possess the qualifications or character required by this chapter; or

~~(d)~~*(e)* has committed unprofessional conduct.

(2) A physician who does not meet the qualifications for a telemedicine license provided in 37-3-345 may apply for a physician's license in order to practice medicine in Montana."

**Section 27.** Section 41-5-216, MCA, is amended to read:

**"41-5-216. Disposition of youth court, law enforcement, and department records — sharing and access to records.** (1) Formal youth court records, law enforcement records, and department records that are not exempt from sealing under subsections (4) and (6) and that pertain to a youth covered by this chapter must be physically sealed on the youth's 18th birthday. In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the records must be physically sealed upon termination of the extended jurisdiction.

(2) Except as provided in subsection (6), when the records pertaining to a youth pursuant to this section are sealed, an agency, other than the department, that has in its possession copies of the sealed records shall destroy the copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

(3) Except as provided in subsection (6), this section does not prohibit the destruction of records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(4) The requirements for sealed records in this section do not apply to medical records, fingerprints, DNA records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements of the court's judgment or disposition, records referred to in 42-3-203, reports referred to in 45-5-624(7), or the information referred to in 46-23-508, in any instance in which the youth was required to register as a sexual offender pursuant to Title 46, chapter 23, part 5.

(5) After formal youth court records, law enforcement records, and department records are sealed, they are not open to inspection except, upon order of the youth court, for good cause, including when a youth commits a new offense, to:

(a) those persons and agencies listed in 41-5-215(2); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority.

(6) (a) When formal youth court records, law enforcement records, and department records are sealed under subsection (1), the electronic records of the management information system maintained by the department of public health and human services and by the department relating to the youth whose records are being sealed must be preserved for the express purpose of research and program evaluation as provided in subsection (6)(b).

(b) The department of public health and human services and the department shall disassociate the offense and disposition information from the name of the youth in the respective management information system. The offense and disposition information must be maintained separately and may be used only:

(i) for research and program evaluation authorized by the department of public health and human services or by the department and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(7) (a) Informal youth court records for a youth for whom formal proceedings have been filed must be physically sealed on the youth's 18th birthday or, in those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, upon termination of the extended jurisdiction and may be inspected only pursuant to subsection (5).

(b) The informal youth court records may be maintained and inspected only by youth court personnel upon a new offense prior to the youth's 18th birthday.

(c) Except as provided in subsection (7)(a), when a youth becomes 18 years of age or when extended supervision ends and the youth was involved only in informal proceedings, informal youth court records that are in hard-copy form must be destroyed and any electronic records in the youth court management information system must disassociate the offense and disposition information from the name of the youth and may be used only for the following purposes:

(i) for research and program evaluation authorized by the office of the court administrator and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(8) Nothing in this section prohibits the intra-agency use or information sharing of formal or informal youth court records within the juvenile probation management information system. Electronic records of the youth court may not be shared except as provided in 41-5-1524. If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the juvenile probation officer shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section.

(9) This section does not prohibit the intra-agency use or information sharing of formal or informal youth court records within the department's youth management information system. Electronic records of the department's youth management information system may not be shared except as provided in subsection (5). If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the department shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section.

(10) This section does not prohibit the sharing of formal or informal youth court records with a short-term detention center, a youth care facility, a youth assessment center, or a youth detention facility upon placement of a youth within the facility.

(11) This section does not prohibit access to formal or informal youth court records, including electronic records, for purposes of conducting evaluations as required by 41-5-2003.

*(12) This section does not prohibit the office of court administrator, upon written request from the department of public health and human services, from confirming whether a person applying for a registry identification card pursuant to [section 4 or 5] is currently under youth court supervision.*"

**Section 28.** Section 45-9-203, MCA, is amended to read:

**"45-9-203. Surrender of license.** *(1)* If a court suspends or revokes a driver's license under 45-9-202(2)(e), the defendant shall, at the time of sentencing, surrender the license to the court. The court shall forward the license and a copy of the sentencing order to the department of justice. The defendant may apply to the department for issuance of a probationary license under 61-2-302.

*(2) If a person with a registry identification card issued pursuant to [section 4 or 5] is convicted of an offense under this chapter, the court shall:*

*(a) at the time of sentencing, require the person to surrender the registry identification card; and*

*(b) notify the department of public health and human services of the conviction in order for the department to carry out its duties under [section 15].*"

**Section 29.** Section 46-18-202, MCA, is amended to read:

**"46-18-202. Additional restrictions on sentence.** (1) The sentencing judge may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 that the judge considers necessary to obtain the objectives of rehabilitation and the protection of the victim and society:

(a) prohibition of the offender's holding public office;

(b) prohibition of the offender's owning or carrying a dangerous weapon;

(c) restrictions on the offender's freedom of association;

(d) restrictions on the offender's freedom of movement;

(e) a requirement that the defendant provide a biological sample for DNA testing for purposes of Title 44, chapter 6, part 1, if an agreement to do so is part of the plea bargain;

*(f) a requirement that the offender surrender any registry identification card issued under [section 3];*

~~(f)~~*(g)* any other limitation reasonably related to the objectives of rehabilitation and the protection of the victim and society.

(2) Whenever the sentencing judge imposes a sentence of imprisonment in a state prison for a term exceeding 1 year, the sentencing judge may also impose the restriction that the offender is ineligible for parole and participation in the supervised release program while serving that term. If the restriction is to be imposed, the sentencing judge shall state the reasons for it in writing. If the sentencing judge finds that the restriction is necessary for the protection of society, the judge shall impose the restriction as part of the sentence and the judgment must contain a statement of the reasons for the restriction.

*(3) If a sentencing judge requires an offender to surrender a registry identification card issued under [section 3], the court shall return the card to the department of public health and human services and provide the department with information on the offender's sentence. The department shall revoke the card for the duration of the sentence and shall return the card if the offender successfully completes the terms of the sentence before the expiration date listed on the card.*"

**Section 30.** Section 50-46-201, MCA, is amended to read:

**"50-46-201. Medical use of marijuana — legal protections — limits on amount — presumption of medical use.** (1) A person who possesses a registry identification card issued ~~pursuant to 50-46-103~~ *before [the effective date of this section]* may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry, if:

(a) the qualifying patient or caregiver acquires, possesses, cultivates, manufactures, delivers, transfers, or transports marijuana not in excess of the amounts allowed in subsection (2); or

(b) the qualifying patient uses marijuana for medical use.

(2) A qualifying patient and that qualifying patient's caregiver may not possess more than six marijuana plants and 1 ounce of usable marijuana each.

(3) (a) A qualifying patient or caregiver is presumed to be engaged in the medical use of marijuana if the qualifying patient or caregiver:

(i) is in possession of a registry identification card; and

(ii) is in possession of an amount of marijuana that does not exceed the amount permitted under subsection (2).

(b) The presumption may be rebutted by evidence that the possession of marijuana was not for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition.

(4) A physician may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by the board of medical examiners or the department of labor

and industry, for providing written certification for the medical use of marijuana to qualifying patients.

(5) An interest in or right to property that is possessed, owned, or used in connection with the medical use of marijuana or acts incidental to medical use may not be forfeited under any provision of law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense.

(6) A person may not be subject to arrest or prosecution for constructive possession, conspiracy, as provided in 45-4-102, or other provisions of law or any other offense for simply being in the presence or vicinity of the medical use of marijuana as permitted under this chapter.

(7) Possession of or application for a registry identification card does not alone constitute probable cause to search the person or property of the person possessing or applying for the registry identification card or otherwise subject the person or property of the person possessing or applying for the card to inspection by any governmental agency, including a law enforcement agency.

(8) A registry identification card or its equivalent issued by another state government to permit the medical use of marijuana by a qualifying patient or to permit a person to assist with a qualifying patient's medical use of marijuana has the same force and effect as a registry identification card issued by the department."

**Section 31.** Section 50-46-202, MCA, is amended to read:

**"50-46-202. Disclosure of confidential information relating to medical use of marijuana — penalty.** *(1) The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list must be confidential and are not subject to disclosure except to:*

*(a) authorized employees of the department as necessary to perform official duties of the department; or*

*(b) state or local law enforcement agencies only as necessary to verify that a person is a lawful possessor of a registry identification card.*

~~(1)~~*(2)* A person, including an employee or official of the department or other state or local government agency, commits the offense of disclosure of confidential information relating to medical use of marijuana if the person knowingly or purposely discloses confidential information in violation of ~~50-46-103~~ *this section*.

~~(2)~~*(3)* A person convicted of disclosure of confidential information relating to medical use of marijuana shall be fined not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

**Section 32.** Section 61-11-101, MCA, is amended to read:

**"61-11-101. Report of convictions and suspension or revocation of driver's licenses — surrender of licenses.** (1) If a person is convicted of an offense for which chapter 5 or chapter 8, part 8, makes mandatory the suspension or revocation of the driver's license or commercial driver's license of the person by the department, the court in which the conviction occurs shall require the surrender to it of all driver's licenses then held by the convicted person. The court shall, within 5 days after the conviction becomes final, forward the license and a record of the conviction to the department. If the person does not possess a driver's license, the court shall indicate that fact in its report to the department.

(2) A court having jurisdiction over offenses committed under a statute of this state or a municipal ordinance regulating the operation of motor vehicles on

highways, except for standing or parking statutes or ordinances, shall forward a record of the conviction, as defined in 61-5-213, to the department within 5 days after the conviction becomes final. The court may recommend that the department issue a restricted probationary license on the condition that the individual comply with the requirement that the person attend and complete a chemical dependency education course, treatment, or both, as ordered by the court under 61-8-732.

(3) A court or other agency of this state or of a subdivision of the state that has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report an action and the adjudication upon which it is based to the department within 5 days on forms furnished by the department.

(4) A conviction becomes final for the purposes of this part upon the later of:

(a) expiration of the time for appeal of the court's judgment or sentence to the next highest court;

(b) forfeiture of bail that is not vacated; or

(c) imposition of a fine or court cost as a condition of a deferred imposition of a sentence or a suspended execution of a sentence.

(5) (a) On a conviction referred to in subsection (1) of a person who holds a commercial driver's license or who is required to hold a commercial driver's license, a court may not take any action, including deferring imposition of judgment, that would prevent a conviction for any violation of a state or local traffic control law or ordinance, except a parking law or ordinance, in any type of motor vehicle, from appearing on the person's driving record. The provisions of this subsection (5)(a) apply only to the conviction of a person who holds a commercial driver's license or who is required to hold a commercial driver's license and do not apply to the conviction of a person who holds any other type of driver's license.

(b) For purposes of this subsection (5), "who is required to hold a commercial driver's license" refers to a person who did not have a commercial driver's license but who was operating a commercial motor vehicle at the time of a violation of a state or local traffic control law or ordinance resulting in a conviction referred to in subsection (1).

*(6) (a) If a person who holds a valid registry identification card issued pursuant to [section 4 or 5] is convicted of or pleads guilty to any offense related to driving under the influence of alcohol or drugs when the initial offense with which the person was charged was a violation of 61-8-401, 61-8-406, or 61-8-410, the court in which the conviction occurs shall require the person to surrender the registry identification card.*

*(b) Within 5 days after the conviction becomes final, the court shall forward the registry identification card and a copy of the conviction to the department of public health and human services.*"

**Section 33. Emergency rulemaking.** The department of public health and human services shall adopt emergency rules as provided in 2-4-303 to allow for issuance of registry identification cards in accordance with the provisions of [sections 1 through 23] beginning June 1, 2011.

**Section 34. Repealer.** The following sections of the Montana Code Annotated are repealed:

50-46-101. Short title.

50-46-102. Definitions.

50-46-103. Procedures — minors — confidentiality — report to legislature.

50-46-201. Medical use of marijuana — legal protections — limits on amount — presumption of medical use.
50-46-202. Disclosure of confidential information relating to medical use of marijuana — penalty.
50-46-205. Limitations of Medical Marijuana Act.
50-46-206. Affirmative defense.
50-46-207. Fraudulent representation of medical use of marijuana — penalty.
50-46-210. Rulemaking — fees.

**Section 35. Transition.** (1) Registry identification cards issued to persons with debilitating medical conditions prior to [the effective date of this section] are valid until the expiration date listed on the card.

(2) (a) The department of public health and human services may issue registry identification cards to persons with debilitating medical conditions and to the persons named as providers or marijuana-infused products providers beginning June 1, 2011, under emergency rules adopted pursuant to [section 33].

(b) Until October 1, 2011, the department may issue cards to persons applying as providers or marijuana-infused products providers before the department has obtained the results of the fingerprint and background check required under [sections 4 and 5].

(c) A person who obtains a registry identification card as a provider or marijuana-infused products provider before October 1, 2011, shall submit fingerprints as required by [sections 4 and 5] no later than October 1, 2011.

(3) (a) The department shall revoke the registry identification card issued to a provider or marijuana-infused products provider under subsection (2) if:

(i) the person fails to submit fingerprints by October 1, 2011; or

(ii) the results of a fingerprint and background check conducted after issuance of the card shows that the person is ineligible for the card.

(b) The department shall notify the provider or marijuana-infused products provider and the registered cardholder who named the provider or marijuana-infused products provider that the person may no longer assist the registered cardholder with the use of marijuana to alleviate the symptoms of the cardholder's debilitating medical condition.

(4) A person who obtained a registry identification card as a caregiver pursuant to 50-46-103 before [the effective date of this section] may not be in possession of mature marijuana plants, seedlings, cuttings, clones, usable marijuana, or marijuana-related products on July 1, 2011, if the person has not obtained a registry identification card pursuant to the provisions of [sections 1 through 23] as provided for in subsection (2). Before July 1, 2011, a caregiver who has not obtained a registry identification card pursuant to [sections 1 through 23] shall take any mature marijuana plants, seedlings, cuttings, clones, usable marijuana, or marijuana-related products still in the caregiver's possession to the law enforcement agency having jurisdiction in the caregiver's area. The law enforcement agency shall destroy the items.

**Section 36. Codification instruction.** [Sections 1 through 23] are intended to be codified as an integral part of Title 50, chapter 46, and the provisions of Title 50, chapter 46, apply to [sections 1 through 23].

**Section 37. Coordination instruction.** If both House Bill No. 175 and [this act] are passed and approved and [this act] repeals 50-46-101, 50-46-102,

50-46-103, 50-46-201, 50-46-202, 50-46-205, 50-46-206, 50-46-207, and 50-46-210, then House Bill No. 175 is void.

**Section 38. Instructions to code commissioner.** (1) Wherever a reference to "medical use of marijuana" or "medical marijuana" appears in legislation enacted by the 2011 legislature, the code commissioner is directed to change the reference to "use of marijuana for a debilitating medical condition".

(2) Wherever a reference to 50-46-102 appears in legislation enacted by the 2011 legislature, the reference must be replaced with a reference to [section 2 of Senate Bill No. 423], if appropriate.

(3) Wherever a reference to 50-46-205 appears in legislation enacted by the 2011 legislature, the reference must be replaced with a reference to [section 11 of Senate Bill No. 423].

**Section 39. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 40. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective July 1, 2011.

(2) [Sections 20, 30, 31, 33, the repeal of 50-46-103 provided for in section 34, and sections 35 and 38], and this section are effective on passage and approval.

Initiative Referendum No. 124 was approved by the following vote at the General Election held November 6, 2012:

| | |
|---|---|
| For: | 268,790 |
| Against: | 200,730 |

# INITIATIVE NO. 166

A LAW PROPOSED BY INITIATIVE PETITION

Ballot initiative I-166 establishes a state policy that corporations are not entitled to constitutional rights because they are not human beings, and charges Montana elected and appointed officials, state and federal, to implement that policy. With this policy, the people of Montana establish that there should be a level playing field in campaign spending, in part by prohibiting corporate campaign contributions and expenditures and by limiting political spending in elections. Further, Montana's congressional delegation is charged with proposing a joint resolution offering an amendment to the United States Constitution establishing that corporations are not human beings entitled to constitutional rights.

THE COMPLETE TEXT OF INITIATIVE NO. 166

*Be it enacted by the People of the State of Montana:*

NEW SECTION. **Section 1. Short title.** [Sections 1 through 4] may be cited as the "Prohibition on Corporate Contributions and Expenditures in Montana Elections Act."

NEW SECTION. **Section 2. Preamble.** The people of the state of Montana find that:

(1) since 1912, through passage of the Corrupt Practices Act by initiative, Montana has prohibited corporate contributions to and expenditures on candidate elections;

(2) in 1996, by passage of Initiative No. 125, Montana prohibited corporations from using corporate funds to make contributions to or expenditures on ballot issue campaigns;

(3) Montana's 1996 prohibition on corporate contributions to ballot issue campaigns was invalidated by *Montana Chamber of Commerce v. Argenbright*, 226 F.3d 1049 (2000). Montana's 1912 prohibition on corporate contributions to and expenditures on candidate elections is also being challenged under the holding of *Citizens United v. FEC*, 558 U.S. _____, 130 S.Ct. 876 (2010). This decision equated the political speech rights of corporations with those of human beings.

(4) in 2011 the Montana Supreme Court, in its decision, *Western Tradition Partnership, Inc. v. Attorney General*, 2011 MT 328, upheld Montana's 1912 prohibition on corporate contributions to and expenditures on candidate campaigns, stating in its opinion as follows:

(a) examples of well-financed corruption involving corporate money abound in Montana;

(b) the corporate power that can be exerted with unlimited corporate political spending is still a vital interest to the people of Montana;

(c) corporate independent spending on Montana ballot issues has far exceeded spending from other sources;

(d) unlimited corporate money into candidate elections would irrevocably change the dynamic of local Montana political office races;

(e) with the infusion of unlimited corporate money in support of or opposition to a targeted candidate, the average citizen candidate in Montana would be unable to compete against the corporate-sponsored candidate, and Montana citizens, who for over 100 years have made their modest election contributions meaningfully count, would be effectively shut out of the process; and

(f) clearly the impact of unlimited corporate donations creates a dominating impact on the Montana political process and inevitably minimizes the impact of individual Montana citizens.

NEW SECTION. **Section 3. Policy.** (1) It is policy of the state of Montana that each elected and appointed official in Montana, whether acting on a state or federal level, advance the philosophy that corporations are not human beings with constitutional rights and that each such elected and appointed official is charged to act to prohibit, whenever possible, corporations from making contributions to or expenditures on the campaigns of candidates or ballot issues. As part of this policy, each such elected and appointed official in Montana is charged to promote actions that accomplish a level playing field in election spending.

(2) When carrying out the policy under subsection (1), Montana's elected and appointed officials are generally directed as follows:

(a) that the people of Montana regard money as property, not speech;

(b) that the people of Montana regard the rights under the United States Constitution as rights of human beings, not rights of corporations;

(c) that the people of Montana regard the immense aggregation of wealth that is accumulated by corporations using advantages provided by the

government to be corrosive and distorting when used to advance the political interests of corporations;

(d) that the people of Montana intend that there should be a level playing field in campaign spending that allows all individuals, regardless of wealth, to express their views to one another and their government; and

(e) that the people of Montana intend that a level playing field in campaign spending includes limits on overall campaign expenditures and limits on large contributions to or expenditures for the benefit of any campaign by any source, including corporations, individuals, or political committees.

NEW SECTION. **Section 4. Promotion of policy by elected or appointed officials.** (1) Montana's congressional delegation is charged with proposing a joint resolution offering an amendment to the United States constitution that accomplishes the following:

(a) overturns the U.S. Supreme Court's ruling in Citizens United v. Federal Election Commission;

(b) establishes that corporations are not human beings with constitutional rights;

(c) establishes that campaign contributions or expenditures by corporations, whether to candidates or ballot issues, may be prohibited by a political body at any level of government; and

(d) accomplishes the goals of Montanans in achieving a level playing field in election spending.

(2) Montana's congressional delegation is charged to work diligently to bring such a joint resolution to a vote and passage, including use of discharge petitions, cloture, and every other procedural method to secure a vote and passage.

(3) The members of the Montana legislature, if given the opportunity, are charged with ratifying any amendment to the United States constitution that is consistent with the policy of the state of Montana.

NEW SECTION. **Section 5. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act.]

NEW SECTION. **Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 7. Effective date.** [This act] is effective upon approval by the electorate.

NEW SECTION. **Section 8. Codification instruction.** Sections [1 through 4] are intended to be codified as an integral part of Title 13 and the provisions of Title 13 apply to sections [1 through 4].

Initiative No. 166 was approved by the following vote at the General Election held November 6, 2012:

| | |
|---|---|
| For: | 343,549 |
| Against: | 116,554 |

# TABLES

**Code Sections Affected**
**Session Laws Affected**
**Senate Bill to Chapter Number**
**House Bill to Chapter Number**
**Chapter Number to Bill Number**
**Effective Dates by Chapter Number**
**Effective Dates by Date**
**Session Law to Code**
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# CODE SECTIONS AFFECTED

This table was compiled before the codification process was completed. It does not reflect certain sections affected by name change amendments. All other substantive changes are reflected. Those sections for which renumbering is not attributed to a particular chapter and bill number were renumbered by the Code Commissioner under the authority of 1-11-204(3)(a)(ii).

| Title-Chapter-Section | Action | Chapter | Bill Number |
|---|---|---|---|
| 1-1-216 | amended | Ch. 131 | HB 325 |
| 1-1-520 | renumbered 1-1-540 | Ch. 91 | HB 351 |
| 1-1-521 | enacted | Ch. 91 | HB 351 |
| 1-1-522 | enacted | Ch. 290 | SB 242 |
| 1-1-540 | formerly 1-1-520 | Ch. 91 | HB 351 |
| 1-5-419 | amended | Ch. 76 | HB 252 |
| 1-5-420 | amended | Ch. 76 | HB 252 |
| 2-2-121 | amended | Ch. 14 | HB 132 |
| 2-2-136 | amended | Ch. 234 | HB 23 |
| 2-4-102 | amended | Ch. 318 | SB 139 |
| 2-4-111 | enacted | Ch. 318 | SB 139 |
| 2-6-102 | amended | Ch. 364 | SB 348 |
| 2-15-142 | amended | Ch. 146 | HB 110 |
| 2-15-247 | enacted | Ch. 413 | SB 410 |
| 2-15-1021 | amended | Ch. 284 | HB 560 |
| 2-15-1028 | amended | Ch. 123 | SB 71 |
| 2-15-1520 | repealed | Ch. 39 | SB 87 |
| 2-15-1747 | amended | Ch. 102 | SB 343 |
| 2-15-1758 | amended | Ch. 87 | HB 308 |
| 2-15-1809 | formerly 2-15-3106 | Ch. 402 | SB 215 |
| 2-15-2005 | amended | Ch. 28 | HB 17 |
| 2-15-2012 | amended | Ch. 237 | HB 71 |
| 2-15-2013 | amended | Ch. 237 | HB 71 |
| 2-15-2017 | amended | Ch. 28 | HB 17 |
| 2-15-2106 | repealed | Ch. 417 | SB 44 |
| 2-15-2302 | amended | Ch. 209 | SB 11 |
| 2-15-3106 | renumbered 2-15-1809 | Ch. 402 | SB 215 |
| 2-15-3110 | amended | Ch. 172 | HB 323 |
| | amended | Ch. 235 | HB 24 |
| | amended | Ch. 369 | HB 395 |
| 2-15-3111 | amended | Ch. 172 | HB 323 |
| 2-15-3112 | amended | Ch. 172 | HB 323 |
| 2-15-3113 | amended | Ch. 123 | SB 71 |
| | amended | Ch. 172 | HB 323 |
| | amended | Ch. 235 | HB 24 |
| 2-15-3308 | amended | Ch. 84 | HB 59 |
| 2-15-3401 | amended | Ch. 235 | HB 24 |
| 2-15-3402 | amended | Ch. 235 | HB 24 |
| 2-15-3404 | amended | Ch. 235 | HB 24 |
| 2-15-3406 | enacted | Ch. 235 | HB 24 |
| 2-16-615 | amended (not codified — referendum) | Ch. 269 | SB 408 |
| 2-17-101 | amended | Ch. 120 | SB 49 |
| 2-17-505 | amended | Ch. 166 | SB 312 |
| 2-17-518 | amended | Ch. 284 | HB 560 |
| 2-17-803 | amended | Ch. 42 | SB 36 |
| 2-17-804 | amended | Ch. 155 | SB 67 |
| 2-17-807 | amended | Ch. 221 | SB 258 |
| 2-17-808 | amended | Ch. 221 | SB 258 |
| 2-17-818 | enacted | Ch. 221 | SB 258 |
| 2-18-301 | amended | Ch. 385 | HB 13 |
| 2-18-303 | amended | Ch. 385 | HB 13 |
| 2-18-703 | amended | Ch. 385 | HB 13 |

2-18-704 . . . . . amended . . . . . Ch. 97 . . . . . SB 55
2-18-705. . . . . enacted . . . . . Ch. 363 . . . . . SB 84
2-18-1103 . . . . . amended . . . . . Ch. 155 . . . . . SB 67
3-6-204 . . . . . amended . . . . . Ch. 105 . . . . . HB 172
3-10-201 . . . . . amended . . . . . Ch. 143 . . . . . SB 132
3-10-206 . . . . . amended . . . . . Ch. 143 . . . . . SB 132
3-10-231 . . . . . amended . . . . . Ch. 248 . . . . . HB 352
3-10-302 . . . . . amended . . . . . Ch. 253 . . . . . HB 485
5-2-302 . . . . . amended . . . . . Ch. 392 . . . . . HB 554
5-2-303 . . . . . amended . . . . . Ch. 392 . . . . . HB 554
5-2-402. . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
amended . . . . . Ch. 336 . . . . . HB 120
5-2-403. . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
5-2-404. . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
5-2-406 . . . . . amended . . . . . Ch. 126 . . . . . SB 142
amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
5-4-104 . . . . . amended . . . . . Ch. 268 . . . . . SB 361
5-5-223 . . . . . amended . . . . . Ch. 19 . . . . . HB 41
5-5-228 . . . . . amended . . . . . Ch. 19 . . . . . HB 41
amended . . . . . Ch. 20 . . . . . HB 53
5-6-101 . . . . . repealed . . . . . Ch. 133 . . . . . SB 3
5-6-102 . . . . . repealed . . . . . Ch. 133 . . . . . SB 3
5-6-103 . . . . . repealed . . . . . Ch. 133 . . . . . SB 3
5-6-104 . . . . . repealed . . . . . Ch. 133 . . . . . SB 3
5-6-105 . . . . . repealed . . . . . Ch. 133 . . . . . SB 3
5-6-106 . . . . . repealed . . . . . Ch. 133 . . . . . SB 3
5-6-107 . . . . . repealed . . . . . Ch. 133 . . . . . SB 3
5-6-108 . . . . . repealed . . . . . Ch. 133 . . . . . SB 3
5-6-109 . . . . . repealed . . . . . Ch. 133 . . . . . SB 3
5-6-110 . . . . . repealed . . . . . Ch. 133 . . . . . SB 3
5-6-111 . . . . . repealed . . . . . Ch. 133 . . . . . SB 3
5-11-401 . . . . . amended . . . . . Ch. 284 . . . . . HB 560
5-11-402 . . . . . amended . . . . . Ch. 284 . . . . . HB 560
5-11-403 . . . . . amended . . . . . Ch. 284 . . . . . HB 560
5-11-404 . . . . . amended . . . . . Ch. 284 . . . . . HB 560
5-11-405 . . . . . amended . . . . . Ch. 284 . . . . . HB 560
5-11-406 . . . . . amended . . . . . Ch. 284 . . . . . HB 560
5-11-407 . . . . . amended . . . . . Ch. 284 . . . . . HB 560
5-11-1101 . . . . . amended . . . . . Ch. 257 . . . . . HB 552
5-11-1102 . . . . . amended . . . . . Ch. 257 . . . . . HB 552
5-11-1111 . . . . . amended . . . . . Ch. 257 . . . . . HB 552
5-12-302 . . . . . amended . . . . . Ch. 120 . . . . . SB 49
7-1-111 . . . . . amended . . . . . Ch. 56 . . . . . HB 148
7-1-2121 . . . . . amended . . . . . Ch. 279 . . . . . HB 258
7-1-4121 . . . . . amended . . . . . Ch. 123 . . . . . SB 71
7-1-4127 . . . . . amended . . . . . Ch. 279 . . . . . HB 258
7-2-2219. . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
7-3-176. . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
7-3-218. . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
7-3-313. . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
7-3-412. . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
7-3-512. . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
7-3-704. . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
7-3-1256. . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
7-4-2102 . . . . . amended . . . . . Ch. 40 . . . . . HB 164
7-4-2106 . . . . . amended . . . . . Ch. 143 . . . . . SB 132
amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
7-4-2206 . . . . . amended . . . . . Ch. 51 . . . . . HB 193
amended . . . . . Ch. 143 . . . . . SB 132
amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
7-4-2302. . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
7-4-2310. . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
7-4-2504 . . . . . amended . . . . . Ch. 62 . . . . . HB 47

| | | | |
|---|---|---|---|
| 7-4-2516 | amended | Ch. 344 | HB 403 |
| 7-4-2631 | amended | Ch. 207 | HB 465 |
| 7-4-4112 | amended (not codified — referendum) | Ch. 269 | SB 408 |
| 7-5-109 | amended | Ch. 415 | HB 497 |
| 7-5-2131 | amended | Ch. 41 | SB 5 |
| 7-5-2133 | amended | Ch. 41 | SB 5 |
| 7-5-2301 | amended | Ch. 110 | SB 77 |
| 7-5-2303 | amended | Ch. 136 | HB 371 |
| 7-5-2316 | repealed | Ch. 188 | SB 116 |
| 7-5-4207 | amended | Ch. 415 | HB 497 |
| 7-5-4209 | enacted | Ch. 415 | HB 497 |
| 7-5-4302 | amended | Ch. 110 | SB 77 |
| 7-5-4316 | repealed | Ch. 188 | SB 116 |
| 7-6-206 | amended | Ch. 52 | HB 202 |
| 7-6-621 | amended | Ch. 412 | SB 386 |
| 7-6-1506 | amended | Ch. 232 | SB 209 |
| 7-6-1541 | amended | Ch. 232 | SB 209 |
| 7-6-1542 | amended | Ch. 232 | SB 209 |
| 7-6-1551 | enacted | Ch. 285 | HB 605 |
| 7-6-4024 | amended | Ch. 62 | HB 47 |
| 7-6-4036 | amended | Ch. 62 | HB 47 |
| 7-8-2210 | enacted | Ch. 130 | HB 245 |
| 7-11-1003 | amended | Ch. 171 | HB 314 |
| 7-11-1006 | amended | Ch. 171 | HB 314 |
| 7-11-1007 | amended | Ch. 171 | HB 314 |
| 7-11-1008 | amended | Ch. 171 | HB 314 |
| 7-11-1011 | amended | Ch. 171 | HB 314 |
| 7-11-1013 | amended | Ch. 171 | HB 314 |
| 7-11-1014 | amended | Ch. 175 | HB 38 |
| 7-11-1021 | amended | Ch. 171 | HB 314 |
| 7-11-1023 | amended | Ch. 171 | HB 314 |
| 7-11-1025 | amended | Ch. 62 | HB 47 |
| | amended | Ch. 171 | HB 314 |
| 7-11-1029 | amended | Ch. 175 | HB 38 |
| 7-13-2275 | amended | Ch. 187 | SB 48 |
| 7-13-2301 | amended | Ch. 187 | SB 48 |
| 7-13-2351 | amended | Ch. 233 | SB 271 |
| 7-13-2352 | enacted | Ch. 233 | SB 271 |
| 7-13-4307 | amended | Ch. 187 | SB 48 |
| 7-14-2124 | amended | Ch. 198 | SB 332 |
| 7-14-2826 | amended | Ch. 123 | SB 71 |
| 7-15-4277 | enacted | Ch. 214 | SB 239 |
| 7-15-4278 | enacted | Ch. 214 | SB 239 |
| 7-15-4279 | enacted | Ch. 214 | SB 239 |
| 7-15-4280 | enacted | Ch. 214 | SB 239 |
| 7-15-4282 | amended | Ch. 214 | SB 239 |
| 7-15-4283 | amended | Ch. 214 | SB 239 |
| 7-15-4284 | amended | Ch. 214 | SB 239 |
| 7-15-4285 | amended | Ch. 214 | SB 239 |
| 7-15-4286 | amended | Ch. 214 | SB 239 |
| 7-15-4287 | amended | Ch. 214 | SB 239 |
| 7-15-4288 | amended | Ch. 214 | SB 239 |
| 7-15-4289 | amended | Ch. 214 | SB 239 |
| 7-15-4290 | amended | Ch. 214 | SB 239 |
| 7-15-4291 | amended | Ch. 214 | SB 239 |
| 7-15-4292 | amended | Ch. 214 | SB 239 |
| 7-15-4293 | amended | Ch. 214 | SB 239 |
| 7-15-4294 | amended | Ch. 214 | SB 239 |
| 7-15-4295 | repealed | Ch. 214 | SB 239 |
| 7-15-4296 | repealed | Ch. 214 | SB 239 |
| 7-15-4297 | repealed | Ch. 214 | SB 239 |
| 7-15-4298 | repealed | Ch. 214 | SB 239 |
| 7-15-4299 | repealed | Ch. 214 | SB 239 |

7-15-4301 . . . . . amended . . . . . Ch. 214 . . . . . SB 239
7-15-4302 . . . . . amended . . . . . Ch. 214 . . . . . SB 239
7-15-4304 . . . . . amended . . . . . Ch. 214 . . . . . SB 239
7-15-4305 . . . . . amended . . . . . Ch. 214 . . . . . SB 239
7-15-4306 . . . . . amended . . . . . Ch. 214 . . . . . SB 239
7-15-4322 . . . . . amended . . . . . Ch. 214 . . . . . SB 239
7-15-4324 . . . . . amended . . . . . Ch. 214 . . . . . SB 239
7-22-2117 . . . . . amended . . . . . Ch. 301 . . . . . SB 301
7-22-2123 . . . . . repealed . . . . . Ch. 301 . . . . . SB 301
7-22-2124 . . . . . repealed . . . . . Ch. 301 . . . . . SB 301
7-22-2131 . . . . . enacted . . . . . Ch. 301 . . . . . SB 301
7-22-2132 . . . . . enacted . . . . . Ch. 301 . . . . . SB 301
7-22-2133 . . . . . enacted . . . . . Ch. 301 . . . . . SB 301
7-22-2134 . . . . . enacted . . . . . Ch. 301 . . . . . SB 301
7-22-2144 . . . . . amended . . . . . Ch. 301 . . . . . SB 301
7-22-2146 . . . . . amended . . . . . Ch. 301 . . . . . SB 301
7-22-2148 . . . . . amended . . . . . Ch. 301 . . . . . SB 301
7-31-301 . . . . . enacted . . . . . Ch. 56 . . . . . HB 148
7-33-2215 . . . . . enacted . . . . . Ch. 206 . . . . . HB 451
7-33-4510 . . . . . enacted . . . . . Ch. 412 . . . . . SB 386
10-1-104 . . . . . amended . . . . . Ch. 8 . . . . . HB 51
10-1-1201 . . . . . amended . . . . . Ch. 140 . . . . . SB 63
10-2-102 . . . . . amended . . . . . Ch. 155 . . . . . SB 67
10-2-118 . . . . . enacted . . . . . Ch. 372 . . . . . HB 447
10-2-603 . . . . . amended . . . . . Ch. 17 . . . . . HB 21
10-2-1301 . . . . . enacted . . . . . Ch. 322 . . . . . SB 275
10-3-312 . . . . . amended . . . . . Ch. 138 . . . . . SB 33
amended . . . . . Ch. 368 . . . . . HB 354
10-4-101 . . . . . amended . . . . . Ch. 316 . . . . . HB 575
10-4-313 . . . . . amended . . . . . Ch. 316 . . . . . HB 575
13-1-101 . . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
amended . . . . . Ch. 336 . . . . . HB 120
amended . . . . . Ch. 347 . . . . . HB 457
13-1-103 . . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-1-210 . . . . . amended . . . . . Ch. 255 . . . . . HB 510
amended . . . . . Ch. 336 . . . . . HB 120
13-2-107 . . . . . amended . . . . . Ch. 336 . . . . . HB 120
13-2-108 . . . . . amended . . . . . Ch. 336 . . . . . HB 120
13-2-110 . . . . . amended . . . . . Ch. 139 . . . . . SB 57
13-2-112 . . . . . amended . . . . . Ch. 336 . . . . . HB 120
13-2-115 . . . . . amended . . . . . Ch. 336 . . . . . HB 120
13-2-122 . . . . . amended . . . . . Ch. 336 . . . . . HB 120
13-2-207 . . . . . amended . . . . . Ch. 336 . . . . . HB 120
13-2-220 . . . . . amended . . . . . Ch. 336 . . . . . HB 120
13-2-301 . . . . . amended (not codified — referendum) . . . . . Ch. 270 . . . . . SB 405
amended . . . . . Ch. 336 . . . . . HB 120
13-2-304 . . . . . amended (not codified — referendum) . . . . . Ch. 270 . . . . . SB 405
amended . . . . . Ch. 336 . . . . . HB 120
13-4-102 . . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-10-201 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
amended . . . . . Ch. 336 . . . . . HB 120
13-10-203 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
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13-10-204 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-10-209 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
amended . . . . . Ch. 336 . . . . . HB 120
13-10-211 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
amended . . . . . Ch. 336 . . . . . HB 120
13-10-301 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-10-302 . . . . repealed (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
amended . . . . . Ch. 336 . . . . . HB 120
13-10-303 . . . . repealed (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-10-305 . . . . repealed (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408

13-10-311 . . . . repealed (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-10-325. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-10-326. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-10-327. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-10-402. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-10-403. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-10-404. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
amended . . . . . Ch. 336 . . . . . HB 120
13-10-405. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
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13-10-501. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-10-502 . . . . repealed (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-10-503 . . . . repealed (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
amended . . . . . Ch. 336 . . . . . HB 120
13-10-504. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-10-505. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-10-507 . . . . repealed (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
amended . . . . . Ch. 336 . . . . . HB 120
13-10-601 . . . . repealed (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-10-602 . . . . repealed (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-10-604 . . . . repealed (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-12-201. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-12-202. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-12-203. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-12-205. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-12-207. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-13-112 . . . . . amended . . . . . Ch. 336 . . . . . HB 120
13-13-118 . . . . . amended . . . . . Ch. 336 . . . . . HB 120
13-13-201 . . . . . amended . . . . . Ch. 139 . . . . . SB 57
amended . . . . . Ch. 336 . . . . . HB 120
13-13-204 . . . . . amended . . . . . Ch. 336 . . . . . HB 120
13-13-211 . . . . . amended . . . . . Ch. 139 . . . . . SB 57
amended . . . . . Ch. 336 . . . . . HB 120
13-13-212 . . . . . amended . . . . . Ch. 255 . . . . . HB 510
amended . . . . . Ch. 336 . . . . . HB 120
13-13-213 . . . . . amended . . . . . Ch. 336 . . . . . HB 120
13-13-214. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
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13-13-225. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
amended . . . . . Ch. 336 . . . . . HB 120
13-13-226 . . . . . amended . . . . . Ch. 336 . . . . . HB 120
13-13-227 . . . . . amended . . . . . Ch. 336 . . . . . HB 120
13-13-228 . . . . . amended . . . . . Ch. 336 . . . . . HB 120
13-13-229 . . . . . amended . . . . . Ch. 336 . . . . . HB 120
13-13-230 . . . . . amended . . . . . Ch. 336 . . . . . HB 120
13-13-233 . . . . . amended . . . . . Ch. 139 . . . . . SB 57
13-13-241. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
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13-13-244 . . . . . amended . . . . . Ch. 336 . . . . . HB 120
13-13-245 . . . . . amended . . . . . Ch. 336 . . . . . HB 120
13-13-301 . . . . . amended . . . . . Ch. 336 . . . . . HB 120
13-13-602 . . . . . amended . . . . . Ch. 336 . . . . . HB 120
13-13-603 . . . . . amended . . . . . Ch. 336 . . . . . HB 120
13-14-111. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-14-112. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
amended . . . . . Ch. 336 . . . . . HB 120
13-14-113. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
amended . . . . . Ch. 336 . . . . . HB 120
13-14-114. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-14-115 . . . . . amended . . . . . Ch. 212 . . . . . SB 122
amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-14-117. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-14-118. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408

13-15-107 . . . . . amended . . . . . Ch. 336 . . . . . HB 120
13-15-108 . . . . . amended . . . . . Ch. 336 . . . . . HB 120
13-15-201 . . . . . amended . . . . . Ch. 139 . . . . . SB 57
amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
amended . . . . . Ch. 336 . . . . . HB 120
13-15-205. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-15-206. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
amended . . . . . Ch. 336 . . . . . HB 120
13-15-208. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-15-401 . . . . . amended . . . . . Ch. 336 . . . . . HB 120
13-15-405. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-15-406. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-15-507. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-16-101. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
amended . . . . . Ch. 347 . . . . . HB 457
13-16-201. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
amended . . . . . Ch. 336 . . . . . HB 120
amended . . . . . Ch. 347 . . . . . HB 457
13-16-203 . . . . . amended . . . . . Ch. 347 . . . . . HB 457
13-16-204 . . . . . amended . . . . . Ch. 347 . . . . . HB 457
13-16-205 . . . . . amended . . . . . Ch. 347 . . . . . HB 457
13-16-211. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
amended . . . . . Ch. 336 . . . . . HB 120
13-16-301 . . . . . amended . . . . . Ch. 347 . . . . . HB 457
13-16-412. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-16-417 . . . . . amended . . . . . Ch. 336 . . . . . HB 120
amended . . . . . Ch. 347 . . . . . HB 457
13-16-418. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
amended . . . . . Ch. 347 . . . . . HB 457
13-16-419. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-16-420 . . . . . amended . . . . . Ch. 347 . . . . . HB 457
13-16-501. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-17-103. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-17-203 . . . . . amended . . . . . Ch. 336 . . . . . HB 120
13-17-211 . . . . . amended . . . . . Ch. 336 . . . . . HB 120
13-19-102 . . . . . amended . . . . . Ch. 336 . . . . . HB 120
13-19-106 . . . . . amended . . . . . Ch. 139 . . . . . SB 57
amended . . . . . Ch. 336 . . . . . HB 120
13-19-205. . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-19-207. . . . amended (not codified — referendum) . . . . . Ch. 270 . . . . . SB 405
13-19-304 . . . . . amended . . . . . Ch. 336 . . . . . HB 120
13-19-306 . . . . . amended . . . . . Ch. 139 . . . . . SB 57
13-21-101 . . . . . amended . . . . . Ch. 139 . . . . . SB 57
13-21-102 . . . . . amended . . . . . Ch. 139 . . . . . SB 57
13-21-103 . . . . . repealed 1/1/2014 . . . . . Ch. 139 . . . . . SB 57
13-21-104 . . . . . amended . . . . . Ch. 139 . . . . . SB 57
13-21-105. . . . . enacted . . . . . Ch. 139 . . . . . SB 57
13-21-106. . . . . enacted . . . . . Ch. 139 . . . . . SB 57
13-21-201 . . . . . repealed 1/1/2014 . . . . . Ch. 139 . . . . . SB 57
13-21-202 . . . . . repealed 1/1/2014 . . . . . Ch. 139 . . . . . SB 57
13-21-203 . . . . . repealed 1/1/2014 . . . . . Ch. 139 . . . . . SB 57
13-21-205 . . . . . repealed 1/1/2014 . . . . . Ch. 139 . . . . . SB 57
amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-21-207 . . . . . repealed 1/1/2014 . . . . . Ch. 139 . . . . . SB 57
13-21-210 . . . . . repealed 1/1/2014 . . . . . Ch. 139 . . . . . SB 57
amended . . . . . Ch. 255 . . . . . HB 510
amended . . . . . Ch. 336 . . . . . HB 120
13-21-212 . . . . . amended . . . . . Ch. 336 . . . . . HB 120
13-21-213 . . . . . amended . . . . . Ch. 139 . . . . . SB 57
13-21-220. . . . . enacted . . . . . Ch. 139 . . . . . SB 57
13-21-221. . . . . enacted . . . . . Ch. 139 . . . . . SB 57
13-21-222. . . . . enacted . . . . . Ch. 139 . . . . . SB 57
13-21-223. . . . . enacted . . . . . Ch. 139 . . . . . SB 57

13-21-224 . . . . . enacted . . . . . Ch. 139 . . . . . SB 57
13-21-225 . . . . . enacted . . . . . Ch. 139 . . . . . SB 57
13-21-226 . . . . . enacted . . . . . Ch. 139 . . . . . SB 57
13-21-227 . . . . . enacted . . . . . Ch. 139 . . . . . SB 57
13-21-228 . . . . . enacted . . . . . Ch. 139 . . . . . SB 57
13-25-101 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-25-201 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-25-205 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-25-303 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-35-106 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-35-205 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-35-206 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-35-207 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-35-214 . . . . . amended . . . . . Ch. 95 . . . . . SB 21
amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-35-218 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
amended . . . . . Ch. 336 . . . . . HB 120
13-35-221 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-35-225 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
amended . . . . . Ch. 367 . . . . . HB 129
amended . . . . . Ch. 423 . . . . . SB 392
13-35-226 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-35-237 . . . . . enacted . . . . . Ch. 340 . . . . . HB 254
13-35-601 . . . . . enacted . . . . . Ch. 249 . . . . . HB 410
13-35-602 . . . . . enacted . . . . . Ch. 249 . . . . . HB 410
13-35-603 . . . . . enacted . . . . . Ch. 249 . . . . . HB 410
13-35-604 . . . . . enacted . . . . . Ch. 249 . . . . . HB 410
13-36-101 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-36-102 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-36-103 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-36-104 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-36-201 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-36-202 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-36-203 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-36-206 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-36-207 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-36-209 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-36-210 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-36-211 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-36-212 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-37-108 . . . . . amended . . . . . Ch. 234 . . . . . HB 23
13-37-111 . . . . . amended . . . . . Ch. 234 . . . . . HB 23
13-37-126 . . . . . amended . . . . . Ch. 147 . . . . . HB 125
amended . . . . . Ch. 336 . . . . . HB 120
13-37-127 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-37-131 . . . . . amended . . . . . Ch. 367 . . . . . HB 129
13-37-206 . . . . . amended . . . . . Ch. 202 . . . . . HB 124
13-37-216 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
amended . . . . . Ch. 330 . . . . . HB 46
13-37-218 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-37-219 . . . . . enacted . . . . . Ch. 330 . . . . . HB 46
13-37-226 . . . . . amended . . . . . Ch. 295 . . . . . HB 64
13-38-101 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
13-38-201 . . . . amended (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
amended . . . . . Ch. 336 . . . . . HB 120
13-38-204 . . . . repealed (not codified — referendum) . . . . . Ch. 269 . . . . . SB 408
15-1-121 . . . . . amended . . . . . Ch. 22 . . . . . SB 16
amended . . . . . Ch. 268 . . . . . SB 361
15-1-122 . . . . . amended . . . . . Ch. 123 . . . . . SB 71
amended . . . . . Ch. 376 . . . . . HB 626
15-1-123 . . . . . amended . . . . . Ch. 396 . . . . . SB 96
15-1-205 . . . . . amended . . . . . Ch. 268 . . . . . SB 361
15-1-211 . . . . . amended . . . . . Ch. 419 . . . . . SB 280

15-1-212 . . . . . enacted . . . . . Ch. 419 . . . . . SB 280
15-1-213 . . . . . enacted . . . . . Ch. 419 . . . . . SB 280
15-1-216 . . . . . amended . . . . . Ch. 123 . . . . . SB 71
15-1-402 . . . . . amended . . . . . Ch. 419 . . . . . SB 280
15-1-706 . . . . . amended . . . . . Ch. 200 . . . . . HB 66
15-6-138 . . . . . amended (voided by sec. 38, Ch. 268) . . . . . Ch. 11 . . . . . HB 35
amended . . . . . Ch. 268 . . . . . SB 361
amended . . . . . Ch. 396 . . . . . SB 96
15-6-141 . . . . . amended . . . . . Ch. 396 . . . . . SB 96
15-6-143 . . . . . amended . . . . . Ch. 243 . . . . . HB 195
15-6-201 . . . . . amended . . . . . Ch. 405 . . . . . SB 231
15-7-103 . . . . . amended . . . . . Ch. 357 . . . . . HB 593
15-7-201 . . . . . amended . . . . . Ch. 357 . . . . . HB 593
15-8-601 . . . . . amended . . . . . Ch. 419 . . . . . SB 280
15-16-603 . . . . . amended . . . . . Ch. 46 . . . . . HB 36
15-23-101 . . . . . amended . . . . . Ch. 396 . . . . . SB 96
15-23-102 . . . . . amended . . . . . Ch. 419 . . . . . SB 280
15-23-104 . . . . . amended . . . . . Ch. 419 . . . . . SB 280
15-24-202 . . . . . amended . . . . . Ch. 50 . . . . . HB 192
15-24-211 . . . . . enacted . . . . . Ch. 50 . . . . . HB 192
15-24-212 . . . . . enacted . . . . . Ch. 50 . . . . . HB 192
15-24-1402 . . . . . amended . . . . . Ch. 57 . . . . . HB 152
15-24-1501 . . . . . amended . . . . . Ch. 57 . . . . . HB 152
15-24-1502 . . . . . amended . . . . . Ch. 57 . . . . . HB 152
15-24-1603 . . . . . amended . . . . . Ch. 57 . . . . . HB 152
15-24-1605 . . . . . amended . . . . . Ch. 57 . . . . . HB 152
15-24-1802 . . . . . amended . . . . . Ch. 57 . . . . . HB 152
15-24-1902 . . . . . amended . . . . . Ch. 57 . . . . . HB 152
15-24-2002 . . . . . amended . . . . . Ch. 57 . . . . . HB 152
15-24-2401 . . . . . repealed . . . . . Ch. 37 . . . . . HB 111
15-24-2402 . . . . . repealed . . . . . Ch. 37 . . . . . HB 111
15-24-2403 . . . . . repealed . . . . . Ch. 37 . . . . . HB 111
15-24-2404 . . . . . repealed . . . . . Ch. 37 . . . . . HB 111
15-24-2405 . . . . . repealed . . . . . Ch. 37 . . . . . HB 111
15-24-3112 . . . . . amended . . . . . Ch. 419 . . . . . SB 280
15-30-2110 . . . . . amended . . . . . Ch. 268 . . . . . SB 361
amended . . . . . Ch. 349 . . . . . HB 545
amended . . . . . Ch. 398 . . . . . SB 117
15-30-2327 . . . . . amended . . . . . Ch. 317 . . . . . SB 108
15-30-2328 . . . . . amended . . . . . Ch. 268 . . . . . SB 361
15-30-2380 . . . . . enacted . . . . . Ch. 346 . . . . . HB 444
15-30-2388 . . . . . amended . . . . . Ch. 34 . . . . . HB 52
15-30-2389 . . . . . amended . . . . . Ch. 34 . . . . . HB 52
15-30-2604 . . . . . amended . . . . . Ch. 123 . . . . . SB 71
15-30-2618 . . . . . amended . . . . . Ch. 21 . . . . . SB 15
15-30-3301 . . . . . amended . . . . . Ch. 268 . . . . . SB 361
15-30-3312 . . . . . amended . . . . . Ch. 268 . . . . . SB 361
15-30-3313 . . . . . amended . . . . . Ch. 268 . . . . . SB 361
15-30-3315 . . . . . enacted . . . . . Ch. 289 . . . . . SB 179
15-31-101 . . . . . amended . . . . . Ch. 268 . . . . . SB 361
15-31-102 . . . . . amended . . . . . Ch. 268 . . . . . SB 361
15-31-111 . . . . . amended . . . . . Ch. 268 . . . . . SB 361
15-31-112 . . . . . amended . . . . . Ch. 268 . . . . . SB 361
15-31-113 . . . . . amended . . . . . Ch. 268 . . . . . SB 361
15-31-114 . . . . . amended . . . . . Ch. 268 . . . . . SB 361
15-31-115 . . . . . amended . . . . . Ch. 268 . . . . . SB 361
15-31-117 . . . . . amended . . . . . Ch. 268 . . . . . SB 361
15-31-125 . . . . . amended . . . . . Ch. 268 . . . . . SB 361
15-31-143 . . . . . amended . . . . . Ch. 268 . . . . . SB 361
15-31-161 . . . . . amended . . . . . Ch. 268 . . . . . SB 361
15-31-401 . . . . . amended . . . . . Ch. 268 . . . . . SB 361
15-31-402 . . . . . amended . . . . . Ch. 268 . . . . . SB 361
15-31-404 . . . . . amended . . . . . Ch. 268 . . . . . SB 361

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| 15-31-406 | amended | Ch. 268 | SB 361 |
| 15-31-511 | amended | Ch. 268 | SB 361 |
| 15-31-522 | amended | Ch. 268 | SB 361 |
| 15-31-523 | amended | Ch. 268 | SB 361 |
| 15-31-531 | amended | Ch. 268 | SB 361 |
| 15-31-543 | amended | Ch. 268 | SB 361 |
| 15-31-551 | amended | Ch. 268 | SB 361 |
| 15-32-107 | amended | Ch. 268 | SB 361 |
| 15-35-108 | amended | Ch. 390 | HB 454 |
| 15-36-315 | amended | Ch. 46 | HB 36 |
| 15-50-207 | amended | Ch. 268 | SB 361 |
| 15-65-121 | amended | Ch. 32 | HB 32 |
| 15-65-131 | amended | Ch. 32 | HB 32 |
| 15-67-101 | amended | Ch. 68 | HB 123 |
| 15-68-815 | amended | Ch. 268 | SB 361 |
| 15-70-101 | amended | Ch. 170 | HB 194 |
| 15-70-301 | amended | Ch. 188 | SB 116 |
| 15-70-302 | repealed | Ch. 188 | SB 116 |
| 15-70-303 | repealed | Ch. 188 | SB 116 |
| 15-70-304 | repealed | Ch. 188 | SB 116 |
| 15-70-305 | repealed | Ch. 188 | SB 116 |
| 15-70-306 | repealed | Ch. 188 | SB 116 |
| 15-70-307 | repealed | Ch. 188 | SB 116 |
| 15-70-311 | amended | Ch. 188 | SB 116 |
| 15-70-314 | amended | Ch. 188 | SB 116 |
| 15-70-317 | repealed | Ch. 188 | SB 116 |
| 15-70-321 | amended | Ch. 188 | SB 116 |
| | amended | Ch. 418 | SB 226 |
| 15-70-323 | repealed | Ch. 188 | SB 116 |
| 15-70-325 | repealed | Ch. 188 | SB 116 |
| 15-70-327 | repealed | Ch. 188 | SB 116 |
| 15-70-328 | repealed | Ch. 188 | SB 116 |
| 15-70-329 | repealed | Ch. 188 | SB 116 |
| 15-70-330 | amended | Ch. 188 | SB 116 |
| | amended | Ch. 418 | SB 226 |
| 15-70-331 | repealed | Ch. 188 | SB 116 |
| 15-70-332 | repealed | Ch. 188 | SB 116 |
| 15-70-333 | repealed | Ch. 188 | SB 116 |
| 15-70-334 | repealed | Ch. 188 | SB 116 |
| 15-70-335 | repealed | Ch. 188 | SB 116 |
| 15-70-336 | repealed | Ch. 188 | SB 116 |
| 15-70-356 | amended | Ch. 188 | SB 116 |
| 15-70-372 | amended | Ch. 188 | SB 116 |
| 16-1-106 | amended | Ch. 115 | SB 266 |
| 16-1-411 | amended | Ch. 115 | SB 266 |
| | amended | Ch. 184 | HB 402 |
| 16-2-201 | amended | Ch. 12 | HB 56 |
| 16-3-218 | amended | Ch. 115 | SB 266 |
| 16-3-307 | amended | Ch. 12 | HB 56 |
| 16-3-402 | amended | Ch. 115 | SB 266 |
| | amended | Ch. 184 | HB 402 |
| 16-3-411 | amended | Ch. 184 | HB 402 |
| 16-4-107 | amended | Ch. 184 | HB 402 |
| 16-4-108 | amended | Ch. 115 | SB 266 |
| 16-4-115 | amended | Ch. 375 | HB 524 |
| 16-4-205 | amended | Ch. 211 | SB 120 |
| 16-4-313 | amended | Ch. 115 | SB 266 |
| 16-4-401 | amended | Ch. 211 | SB 120 |
| 16-4-406 | amended | Ch. 327 | SB 294 |
| 16-4-901 | amended | Ch. 184 | HB 402 |
| 16-4-902 | amended | Ch. 184 | HB 402 |
| 16-4-903 | amended | Ch. 184 | HB 402 |
| 16-4-906 | amended | Ch. 184 | HB 402 |

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| 16-4-1101 | enacted | Ch. 184 | HB 402 |
| 16-4-1102 | enacted | Ch. 184 | HB 402 |
| 16-4-1103 | enacted | Ch. 184 | HB 402 |
| 16-6-301 | amended | Ch. 184 | HB 402 |
| 17-1-102 | amended | Ch. 120 | SB 49 |
| 17-1-505 | amended | Ch. 120 | SB 49 |
| 17-1-508 | amended | Ch. 17 | HB 21 |
| 17-2-107 | amended | Ch. 120 | SB 49 |
| 17-2-111 | repealed | Ch. 120 | SB 49 |
| 17-2-304 | amended | Ch. 120 | SB 49 |
| 17-3-112 | repealed contingently | Ch. 17 | HB 21 |
| 17-5-205 | amended | Ch. 18 | HB 34 |
| 17-5-703 | amended | Ch. 390 | HB 454 |
| 17-5-820 | amended | Ch. 120 | SB 49 |
| | repealed | Ch. 214 | SB 239 |
| 17-6-230 | amended | Ch. 155 | SB 67 |
| 17-6-308 | amended | Ch. 213 | SB 136 |
| 17-6-340 | repealed | Ch. 17 | HB 21 |
| 17-7-140 | amended | Ch. 120 | SB 49 |
| | amended | Ch. 368 | HB 354 |
| 17-7-502 | amended | Ch. 17 | HB 21 |
| | amended | Ch. 244 | HB 203 |
| | amended | Ch. 368 | HB 354 |
| | amended | Ch. 413 | SB 410 |
| 17-8-101 | amended | Ch. 120 | SB 49 |
| 17-8-402 | amended | Ch. 388 | HB 345 |
| 17-8-403 | amended | Ch. 388 | HB 345 |
| 17-8-404 | amended | Ch. 388 | HB 345 |
| 17-8-410 | amended | Ch. 388 | HB 345 |
| 17-8-411 | amended | Ch. 388 | HB 345 |
| 17-8-412 | amended | Ch. 388 | HB 345 |
| 17-8-416 | enacted | Ch. 388 | HB 345 |
| 18-2-402 | amended | Ch. 373 | HB 464 |
| 18-2-411 | amended | Ch. 373 | HB 464 |
| 18-2-413 | amended | Ch. 373 | HB 464 |
| 18-2-414 | amended | Ch. 373 | HB 464 |
| 18-2-418 | enacted | Ch. 373 | HB 464 |
| 18-2-419 | enacted | Ch. 373 | HB 464 |
| 19-2-303 | amended | Ch. 178 | HB 105 |
| | amended | Ch. 240 | HB 122 |
| | amended | Ch. 272 | HB 336 |
| | amended | Ch. 386 | HB 97 |
| 19-2-403 | amended | Ch. 178 | HB 105 |
| 19-2-405 | amended | Ch. 155 | SB 67 |
| | amended | Ch. 240 | HB 122 |
| 19-2-406 | amended | Ch. 178 | HB 105 |
| 19-2-505 | amended | Ch. 178 | HB 105 |
| 19-2-511 | amended | Ch. 282 | HB 320 |
| 19-2-706 | amended | Ch. 178 | HB 105 |
| 19-2-801 | amended | Ch. 178 | HB 105 |
| 19-2-907 | amended | Ch. 178 | HB 105 |
| 19-2-1001 | amended | Ch. 240 | HB 122 |
| 19-2-1005 | amended | Ch. 386 | HB 97 |
| 19-2-1011 | amended | Ch. 240 | HB 122 |
| 19-2-1014 | amended | Ch. 240 | HB 122 |
| 19-3-108 | amended | Ch. 386 | HB 97 |
| 19-3-112 | amended | Ch. 282 | HB 320 |
| 19-3-117 | enacted | Ch. 390 | HB 454 |
| 19-3-315 | amended | Ch. 390 | HB 454 |
| 19-3-316 | amended | Ch. 390 | HB 454 |
| 19-3-412 | amended | Ch. 178 | HB 105 |
| 19-3-512 | amended | Ch. 178 | HB 105 |
| 19-3-901 | amended | Ch. 240 | HB 122 |

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| 19-3-908 | amended | Ch. 178 | HB 105 |
| 19-3-1005 | repealed | Ch. 178 | HB 105 |
| 19-3-1103 | amended | Ch. 178 | HB 105 |
| 19-3-1106 | amended | Ch. 178 | HB 105 |
| 19-3-1113 | enacted | Ch. 239 | HB 95 |
| 19-3-1210 | amended | Ch. 178 | HB 105 |
| 19-3-1501 | amended | Ch. 178 | HB 105 |
| 19-3-1605 | amended | Ch. 390 | HB 454 |
| 19-3-2101 | amended | Ch. 282 | HB 320 |
| 19-3-2106 | amended | Ch. 282 | HB 320 |
| 19-3-2112 | amended | Ch. 282 | HB 320 |
| 19-3-2113 | amended | Ch. 282 | HB 320 |
| 19-3-2117 | amended | Ch. 390 | HB 454 |
| 19-3-2133 | amended | Ch. 178 | HB 105 |
| 19-3-2141 | amended | Ch. 178 | HB 105 |
| 19-5-101 | amended | Ch. 386 | HB 97 |
| 19-5-501 | amended | Ch. 240 | HB 122 |
| 19-5-601 | amended | Ch. 178 | HB 105 |
| 19-5-701 | amended | Ch. 178 | HB 105 |
| 19-5-801 | amended | Ch. 178 | HB 105 |
| 19-5-802 | amended | Ch. 178 | HB 105 |
| 19-6-101 | amended | Ch. 386 | HB 97 |
| 19-6-301 | amended | Ch. 272 | HB 336 |
| 19-6-402 | amended | Ch. 272 | HB 336 |
| 19-6-404 | amended | Ch. 272 | HB 336 |
| 19-6-501 | amended | Ch. 240 | HB 122 |
| 19-6-502 | amended | Ch. 272 | HB 336 |
| 19-6-503 | amended | Ch. 272 | HB 336 |
| 19-6-601 | amended | Ch. 178 | HB 105 |
| | amended | Ch. 272 | HB 336 |
| 19-6-707 | amended | Ch. 272 | HB 336 |
| 19-6-710 | amended | Ch. 272 | HB 336 |
| 19-6-711 | amended | Ch. 272 | HB 336 |
| 19-6-712 | enacted | Ch. 272 | HB 336 |
| 19-6-801 | amended | Ch. 272 | HB 336 |
| 19-6-803 | amended | Ch. 272 | HB 336 |
| 19-6-804 | amended | Ch. 272 | HB 336 |
| 19-7-101 | amended | Ch. 386 | HB 97 |
| 19-7-501 | amended | Ch. 240 | HB 122 |
| 19-7-503 | amended | Ch. 178 | HB 105 |
| 19-7-601 | amended | Ch. 178 | HB 105 |
| 19-7-901 | amended | Ch. 178 | HB 105 |
| 19-7-1001 | amended | Ch. 178 | HB 105 |
| 19-7-1101 | amended | Ch. 239 | HB 95 |
| 19-8-101 | amended | Ch. 386 | HB 97 |
| 19-8-302 | amended | Ch. 178 | HB 105 |
| 19-8-601 | amended | Ch. 240 | HB 122 |
| 19-8-701 | amended | Ch. 178 | HB 105 |
| 19-8-801 | amended | Ch. 178 | HB 105 |
| 19-8-1002 | amended | Ch. 178 | HB 105 |
| 19-9-104 | amended | Ch. 386 | HB 97 |
| 19-9-710 | amended | Ch. 178 | HB 105 |
| 19-9-801 | amended | Ch. 240 | HB 122 |
| 19-9-1007 | amended | Ch. 178 | HB 105 |
| 19-13-104 | amended | Ch. 178 | HB 105 |
| | amended | Ch. 386 | HB 97 |
| 19-13-701 | amended | Ch. 240 | HB 122 |
| 19-13-803 | amended | Ch. 178 | HB 105 |
| 19-13-1101 | amended | Ch. 239 | HB 95 |
| 19-17-112 | amended | Ch. 96 | SB 35 |
| 19-17-605 | amended | Ch. 178 | HB 105 |
| 19-18-402 | amended | Ch. 226 | SB 245 |
| 19-18-602 | amended | Ch. 252 | HB 461 |

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| 19-20-101 | amended | Ch. 366 | HB 54 |
| | amended | Ch. 389 | HB 377 |
| 19-20-201 | amended | Ch. 155 | SB 67 |
| | amended | Ch. 366 | HB 54 |
| 19-20-208 | amended | Ch. 282 | HB 320 |
| | amended | Ch. 389 | HB 377 |
| 19-20-216 | enacted | Ch. 389 | HB 377 |
| 19-20-302 | amended | Ch. 282 | HB 320 |
| 19-20-409 | amended | Ch. 366 | HB 54 |
| | amended | Ch. 389 | HB 377 |
| 19-20-426 | amended | Ch. 282 | HB 320 |
| 19-20-427 | amended | Ch. 389 | HB 377 |
| 19-20-602 | amended | Ch. 389 | HB 377 |
| 19-20-605 | amended | Ch. 389 | HB 377 |
| 19-20-607 | amended | Ch. 389 | HB 377 |
| 19-20-608 | enacted | Ch. 389 | HB 377 |
| 19-20-609 | enacted | Ch. 389 | HB 377 |
| 19-20-621 | amended | Ch. 282 | HB 320 |
| 19-20-716 | amended | Ch. 366 | HB 54 |
| | amended | Ch. 389 | HB 377 |
| 19-20-719 | amended | Ch. 389 | HB 377 |
| 19-20-731 | amended | Ch. 238 | HB 78 |
| | amended | Ch. 282 | HB 320 |
| 19-20-732 | amended | Ch. 389 | HB 377 |
| 19-20-733 | amended (voided by sec. 12, Ch. 366) | Ch. 238 | HB 78 |
| | amended | Ch. 366 | HB 54 |
| 19-20-734 | enacted | Ch. 238 | HB 78 |
| 19-20-801 | amended | Ch. 366 | HB 54 |
| | amended (voided by sec. 13, Ch. 366) | Ch. 389 | HB 377 |
| 19-20-802 | amended (voided by sec. 14, Ch. 366) | Ch. 366 | HB 54 |
| | amended | Ch. 389 | HB 377 |
| 19-20-804 | amended | Ch. 389 | HB 377 |
| 19-20-805 | amended | Ch. 366 | HB 54 |
| | amended | Ch. 389 | HB 377 |
| 19-20-810 | enacted | Ch. 366 | HB 54 |
| 19-20-901 | amended | Ch. 389 | HB 377 |
| 19-20-1001 | amended | Ch. 389 | HB 377 |
| 19-20-1101 | amended | Ch. 366 | HB 54 |
| 19-21-101 | amended | Ch. 282 | HB 320 |
| 19-21-102 | amended | Ch. 282 | HB 320 |
| 19-21-211 | amended | Ch. 282 | HB 320 |
| 19-21-212 | amended | Ch. 282 | HB 320 |
| 19-50-101 | amended | Ch. 145 | HB 91 |
| 19-50-103 | amended | Ch. 145 | HB 91 |
| 19-50-104 | amended | Ch. 240 | HB 122 |
| 20-1-102 | amended | Ch. 222 | HB 182 |
| 20-1-212 | amended | Ch. 33 | HB 40 |
| 20-1-230 | enacted | Ch. 321 | SB 203 |
| 20-1-231 | enacted | Ch. 321 | SB 203 |
| 20-1-401 | amended | Ch. 364 | SB 348 |
| 20-1-402 | amended | Ch. 364 | SB 348 |
| 20-3-105 | amended | Ch. 118 | SB 2 |
| 20-3-324 | amended | Ch. 266 | SB 340 |
| 20-3-363 | amended | Ch. 127 | SB 291 |
| | amended | Ch. 329 | HB 39 |
| 20-5-101 | amended | Ch. 128 | SB 356 |
| 20-5-104 | amended | Ch. 281 | HB 313 |
| 20-5-105 | amended | Ch. 281 | HB 313 |
| 20-5-106 | amended | Ch. 281 | HB 313 |
| 20-5-202 | amended | Ch. 364 | SB 348 |
| 20-5-324 | amended | Ch. 305 | SB 191 |
| 20-5-420 | amended | Ch. 189 | SB 165 |
| 20-5-421 | enacted | Ch. 189 | SB 165 |

20-6-630 . . . . . repealed . . . . . Ch. 188 . . . . . SB 116
20-7-102 . . . . . amended . . . . . Ch. 400 . . . . . SB 175
20-7-104 . . . . . amended . . . . . Ch. 400 . . . . . SB 175
20-7-105. . . . . enacted . . . . . Ch. 400 . . . . . SB 175
20-7-320. . . . . enacted . . . . . Ch. 276 . . . . . HB 86
20-7-1301. . . . . enacted . . . . . Ch. 260 . . . . . SB 112
20-7-1302. . . . . enacted . . . . . Ch. 260 . . . . . SB 112
20-7-1303. . . . . enacted . . . . . Ch. 260 . . . . . SB 112
20-7-1304. . . . . enacted . . . . . Ch. 260 . . . . . SB 112
20-9-104 . . . . . amended . . . . . Ch. 329 . . . . . HB 39
20-9-141 . . . . . amended . . . . . Ch. 400 . . . . . SB 175
20-9-152 . . . . . amended . . . . . Ch. 62 . . . . . HB 47
20-9-204 . . . . . amended . . . . . Ch. 110 . . . . . SB 77
20-9-208 . . . . . amended . . . . . Ch. 329 . . . . . HB 39
20-9-235 . . . . . amended . . . . . Ch. 329 . . . . . HB 39
20-9-306 . . . . . amended . . . . . Ch. 400 . . . . . SB 175
20-9-308 . . . . . amended . . . . . Ch. 400 . . . . . SB 175
20-9-310 . . . . . amended . . . . . Ch. 400 . . . . . SB 175
20-9-311 . . . . . amended . . . . . Ch. 400 . . . . . SB 175
20-9-314 . . . . . amended . . . . . Ch. 400 . . . . . SB 175
20-9-323 . . . . . amended . . . . . Ch. 400 . . . . . SB 175
20-9-325. . . . . enacted . . . . . Ch. 400 . . . . . SB 175
20-9-326 . . . . . amended . . . . . Ch. 400 . . . . . SB 175
20-9-328 . . . . . amended . . . . . Ch. 118 . . . . . SB 2
20-9-330 . . . . . amended . . . . . Ch. 118 . . . . . SB 2
20-9-342 . . . . . amended . . . . . Ch. 400 . . . . . SB 175
20-9-343 . . . . . amended (line-item vetoed) . . . . . Ch. 325 . . . . . HB 15
20-9-344 . . . . . amended . . . . . Ch. 400 . . . . . SB 175
20-9-376. . . . . enacted . . . . . Ch. 400 . . . . . SB 175
20-9-403 . . . . . amended . . . . . Ch. 400 . . . . . SB 175
20-9-406 . . . . . amended . . . . . Ch. 400 . . . . . SB 175
20-9-408 . . . . . amended . . . . . Ch. 400 . . . . . SB 175
20-9-422 . . . . . amended . . . . . Ch. 400 . . . . . SB 175
20-9-423 . . . . . amended . . . . . Ch. 400 . . . . . SB 175
20-9-426 . . . . . amended . . . . . Ch. 400 . . . . . SB 175
20-9-427 . . . . . amended . . . . . Ch. 400 . . . . . SB 175
20-9-430 . . . . . amended . . . . . Ch. 400 . . . . . SB 175
20-9-437 . . . . . amended . . . . . Ch. 400 . . . . . SB 175
20-9-438 . . . . . amended . . . . . Ch. 400 . . . . . SB 175
20-9-440 . . . . . amended . . . . . Ch. 400 . . . . . SB 175
20-9-473. . . . . enacted . . . . . Ch. 400 . . . . . SB 175
20-9-474. . . . . enacted . . . . . Ch. 400 . . . . . SB 175
20-9-501 . . . . . amended . . . . . Ch. 389 . . . . . HB 377
20-9-504 . . . . . amended . . . . . Ch. 38 . . . . . SB 32
20-9-507 . . . . . amended . . . . . Ch. 46 . . . . . HB 36
20-9-516 . . . . . amended . . . . . Ch. 17 . . . . . HB 21
amended (line-item vetoed) . . . . . Ch. 325 . . . . . HB 15
20-9-517 . . . . . amended . . . . . Ch. 329 . . . . . HB 39
amended . . . . . Ch. 400 . . . . . SB 175
20-9-518 . . . . . amended . . . . . Ch. 329 . . . . . HB 39
amended (voided by sec. 8, Ch. 329) . . . . . Ch. 400 . . . . . SB 175
20-9-520. . . . . enacted . . . . . Ch. 400 . . . . . SB 175
20-9-521. . . . . enacted . . . . . Ch. 400 . . . . . SB 175
20-9-533 . . . . . amended . . . . . Ch. 262 . . . . . SB 199
20-9-534 . . . . . amended . . . . . Ch. 329 . . . . . HB 39
20-9-537. . . . . enacted . . . . . Ch. 410 . . . . . SB 342
20-9-620 . . . . . amended (line-item vetoed) . . . . . Ch. 325 . . . . . HB 15
20-9-622 . . . . . amended . . . . . Ch. 17 . . . . . HB 21
amended . . . . . Ch. 400 . . . . . SB 175
20-9-630 . . . . . amended . . . . . Ch. 268 . . . . . SB 361
20-10-144 . . . . . amended . . . . . Ch. 46 . . . . . HB 36
20-10-145 . . . . . amended . . . . . Ch. 389 . . . . . HB 377
20-10-146 . . . . . amended . . . . . Ch. 46 . . . . . HB 36

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| 20-15-219 | amended | Ch. 251 | HB 448 |
| 20-15-221 | amended | Ch. 251 | HB 448 |
| 20-15-310 | amended | Ch. 3 | HB 25 |
| 20-15-313 | amended | Ch. 62 | HB 47 |
| 20-20-420 | enacted | Ch. 347 | HB 457 |
| 20-25-301 | amended | Ch. 78 | HB 318 |
| 20-25-303 | repealed | Ch. 78 | HB 318 |
| 20-25-304 | repealed | Ch. 78 | HB 318 |
| 20-25-421 | amended | Ch. 280 | HB 286 |
| 20-25-424 | amended | Ch. 78 | HB 318 |
| 20-25-517 | enacted | Ch. 77 | HB 317 |
| 20-25-1403 | amended | Ch. 363 | SB 84 |
| 20-26-103 | amended | Ch. 39 | SB 87 |
| 20-26-104 | amended | Ch. 39 | SB 87 |
| 20-26-201 | amended | Ch. 39 | SB 87 |
| 20-26-1101 | amended | Ch. 39 | SB 87 |
| 20-26-1104 | repealed | Ch. 39 | SB 87 |
| 22-1-327 | amended | Ch. 244 | HB 203 |
| 23-1-101 | amended | Ch. 235 | HB 24 |
| 23-1-102 | amended | Ch. 235 | HB 24 |
| 23-1-106 | amended | Ch. 235 | HB 24 |
| 23-1-108 | amended | Ch. 235 | HB 24 |
| 23-1-110 | amended | Ch. 235 | HB 24 |
| 23-1-111 | enacted | Ch. 235 | HB 24 |
| 23-1-121 | amended | Ch. 235 | HB 24 |
| 23-1-122 | amended | Ch. 235 | HB 24 |
| 23-2-301 | amended | Ch. 235 | HB 24 |
| 23-2-403 | amended | Ch. 235 | HB 24 |
| 23-2-404 | amended | Ch. 235 | HB 24 |
| 23-2-408 | amended | Ch. 235 | HB 24 |
| 23-2-410 | amended | Ch. 235 | HB 24 |
| 23-2-601 | amended | Ch. 123 | SB 71 |
| 23-2-614 | amended | Ch. 123 | SB 71 |
| 23-2-631 | amended | Ch. 123 | SB 71 |
| 23-2-634 | amended | Ch. 123 | SB 71 |
| 23-2-641 | amended | Ch. 123 | SB 71 |
| 23-2-642 | amended | Ch. 123 | SB 71 |
| 23-2-644 | amended | Ch. 123 | SB 71 |
| 23-4-101 | amended | Ch. 402 | SB 215 |
| 23-5-177 | amended | Ch. 82 | HB 264 |
| 23-5-310 | amended | Ch. 82 | HB 264 |
| 23-5-312 | amended | Ch. 64 | HB 141 |
| 23-5-317 | amended | Ch. 64 | HB 141 |
| 23-5-318 | amended | Ch. 64 | HB 141 |
| 23-5-410 | amended | Ch. 82 | HB 264 |
| 23-5-503 | amended | Ch. 80 | HB 199 |
| 23-5-612 | amended | Ch. 64 | HB 141 |
| 23-7-402 | amended | Ch. 2 | HB 20 |
| 25-1-201 | amended | Ch. 344 | HB 403 |
| 25-10-404 | amended | Ch. 344 | HB 403 |
| 25-10-405 | amended | Ch. 344 | HB 403 |
| 25-12-103 | enacted | Ch. 154 | HB 224 |
| 25-13-402 | amended | Ch. 200 | HB 66 |
| 25-31-112 | amended | Ch. 339 | HB 206 |
| 25-35-608 | amended | Ch. 339 | HB 206 |
| 27-1-747 | enacted | Ch. 311 | HB 310 |
| 27-2-216 | amended | Ch. 225 | SB 107 |
| 28-3-206 | amended | Ch. 31 | SB 121 |
| 30-2A-103 | amended | Ch. 75 | HB 212 |
| 30-4A-108 | amended | Ch. 71 | HB 190 |
| 30-9A-102 | amended | Ch. 75 | HB 212 |
| 30-9A-105 | amended | Ch. 75 | HB 212 |
| 30-9A-307 | amended | Ch. 75 | HB 212 |

30-9A-311 . . . . . amended . . . . . Ch. 75 . . . . . HB 212
30-9A-316 . . . . . amended . . . . . Ch. 75 . . . . . HB 212
30-9A-317 . . . . . amended . . . . . Ch. 75 . . . . . HB 212
30-9A-326 . . . . . amended . . . . . Ch. 75 . . . . . HB 212
30-9A-406 . . . . . amended . . . . . Ch. 75 . . . . . HB 212
30-9A-408 . . . . . amended . . . . . Ch. 75 . . . . . HB 212
30-9A-502 . . . . . amended . . . . . Ch. 75 . . . . . HB 212
30-9A-503 . . . . . amended . . . . . Ch. 75 . . . . . HB 212
30-9A-507 . . . . . amended . . . . . Ch. 75 . . . . . HB 212
30-9A-515 . . . . . amended . . . . . Ch. 75 . . . . . HB 212
30-9A-516 . . . . . amended . . . . . Ch. 75 . . . . . HB 212
30-9A-518 . . . . . amended . . . . . Ch. 75 . . . . . HB 212
30-9A-521 . . . . . amended . . . . . Ch. 75 . . . . . HB 212
30-9A-527 . . . . . amended . . . . . Ch. 155 . . . . . SB 67
30-9A-607 . . . . . amended . . . . . Ch. 75 . . . . . HB 212
30-9A-803 . . . . . enacted . . . . . Ch. 75 . . . . . HB 212
30-9A-804 . . . . . enacted . . . . . Ch. 75 . . . . . HB 212
30-9A-805 . . . . . enacted . . . . . Ch. 75 . . . . . HB 212
30-9A-806 . . . . . enacted . . . . . Ch. 75 . . . . . HB 212
30-9A-807 . . . . . enacted . . . . . Ch. 75 . . . . . HB 212
30-9A-808 . . . . . enacted . . . . . Ch. 75 . . . . . HB 212
30-9A-809 . . . . . enacted . . . . . Ch. 75 . . . . . HB 212
30-10-115 . . . . . amended . . . . . Ch. 66 . . . . . HB 81
30-10-209 . . . . . amended . . . . . Ch. 66 . . . . . HB 81
30-10-216. . . . . enacted . . . . . Ch. 286 . . . . . SB 20
30-10-301 . . . . . amended . . . . . Ch. 286 . . . . . SB 20
30-10-303 . . . . . amended . . . . . Ch. 286 . . . . . SB 20
30-10-324 . . . . . amended . . . . . Ch. 286 . . . . . SB 20
30-10-326 . . . . . repealed . . . . . Ch. 286 . . . . . SB 20
30-10-1004 . . . . . amended . . . . . Ch. 66 . . . . . HB 81
amended . . . . . Ch. 286 . . . . . SB 20
30-12-107. . . . . enacted . . . . . Ch. 296 . . . . . HB 157
30-12-203 . . . . . amended . . . . . Ch. 356 . . . . . HB 591
30-12-306 . . . . . amended . . . . . Ch. 296 . . . . . HB 157
30-12-406 . . . . . amended . . . . . Ch. 296 . . . . . HB 157
30-14-143 . . . . . amended . . . . . Ch. 217 . . . . . HB 287
30-14-144. . . . . enacted . . . . . Ch. 217 . . . . . HB 287
30-14-151. . . . . enacted . . . . . Ch. 313 . . . . . HB 415
30-14-152. . . . . enacted . . . . . Ch. 313 . . . . . HB 415
30-14-153. . . . . enacted . . . . . Ch. 313 . . . . . HB 415
30-14-154. . . . . enacted . . . . . Ch. 313 . . . . . HB 415
30-14-155. . . . . enacted . . . . . Ch. 313 . . . . . HB 415
30-14-156. . . . . enacted . . . . . Ch. 313 . . . . . HB 415
30-14-157. . . . . enacted . . . . . Ch. 313 . . . . . HB 415
30-18-117 . . . . . amended . . . . . Ch. 123 . . . . . SB 71
30-22-101 . . . . . amended . . . . . Ch. 174 . . . . . HB 463
31-1-106 . . . . . amended . . . . . Ch. 278 . . . . . HB 118
31-1-111 . . . . . amended . . . . . Ch. 278 . . . . . HB 118
31-1-112 . . . . . amended . . . . . Ch. 278 . . . . . HB 118
31-1-202 . . . . . amended . . . . . Ch. 63 . . . . . HB 63
amended . . . . . Ch. 123 . . . . . SB 71
31-1-203 . . . . . amended . . . . . Ch. 63 . . . . . HB 63
31-1-211 . . . . . amended . . . . . Ch. 63 . . . . . HB 63
31-1-221 . . . . . amended . . . . . Ch. 63 . . . . . HB 63
31-1-222 . . . . . amended . . . . . Ch. 63 . . . . . HB 63
31-1-223. . . . . enacted . . . . . Ch. 63 . . . . . HB 63
31-1-231 . . . . . amended . . . . . Ch. 63 . . . . . HB 63
31-1-232 . . . . . amended . . . . . Ch. 63 . . . . . HB 63
31-1-235 . . . . . amended . . . . . Ch. 63 . . . . . HB 63
31-1-236 . . . . . amended . . . . . Ch. 63 . . . . . HB 63
31-1-241 . . . . . amended . . . . . Ch. 63 . . . . . HB 63
31-1-242 . . . . . amended . . . . . Ch. 63 . . . . . HB 63
31-1-401 . . . . . amended . . . . . Ch. 278 . . . . . HB 118

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| 31-1-705 | amended | Ch. 96 | SB | 35 |
| | amended | Ch. 277 | HB | 116 |
| 31-1-706 | amended | Ch. 277 | HB | 116 |
| 31-1-707 | amended | Ch. 96 | SB | 35 |
| | amended | Ch. 277 | HB | 116 |
| 31-1-710 | enacted | Ch. 277 | HB | 116 |
| 31-1-712 | amended | Ch. 277 | HB | 116 |
| 31-1-713 | amended | Ch. 277 | HB | 116 |
| 31-1-714 | amended | Ch. 96 | SB | 35 |
| | amended | Ch. 277 | HB | 116 |
| 31-1-801 | repealed 12/31/2013 | Ch. 278 | HB | 118 |
| 31-1-802 | repealed 12/31/2013 | Ch. 278 | HB | 118 |
| 31-1-803 | repealed 12/31/2013 | Ch. 278 | HB | 118 |
| 31-1-804 | repealed 12/31/2013 | Ch. 278 | HB | 118 |
| 31-1-805 | repealed 12/31/2013 | Ch. 278 | HB | 118 |
| 31-1-810 | repealed 12/31/2013 | Ch. 278 | HB | 118 |
| 31-1-811 | repealed 12/31/2013 | Ch. 278 | HB | 118 |
| 31-1-812 | repealed 12/31/2013 | Ch. 278 | HB | 118 |
| 31-1-813 | repealed 12/31/2013 | Ch. 278 | HB | 118 |
| 31-1-815 | repealed 12/31/2013 | Ch. 278 | HB | 118 |
| 31-1-816 | repealed 12/31/2013 | Ch. 278 | HB | 118 |
| 31-1-817 | repealed 12/31/2013 | Ch. 278 | HB | 118 |
| 31-1-818 | repealed 12/31/2013 | Ch. 278 | HB | 118 |
| 31-1-819 | repealed 12/31/2013 | Ch. 278 | HB | 118 |
| 31-1-820 | repealed 12/31/2013 | Ch. 278 | HB | 118 |
| 31-1-821 | repealed 12/31/2013 | Ch. 278 | HB | 118 |
| 31-1-822 | repealed 12/31/2013 | Ch. 278 | HB | 118 |
| 31-1-825 | repealed 12/31/2013 | Ch. 278 | HB | 118 |
| 31-1-826 | repealed 12/31/2013 | Ch. 278 | HB | 118 |
| 31-1-827 | repealed 12/31/2013 | Ch. 278 | HB | 118 |
| 31-1-828 | repealed 12/31/2013 | Ch. 278 | HB | 118 |
| 31-1-829 | repealed 12/31/2013 | Ch. 278 | HB | 118 |
| 31-1-841 | repealed 12/31/2013 | Ch. 278 | HB | 118 |
| 31-1-842 | repealed 12/31/2013 | Ch. 278 | HB | 118 |
| 31-2-209 | amended | Ch. 264 | SB | 251 |
| 32-1-102 | amended | Ch. 264 | SB | 251 |
| 32-1-109 | amended | Ch. 49 | HB | 138 |
| 32-1-212 | amended | Ch. 49 | HB | 138 |
| 32-1-370 | amended | Ch. 49 | HB | 138 |
| 32-1-371 | amended | Ch. 49 | HB | 138 |
| 32-1-376 | amended | Ch. 49 | HB | 138 |
| 32-1-381 | amended | Ch. 49 | HB | 138 |
| 32-1-382 | repealed | Ch. 49 | HB | 138 |
| 32-1-383 | amended | Ch. 49 | HB | 138 |
| 32-1-384 | amended | Ch. 49 | HB | 138 |
| 32-1-402 | amended | Ch. 123 | SB | 71 |
| 32-1-425 | amended | Ch. 123 | SB | 71 |
| 32-1-432 | amended | Ch. 121 | SB | 61 |
| 32-1-433 | amended | Ch. 121 | SB | 61 |
| 32-1-506 | amended | Ch. 49 | HB | 138 |
| 32-1-516 | amended | Ch. 49 | HB | 138 |
| 32-1-904 | amended | Ch. 49 | HB | 138 |
| 32-1-907 | amended | Ch. 49 | HB | 138 |
| 32-1-908 | amended | Ch. 49 | HB | 138 |
| 32-1-1005 | amended | Ch. 122 | SB | 62 |
| 32-3-506 | amended | Ch. 264 | SB | 251 |
| 32-5-102 | amended | Ch. 173 | HB | 65 |
| | amended | Ch. 278 | HB | 118 |
| 32-5-103 | amended | Ch. 173 | HB | 65 |
| | amended | Ch. 278 | HB | 118 |
| 32-5-201 | amended | Ch. 173 | HB | 65 |
| 32-5-202 | amended | Ch. 173 | HB | 65 |
| 32-5-204 | repealed 12/31/2013 | Ch. 173 | HB | 65 |

32-5-205 . . . . . amended . . . . . Ch. 173 . . . . . HB 65
32-5-207 . . . . . amended . . . . . Ch. 173 . . . . . HB 65
32-5-209. . . . . enacted . . . . . Ch. 173 . . . . . HB 65
32-5-301 . . . . . amended . . . . . Ch. 173 . . . . . HB 65
32-5-302 . . . . . amended . . . . . Ch. 173 . . . . . HB 65
32-5-303 . . . . . amended . . . . . Ch. 173 . . . . . HB 65
32-5-304 . . . . . amended . . . . . Ch. 173 . . . . . HB 65
32-5-305 . . . . . amended . . . . . Ch. 173 . . . . . HB 65
32-5-308 . . . . . amended . . . . . Ch. 96 . . . . . SB 35
amended . . . . . Ch. 173 . . . . . HB 65
32-5-310 . . . . . amended . . . . . Ch. 96 . . . . . SB 35
32-5-311. . . . . enacted . . . . . Ch. 173 . . . . . HB 65
32-7-102 . . . . . amended . . . . . Ch. 216 . . . . . HB 117
32-7-103 . . . . . amended . . . . . Ch. 216 . . . . . HB 117
32-7-108 . . . . . amended . . . . . Ch. 216 . . . . . HB 117
32-7-109 . . . . . amended . . . . . Ch. 96 . . . . . SB 35
amended . . . . . Ch. 216 . . . . . HB 117
32-7-110 . . . . . amended . . . . . Ch. 216 . . . . . HB 117
32-7-111 . . . . . amended . . . . . Ch. 216 . . . . . HB 117
32-7-112. . . . . enacted . . . . . Ch. 216 . . . . . HB 117
32-7-115 . . . . . amended . . . . . Ch. 216 . . . . . HB 117
32-7-121 . . . . . amended . . . . . Ch. 216 . . . . . HB 117
32-7-122 . . . . . amended . . . . . Ch. 216 . . . . . HB 117
32-7-123 . . . . . amended . . . . . Ch. 216 . . . . . HB 117
32-7-124 . . . . . amended . . . . . Ch. 216 . . . . . HB 117
32-9-101 . . . . . amended . . . . . Ch. 125 . . . . . SB 93
32-9-102 . . . . . amended . . . . . Ch. 125 . . . . . SB 93
32-9-103 . . . . . amended . . . . . Ch. 123 . . . . . SB 71
amended . . . . . Ch. 125 . . . . . SB 93
32-9-104 . . . . . amended . . . . . Ch. 123 . . . . . SB 71
amended . . . . . Ch. 125 . . . . . SB 93
32-9-105 . . . . . amended . . . . . Ch. 125 . . . . . SB 93
32-9-107 . . . . . amended . . . . . Ch. 125 . . . . . SB 93
32-9-109 . . . . . amended . . . . . Ch. 125 . . . . . SB 93
32-9-110 . . . . . amended . . . . . Ch. 125 . . . . . SB 93
32-9-112 . . . . . amended . . . . . Ch. 125 . . . . . SB 93
32-9-116 . . . . . amended . . . . . Ch. 125 . . . . . SB 93
32-9-117 . . . . . amended . . . . . Ch. 125 . . . . . SB 93
32-9-118 . . . . . amended . . . . . Ch. 125 . . . . . SB 93
32-9-120 . . . . . amended . . . . . Ch. 125 . . . . . SB 93
32-9-121 . . . . . amended . . . . . Ch. 125 . . . . . SB 93
32-9-122 . . . . . amended . . . . . Ch. 125 . . . . . SB 93
32-9-123 . . . . . amended . . . . . Ch. 125 . . . . . SB 93
32-9-124 . . . . . amended . . . . . Ch. 125 . . . . . SB 93
32-9-125. . . . . repealed . . . . . Ch. 125 . . . . . SB 93
32-9-126 . . . . . amended . . . . . Ch. 125 . . . . . SB 93
32-9-129 . . . . . amended . . . . . Ch. 125 . . . . . SB 93
32-9-130 . . . . . amended . . . . . Ch. 125 . . . . . SB 93
32-9-133 . . . . . amended . . . . . Ch. 125 . . . . . SB 93
32-9-134. . . . . enacted . . . . . Ch. 125 . . . . . SB 93
32-9-149. . . . . enacted . . . . . Ch. 125 . . . . . SB 93
32-9-150 . . . . . amended . . . . . Ch. 125 . . . . . SB 93
32-9-151 . . . . . amended . . . . . Ch. 125 . . . . . SB 93
32-9-152. . . . . enacted . . . . . Ch. 125 . . . . . SB 93
32-9-155 . . . . . amended . . . . . Ch. 125 . . . . . SB 93
32-9-160 . . . . . amended . . . . . Ch. 125 . . . . . SB 93
32-9-165 . . . . . amended . . . . . Ch. 125 . . . . . SB 93
32-9-167 . . . . . amended . . . . . Ch. 125 . . . . . SB 93
32-9-170 . . . . . amended . . . . . Ch. 125 . . . . . SB 93
33-1-102 . . . . . amended . . . . . Ch. 313 . . . . . HB 415
amended . . . . . Ch. 363 . . . . . SB 84
33-1-110. . . . . enacted . . . . . Ch. 420 . . . . . SB 297
33-1-311 . . . . . amended . . . . . Ch. 360 . . . . . SB 28

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| 33-1-409 | amended | Ch. 169 | HB | 22 |
| 33-1-501 | amended | Ch. 360 | SB | 28 |
| 33-1-1202 | amended | Ch. 169 | HB | 22 |
| 33-2-604 | amended | Ch. 169 | HB | 22 |
| 33-2-606 | amended | Ch. 169 | HB | 22 |
| 33-2-611 | amended | Ch. 169 | HB | 22 |
| 33-2-612 | amended | Ch. 169 | HB | 22 |
| 33-2-708 | amended | Ch. 245 | HB | 250 |
| 33-2-1303 | amended | Ch. 169 | HB | 22 |
| 33-2-1401 | enacted | Ch. 303 | SB | 158 |
| 33-2-1402 | enacted | Ch. 303 | SB | 158 |
| 33-2-1403 | enacted | Ch. 303 | SB | 158 |
| 33-2-1404 | enacted | Ch. 303 | SB | 158 |
| 33-2-1405 | enacted | Ch. 303 | SB | 158 |
| 33-2-1406 | enacted | Ch. 303 | SB | 158 |
| 33-2-1407 | enacted | Ch. 303 | SB | 158 |
| 33-2-1501 | amended | Ch. 208 | HB | 502 |
| 33-2-2001 | enacted | Ch. 114 | SB | 235 |
| 33-2-2002 | enacted | Ch. 114 | SB | 235 |
| 33-2-2003 | enacted | Ch. 114 | SB | 235 |
| 33-2-2004 | enacted | Ch. 114 | SB | 235 |
| 33-2-2005 | enacted | Ch. 114 | SB | 235 |
| 33-2-2006 | enacted | Ch. 114 | SB | 235 |
| 33-3-401 | amended | Ch. 169 | HB | 22 |
| 33-4-302 | amended | Ch. 169 | HB | 22 |
| 33-4-320 | enacted | Ch. 208 | HB | 502 |
| 33-4-502 | amended | Ch. 208 | HB | 502 |
| 33-10-104 | amended | Ch. 169 | HB | 22 |
| 33-17-102 | amended | Ch. 169 | HB | 22 |
| | amended | Ch. 245 | HB | 250 |
| 33-17-212 | amended | Ch. 324 | SB | 357 |
| | amended | Ch. 359 | HB | 614 |
| 33-17-214 | amended | Ch. 169 | HB | 22 |
| 33-17-220 | amended | Ch. 245 | HB | 250 |
| 33-17-231 | amended | Ch. 245 | HB | 250 |
| 33-17-241 | enacted | Ch. 245 | HB | 250 |
| 33-17-242 | enacted | Ch. 245 | HB | 250 |
| 33-17-243 | enacted | Ch. 245 | HB | 250 |
| 33-17-244 | enacted | Ch. 245 | HB | 250 |
| 33-17-301 | amended | Ch. 169 | HB | 22 |
| | amended | Ch. 406 | SB | 264 |
| 33-17-407 | amended | Ch. 268 | SB | 361 |
| 33-17-503 | amended | Ch. 169 | HB | 22 |
| 33-17-505 | amended | Ch. 169 | HB | 22 |
| 33-17-1101 | amended | Ch. 169 | HB | 22 |
| 33-17-1203 | amended | Ch. 324 | SB | 357 |
| 33-17-1401 | enacted | Ch. 359 | HB | 614 |
| 33-17-1402 | enacted | Ch. 359 | HB | 614 |
| 33-17-1403 | enacted | Ch. 359 | HB | 614 |
| 33-17-1404 | enacted | Ch. 359 | HB | 614 |
| 33-20-1601 | enacted | Ch. 119 | SB | 34 |
| 33-20-1602 | enacted | Ch. 119 | SB | 34 |
| 33-20-1603 | enacted | Ch. 119 | SB | 34 |
| 33-20-1604 | enacted | Ch. 119 | SB | 34 |
| 33-20-1605 | enacted | Ch. 119 | SB | 34 |
| 33-20-1606 | enacted | Ch. 119 | SB | 34 |
| 33-22-101 | amended | Ch. 97 | SB | 55 |
| | amended | Ch. 164 | SB | 270 |
| 33-22-115 | enacted | Ch. 160 | SB | 172 |
| 33-22-138 | enacted | Ch. 164 | SB | 270 |
| 33-22-153 | enacted | Ch. 97 | SB | 55 |
| 33-22-156 | enacted | Ch. 334 | HB | 87 |
| 33-22-157 | enacted | Ch. 334 | HB | 87 |

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| 33-22-158 | enacted | Ch. 334 | HB 87 |
| 33-22-159 | enacted | Ch. 334 | HB 87 |
| 33-22-166 | enacted | Ch. 349 | HB 545 |
| 33-22-304 | amended | Ch. 68 | HB 123 |
| 33-22-506 | amended | Ch. 68 | HB 123 |
| 33-22-522 | repealed | Ch. 169 | HB 22 |
| 33-22-1501 | amended | Ch. 404 | SB 223 |
| 33-22-1502 | amended | Ch. 404 | SB 223 |
| 33-22-1504 | amended | Ch. 404 | SB 223 |
| 33-22-1514 | amended | Ch. 120 | SB 49 |
| 33-22-1706 | amended | Ch. 306 | HB 544 |
| 33-22-1804 | amended | Ch. 349 | HB 545 |
| 33-22-1811 | amended | Ch. 169 | HB 22 |
| 33-22-2002 | amended | Ch. 169 | HB 22 |
| 33-22-2004 | amended | Ch. 331 | HB 48 |
| 33-22-2006 | amended | Ch. 331 | HB 48 |
| 33-22-2007 | amended | Ch. 331 | HB 48 |
| 33-22-2008 | amended | Ch. 331 | HB 48 |
| 33-24-201 | enacted | Ch. 406 | SB 264 |
| 33-24-202 | enacted | Ch. 406 | SB 264 |
| 33-24-203 | enacted | Ch. 406 | SB 264 |
| 33-24-204 | enacted | Ch. 406 | SB 264 |
| 33-24-205 | enacted | Ch. 406 | SB 264 |
| 33-24-206 | enacted | Ch. 406 | SB 264 |
| 33-24-207 | enacted | Ch. 406 | SB 264 |
| 33-24-208 | enacted | Ch. 406 | SB 264 |
| 33-24-209 | enacted | Ch. 406 | SB 264 |
| 33-27-103 | amended | Ch. 268 | SB 361 |
| 33-28-104 | amended | Ch. 169 | HB 22 |
| 33-28-202 | amended | Ch. 169 | HB 22 |
| 33-28-301 | amended | Ch. 169 | HB 22 |
| 33-30-1003 | amended | Ch. 68 | HB 123 |
| 33-30-1004 | amended | Ch. 68 | HB 123 |
| 33-31-111 | amended | Ch. 97 | SB 55 |
| | amended | Ch. 164 | SB 270 |
| | amended | Ch. 334 | HB 87 |
| | amended | Ch. 363 | SB 84 |
| 33-35-306 | amended | Ch. 97 | SB 55 |
| | amended | Ch. 164 | SB 270 |
| | amended | Ch. 363 | SB 84 |
| 33-39-101 | enacted | Ch. 360 | SB 28 |
| 33-39-102 | enacted | Ch. 360 | SB 28 |
| 33-39-103 | enacted | Ch. 360 | SB 28 |
| 33-40-101 | enacted | Ch. 363 | SB 84 |
| 33-40-102 | enacted | Ch. 363 | SB 84 |
| 33-40-103 | enacted | Ch. 363 | SB 84 |
| 33-40-104 | enacted | Ch. 363 | SB 84 |
| 33-40-105 | enacted | Ch. 363 | SB 84 |
| 35-2-114 | amended | Ch. 190 | SB 176 |
| 35-2-115 | amended | Ch. 190 | SB 176 |
| 35-2-118 | amended | Ch. 264 | SB 251 |
| 35-2-119 | amended | Ch. 190 | SB 176 |
| 35-2-233 | amended | Ch. 190 | SB 176 |
| 35-2-520 | amended | Ch. 190 | SB 176 |
| 35-2-526 | amended | Ch. 190 | SB 176 |
| 35-2-527 | amended | Ch. 190 | SB 176 |
| 35-2-533 | amended | Ch. 190 | SB 176 |
| 35-2-535 | amended | Ch. 190 | SB 176 |
| 35-2-539 | amended | Ch. 190 | SB 176 |
| 35-2-542 | amended | Ch. 190 | SB 176 |
| 35-2-911 | amended | Ch. 190 | SB 176 |
| 35-4-301 | amended | Ch. 99 | SB 104 |
| 35-8-102 | amended | Ch. 183 | HB 362 |

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| 35-8-107 | amended | Ch. 183 | HB 362 |
| 35-8-108 | amended | Ch. 183 | HB 362 |
| 35-8-202 | amended | Ch. 183 | HB 362 |
| 35-8-205 | amended | Ch. 183 | HB 362 |
| 35-8-208 | amended | Ch. 183 | HB 362 |
| 35-8-304 | amended | Ch. 183 | HB 362 |
| 35-8-307 | amended | Ch. 183 | HB 362 |
| 35-8-503 | amended | Ch. 183 | HB 362 |
| 35-8-803 | amended | Ch. 183 | HB 362 |
| 35-8-804 | amended | Ch. 183 | HB 362 |
| 35-8-901 | amended | Ch. 183 | HB 362 |
| 35-8-902 | amended | Ch. 183 | HB 362 |
| 35-18-317 | amended | Ch. 55 | SB 90 |
| 35-18-318 | amended | Ch. 55 | SB 90 |
| 37-1-145 | enacted | Ch. 310 | HB 259 |
| | enacted | Ch. 320 | SB 183 |
| 37-2-401 | amended | Ch. 265 | SB 292 |
| 37-7-101 | amended | Ch. 220 | SB 149 |
| 37-7-105 | amended | Ch. 220 | SB 149 |
| 37-15-102 | amended | Ch. 162 | SB 230 |
| 37-15-202 | amended | Ch. 162 | SB 230 |
| 37-15-314 | enacted | Ch. 162 | SB 230 |
| 37-15-315 | enacted | Ch. 162 | SB 230 |
| 37-22-412 | enacted | Ch. 16 | SB 64 |
| 37-23-312 | enacted | Ch. 16 | SB 64 |
| 37-31-305 | amended | Ch. 102 | SB 343 |
| 37-35-102 | amended | Ch. 275 | HB 61 |
| 37-37-302 | enacted | Ch. 16 | SB 64 |
| 37-47-101 | amended | Ch. 241 | HB 187 |
| | amended | Ch. 341 | HB 274 |
| 37-47-103 | repealed | Ch. 341 | HB 274 |
| 37-47-201 | amended | Ch. 241 | HB 187 |
| | amended | Ch. 341 | HB 274 |
| 37-47-301 | amended | Ch. 341 | HB 274 |
| 37-47-302 | amended | Ch. 341 | HB 274 |
| 37-47-303 | amended | Ch. 341 | HB 274 |
| 37-47-304 | amended | Ch. 341 | HB 274 |
| 37-47-305 | amended | Ch. 341 | HB 274 |
| 37-47-306 | amended | Ch. 341 | HB 274 |
| 37-47-307 | amended | Ch. 341 | HB 274 |
| 37-47-310 | amended | Ch. 235 | HB 24 |
| | amended | Ch. 341 | HB 274 |
| 37-47-311 | amended | Ch. 341 | HB 274 |
| 37-47-316 | repealed | Ch. 341 | HB 274 |
| 37-47-318 | repealed | Ch. 341 | HB 274 |
| 37-47-325 | enacted | Ch. 241 | HB 187 |
| 37-47-341 | amended | Ch. 341 | HB 274 |
| 37-47-343 | amended | Ch. 341 | HB 274 |
| 37-47-401 | amended | Ch. 241 | HB 187 |
| | amended | Ch. 341 | HB 274 |
| 37-47-402 | amended | Ch. 341 | HB 274 |
| 37-47-403 | amended | Ch. 241 | HB 187 |
| | amended | Ch. 341 | HB 274 |
| 37-47-404 | amended | Ch. 241 | HB 187 |
| | amended | Ch. 341 | HB 274 |
| 37-47-405 | enacted | Ch. 241 | HB 187 |
| 37-51-309 | amended | Ch. 414 | HB 184 |
| 37-61-211 | amended | Ch. 7 | SB 50 |
| 37-67-306 | amended | Ch. 72 | HB 243 |
| 37-67-307 | amended | Ch. 72 | HB 243 |
| 37-67-311 | amended | Ch. 72 | HB 243 |
| 39-1-105 | enacted | Ch. 413 | SB 410 |

39-3-406 . . . . . amended . . . . . Ch. 150 . . . . . HB 226
amended . . . . . Ch. 241 . . . . . HB 187
39-6-101 . . . . . amended . . . . . Ch. 15 . . . . . SB 46
39-6-102 . . . . . amended . . . . . Ch. 15 . . . . . SB 46
39-6-104 . . . . . amended . . . . . Ch. 15 . . . . . SB 46
39-6-106 . . . . . amended . . . . . Ch. 15 . . . . . SB 46
39-6-107 . . . . . amended . . . . . Ch. 15 . . . . . SB 46
39-6-108 . . . . . amended . . . . . Ch. 15 . . . . . SB 46
39-11-103 . . . . . amended . . . . . Ch. 10 . . . . . SB 29
39-11-202 . . . . . amended . . . . . Ch. 10 . . . . . SB 29
39-29-102 . . . . . amended . . . . . Ch. 191 . . . . . SB 185
39-29-103 . . . . . amended . . . . . Ch. 191 . . . . . SB 185
39-29-112 . . . . . amended . . . . . Ch. 191 . . . . . SB 185
39-30-103 . . . . . amended . . . . . Ch. 68 . . . . . HB 123
amended . . . . . Ch. 191 . . . . . SB 185
39-30-107 . . . . . amended . . . . . Ch. 191 . . . . . SB 185
39-30-201 . . . . . amended . . . . . Ch. 191 . . . . . SB 185
39-51-201 . . . . . amended . . . . . Ch. 287 . . . . . SB 127
39-51-301 . . . . . amended . . . . . Ch. 81 . . . . . HB 261
39-51-401 . . . . . amended . . . . . Ch. 203 . . . . . HB 127
39-51-605. . . . . enacted . . . . . Ch. 203 . . . . . HB 127
39-51-1125 . . . . . amended . . . . . Ch. 203 . . . . . HB 127
39-51-1212 . . . . . amended . . . . . Ch. 203 . . . . . HB 127
39-51-1213 . . . . . amended . . . . . Ch. 81 . . . . . HB 261
39-51-1214 . . . . . amended . . . . . Ch. 81 . . . . . HB 261
amended . . . . . Ch. 167 . . . . . SB 128
amended . . . . . Ch. 203 . . . . . HB 127
39-51-3106 . . . . . amended . . . . . Ch. 203 . . . . . HB 127
39-51-3201 . . . . . amended . . . . . Ch. 203 . . . . . HB 127
39-71-118 . . . . . amended . . . . . Ch. 412 . . . . . SB 386
39-71-123 . . . . . amended . . . . . Ch. 412 . . . . . SB 386
39-71-401 . . . . . amended . . . . . Ch. 412 . . . . . SB 386
39-71-402 . . . . . amended . . . . . Ch. 74 . . . . . HB 82
39-71-413 . . . . . amended . . . . . Ch. 148 . . . . . HB 232
39-71-745. . . . . enacted . . . . . Ch. 412 . . . . . SB 386
39-71-1110. . . . . enacted . . . . . Ch. 407 . . . . . SB 323
39-71-2363 . . . . . amended . . . . . Ch. 120 . . . . . SB 49
40-4-105 . . . . . amended . . . . . Ch. 88 . . . . . HB 330
40-4-121 . . . . . amended . . . . . Ch. 88 . . . . . HB 330
40-4-201 . . . . . amended . . . . . Ch. 88 . . . . . HB 330
40-4-202 . . . . . amended . . . . . Ch. 88 . . . . . HB 330
40-4-203 . . . . . amended . . . . . Ch. 88 . . . . . HB 330
40-4-204 . . . . . amended . . . . . Ch. 88 . . . . . HB 330
40-4-205 . . . . . amended . . . . . Ch. 88 . . . . . HB 330
40-4-215 . . . . . amended . . . . . Ch. 88 . . . . . HB 330
40-4-219 . . . . . amended . . . . . Ch. 88 . . . . . HB 330
amended . . . . . Ch. 350 . . . . . HB 555
40-4-220 . . . . . amended . . . . . Ch. 88 . . . . . HB 330
40-4-301 . . . . . amended . . . . . Ch. 350 . . . . . HB 555
40-4-302 . . . . . amended . . . . . Ch. 350 . . . . . HB 555
40-4-307 . . . . . amended . . . . . Ch. 350 . . . . . HB 555
40-5-901 . . . . . amended . . . . . Ch. 203 . . . . . HB 127
40-6-237 . . . . . amended . . . . . Ch. 4 . . . . . HB 42
40-6-238 . . . . . amended . . . . . Ch. 4 . . . . . HB 42
41-1-405 . . . . . amended (voided by sec. 16, Ch. 292) . . . . . Ch. 292 . . . . . HB 521
amended . . . . . Ch. 307 . . . . . HB 391
41-3-102 . . . . . amended . . . . . Ch. 225 . . . . . SB 107
41-3-201 . . . . . amended . . . . . Ch. 337 . . . . . HB 131
41-3-202 . . . . . amended . . . . . Ch. 61 . . . . . SB 65
41-3-205 . . . . . amended . . . . . Ch. 61 . . . . . SB 65
amended . . . . . Ch. 332 . . . . . HB 74
amended . . . . . Ch. 333 . . . . . HB 76
amended . . . . . Ch. 337 . . . . . HB 131
amended . . . . . Ch. 364 . . . . . SB 348

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| 41-3-208 | amended | Ch. 332 | HB 74 |
| 41-3-304 | enacted | Ch. 267 | SB 351 |
| 41-3-425 | amended | Ch. 29 | HB 107 |
| 41-3-1201 | enacted | Ch. 333 | HB 76 |
| 41-3-1202 | enacted | Ch. 333 | HB 76 |
| 41-3-1203 | enacted | Ch. 333 | HB 76 |
| 41-3-1204 | enacted | Ch. 333 | HB 76 |
| 41-3-1205 | enacted | Ch. 333 | HB 76 |
| 41-3-1206 | enacted | Ch. 333 | HB 76 |
| 41-3-1207 | enacted | Ch. 333 | HB 76 |
| 41-5-103 | amended | Ch. 281 | HB 313 |
| 41-5-215 | amended | Ch. 364 | SB 348 |
| 44-1-504 | amended | Ch. 272 | HB 336 |
| 44-2-117 | amended | Ch. 6 | SB 8 |
| 44-2-301 | amended | Ch. 5 | HB 139 |
| 44-2-302 | amended | Ch. 5 | HB 139 |
| 44-2-303 | amended | Ch. 5 | HB 139 |
| 44-2-304 | amended | Ch. 5 | HB 139 |
| 44-2-311 | amended | Ch. 5 | HB 139 |
| 44-2-312 | amended | Ch. 5 | HB 139 |
| 44-2-313 | amended | Ch. 5 | HB 139 |
| 44-2-314 | amended | Ch. 5 | HB 139 |
| 44-2-315 | amended | Ch. 5 | HB 139 |
| 44-2-316 | repealed | Ch. 5 | HB 139 |
| 44-2-701 | repealed | Ch. 53 | SB 73 |
| 44-2-702 | repealed | Ch. 53 | SB 73 |
| 44-2-703 | repealed | Ch. 53 | SB 73 |
| 44-2-704 | repealed | Ch. 53 | SB 73 |
| 44-2-705 | repealed | Ch. 53 | SB 73 |
| 44-4-1201 | amended | Ch. 309 | HB 233 |
| 44-4-1202 | amended | Ch. 309 | HB 233 |
| 44-4-1203 | amended | Ch. 309 | HB 233 |
| 44-4-1204 | amended | Ch. 309 | HB 233 |
| 44-4-1205 | amended | Ch. 309 | HB 233 |
| 44-4-1206 | amended | Ch. 309 | HB 233 |
| 44-4-1501 | enacted | Ch. 223 | HB 488 |
| 44-6-103 | amended | Ch. 101 | SB 213 |
| 45-1-205 | amended | Ch. 225 | SB 107 |
| 45-2-101 | amended | Ch. 225 | SB 107 |
| 45-5-102 | amended | Ch. 271 | HB 104 |
| 45-5-103 | amended | Ch. 271 | HB 104 |
| 45-5-106 | amended | Ch. 153 | HB 168 |
| 45-5-116 | enacted | Ch. 271 | HB 104 |
| 45-5-206 | amended | Ch. 161 | SB 189 |
| | amended | Ch. 228 | SB 306 |
| 45-5-212 | amended | Ch. 378 | SB 198 |
| 45-5-305 | amended | Ch. 374 | HB 478 |
| 45-5-306 | amended | Ch. 374 | HB 478 |
| 45-5-310 | enacted | Ch. 374 | HB 478 |
| 45-5-311 | enacted | Ch. 374 | HB 478 |
| 45-5-503 | amended | Ch. 149 | SB 326 |
| 45-5-505 | amended and renumbered 45-8-218 | Ch. 225 | SB 107 |
| 45-5-601 | amended | Ch. 374 | HB 478 |
| 45-5-602 | amended | Ch. 374 | HB 478 |
| 45-5-603 | amended | Ch. 374 | HB 478 |
| 45-5-628 | enacted | Ch. 304 | SB 160 |
| 45-6-320 | enacted | Ch. 174 | HB 463 |
| 45-8-101 | amended | Ch. 250 | HB 446 |
| 45-8-218 | formerly 45-5-505 | Ch. 225 | SB 107 |
| 45-8-322 | amended | Ch. 111 | SB 145 |
| 45-9-101 | amended | Ch. 135 | HB 140 |
| 45-9-102 | amended | Ch. 135 | HB 140 |
| 45-9-103 | amended | Ch. 135 | HB 140 |

45-9-110 . . . . . amended . . . . . Ch. 135 . . . . . HB 140
46-1-502 . . . . . amended . . . . . Ch. 225 . . . . . SB 107
46-1-1103 . . . . . amended . . . . . Ch. 9 . . . . . HB 92
46-1-1203 . . . . . amended . . . . . Ch. 9 . . . . . HB 92
46-5-105. . . . . enacted . . . . . Ch. 192 . . . . . SB 194
46-5-109. . . . . enacted . . . . . Ch. 377 . . . . . SB 196
46-5-110. . . . . enacted . . . . . Ch. 394 . . . . . HB 603
46-9-108 . . . . . amended . . . . . Ch. 209 . . . . . SB 11
46-9-301 . . . . . amended . . . . . Ch. 209 . . . . . SB 11
46-14-101 . . . . . amended . . . . . Ch. 209 . . . . . SB 11
46-15-411 . . . . . amended . . . . . Ch. 237 . . . . . HB 71
46-16-105 . . . . . amended . . . . . Ch. 144 . . . . . SB 267
46-16-130 . . . . . amended . . . . . Ch. 153 . . . . . HB 168
46-17-203 . . . . . amended . . . . . Ch. 144 . . . . . SB 267
46-18-104 . . . . . amended . . . . . Ch. 177 . . . . . HB 72
46-18-111 . . . . . amended . . . . . Ch. 374 . . . . . HB 478
amended . . . . . Ch. 378 . . . . . SB 198
46-18-201 . . . . . amended . . . . . Ch. 153 . . . . . HB 168
amended . . . . . Ch. 177 . . . . . HB 72
amended . . . . . Ch. 309 . . . . . HB 233
amended . . . . . Ch. 374 . . . . . HB 478
46-18-203 . . . . . amended . . . . . Ch. 374 . . . . . HB 478
46-18-205 . . . . . amended . . . . . Ch. 374 . . . . . HB 478
46-18-207 . . . . . amended . . . . . Ch. 374 . . . . . HB 478
46-18-222 . . . . . amended . . . . . Ch. 30 . . . . . HB 137
amended . . . . . Ch. 374 . . . . . HB 478
46-18-231 . . . . . amended . . . . . Ch. 374 . . . . . HB 478
46-18-236 . . . . . amended . . . . . Ch. 153 . . . . . HB 168
46-18-608. . . . . enacted . . . . . Ch. 193 . . . . . SB 259
46-23-201 . . . . . amended . . . . . Ch. 209 . . . . . SB 11
46-23-210 . . . . . amended . . . . . Ch. 43 . . . . . SB 51
46-23-502 . . . . . amended . . . . . Ch. 374 . . . . . HB 478
46-23-504 . . . . . amended . . . . . Ch. 101 . . . . . SB 213
46-23-505 . . . . . amended . . . . . Ch. 283 . . . . . HB 433
46-23-509 . . . . . amended . . . . . Ch. 182 . . . . . HB 335
46-23-901. . . . . enacted . . . . . Ch. 176 . . . . . HB 68
46-23-902. . . . . enacted . . . . . Ch. 176 . . . . . HB 68
46-23-903. . . . . enacted . . . . . Ch. 176 . . . . . HB 68
46-23-1003 . . . . . amended . . . . . Ch. 209 . . . . . SB 11
46-23-1011 . . . . . amended . . . . . Ch. 374 . . . . . HB 478
47-1-104 . . . . . amended (voided by sec. 16, Ch. 292) . . . . . Ch. 292 . . . . . HB 521
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47-1-201 . . . . . amended . . . . . Ch. 120 . . . . . SB 49
50-2-116 . . . . . amended . . . . . Ch. 195 . . . . . SB 316
50-4-105. . . . . enacted . . . . . Ch. 420 . . . . . SB 297
50-4-623 . . . . . repealed . . . . . Ch. 17 . . . . . HB 21
50-4-805 . . . . . amended . . . . . Ch. 120 . . . . . SB 49
50-5-101 . . . . . amended . . . . . Ch. 157 . . . . . SB 103
50-5-103 . . . . . amended . . . . . Ch. 157 . . . . . SB 103
50-8-101 . . . . . amended . . . . . Ch. 68 . . . . . HB 123
50-16-108. . . . . enacted . . . . . Ch. 231 . . . . . HB 459
50-16-201 . . . . . amended . . . . . Ch. 265 . . . . . SB 292
50-16-522 . . . . . amended . . . . . Ch. 67 . . . . . HB 28
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50-16-525 . . . . . amended . . . . . Ch. 353 . . . . . HB 583
50-16-804 . . . . . amended . . . . . Ch. 67 . . . . . HB 28
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50-16-805 . . . . . amended . . . . . Ch. 67 . . . . . HB 28
amended . . . . . Ch. 353 . . . . . HB 583
50-19-401 . . . . . amended . . . . . Ch. 67 . . . . . HB 28
50-19-402 . . . . . amended . . . . . Ch. 67 . . . . . HB 28
50-19-403 . . . . . amended . . . . . Ch. 67 . . . . . HB 28
50-19-404 . . . . . amended . . . . . Ch. 67 . . . . . HB 28

50-20-221 . . . . . repealed (voided by sec. 16, Ch. 292) . . . . . Ch. 292 . . . . . HB 521
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50-20-222 . . . . . repealed (voided by sec. 16, Ch. 292) . . . . . Ch. 292 . . . . . HB 521
repealed . . . . . Ch. 307 . . . . . HB 391
50-20-223 . . . . . repealed (voided by sec. 16, Ch. 292) . . . . . Ch. 292 . . . . . HB 521
repealed . . . . . Ch. 307 . . . . . HB 391
50-20-224 . . . . . repealed (voided by sec. 16, Ch. 292) . . . . . Ch. 292 . . . . . HB 521
repealed . . . . . Ch. 307 . . . . . HB 391
50-20-225 . . . . . repealed (voided by sec. 16, Ch. 292) . . . . . Ch. 292 . . . . . HB 521
repealed . . . . . Ch. 307 . . . . . HB 391
50-20-228 . . . . . repealed (voided by sec. 16, Ch. 292) . . . . . Ch. 292 . . . . . HB 521
repealed . . . . . Ch. 307 . . . . . HB 391
50-20-229 . . . . . repealed (voided by sec. 16, Ch. 292) . . . . . Ch. 292 . . . . . HB 521
repealed . . . . . Ch. 307 . . . . . HB 391
50-20-232 . . . . . repealed (voided by sec. 16, Ch. 292) . . . . . Ch. 292 . . . . . HB 521
repealed . . . . . Ch. 307 . . . . . HB 391
50-20-235 . . . . . repealed (voided by sec. 16, Ch. 292) . . . . . Ch. 292 . . . . . HB 521
repealed . . . . . Ch. 307 . . . . . HB 391
50-20-501 . . . . . enacted . . . . . Ch. 307 . . . . . HB 391
50-20-502 . . . . . enacted . . . . . Ch. 307 . . . . . HB 391
50-20-503 . . . . . enacted . . . . . Ch. 307 . . . . . HB 391
50-20-504 . . . . . enacted . . . . . Ch. 307 . . . . . HB 391
50-20-505 . . . . . enacted . . . . . Ch. 307 . . . . . HB 391
50-20-506 . . . . . enacted . . . . . Ch. 307 . . . . . HB 391
50-20-507 . . . . . enacted . . . . . Ch. 307 . . . . . HB 391
50-20-508 . . . . . enacted . . . . . Ch. 307 . . . . . HB 391
50-20-509 . . . . . enacted . . . . . Ch. 307 . . . . . HB 391
50-20-510 . . . . . enacted . . . . . Ch. 307 . . . . . HB 391
50-20-511 . . . . . enacted . . . . . Ch. 307 . . . . . HB 391
50-32-101 . . . . . amended . . . . . Ch. 135 . . . . . HB 140
50-32-222 . . . . . amended . . . . . Ch. 135 . . . . . HB 140
50-32-224 . . . . . amended . . . . . Ch. 135 . . . . . HB 140
50-32-226 . . . . . amended . . . . . Ch. 135 . . . . . HB 140
50-32-229 . . . . . amended . . . . . Ch. 135 . . . . . HB 140
50-32-232 . . . . . amended . . . . . Ch. 135 . . . . . HB 140
50-32-314 . . . . . amended . . . . . Ch. 135 . . . . . HB 140
50-40-103 . . . . . amended . . . . . Ch. 123 . . . . . SB 71
50-46-320 . . . . . amended . . . . . Ch. 153 . . . . . HB 168
50-46-327 . . . . . amended . . . . . Ch. 123 . . . . . SB 71
50-50-102 . . . . . amended . . . . . Ch. 302 . . . . . SB 94
50-50-202 . . . . . amended . . . . . Ch. 89 . . . . . HB 333
amended . . . . . Ch. 94 . . . . . HB 399
50-63-103 . . . . . amended . . . . . Ch. 291 . . . . . SB 345
50-63-104 . . . . . enacted . . . . . Ch. 291 . . . . . SB 345
50-65-102 . . . . . amended . . . . . Ch. 28 . . . . . HB 17
50-72-105 . . . . . enacted . . . . . Ch. 60 . . . . . SB 47
50-72-106 . . . . . enacted . . . . . Ch. 60 . . . . . SB 47
50-73-106 . . . . . enacted . . . . . Ch. 60 . . . . . SB 47
50-73-107 . . . . . enacted . . . . . Ch. 60 . . . . . SB 47
50-73-406 . . . . . amended . . . . . Ch. 60 . . . . . SB 47
52-2-211 . . . . . amended . . . . . Ch. 364 . . . . . SB 348
52-2-304 . . . . . amended . . . . . Ch. 364 . . . . . SB 348
52-3-803 . . . . . amended . . . . . Ch. 158 . . . . . SB 134
amended . . . . . Ch. 225 . . . . . SB 107
52-3-825 . . . . . amended . . . . . Ch. 158 . . . . . SB 134
53-1-215 . . . . . enacted . . . . . Ch. 413 . . . . . SB 410
53-2-208 . . . . . enacted . . . . . Ch. 413 . . . . . SB 410
53-2-211 . . . . . amended . . . . . Ch. 21 . . . . . SB 15
53-2-301 . . . . . amended . . . . . Ch. 59 . . . . . HB 77
53-2-304 . . . . . amended . . . . . Ch. 59 . . . . . HB 77
53-2-305 . . . . . amended . . . . . Ch. 59 . . . . . HB 77
53-4-1005 . . . . . amended . . . . . Ch. 97 . . . . . SB 55
53-6-101 . . . . . amended . . . . . Ch. 97 . . . . . SB 55

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| 53-6-110 | amended | Ch. 120 | SB 49 |
| 53-6-113 | amended | Ch. 363 | SB 84 |
| 53-6-131 | amended | Ch. 387 | HB 262 |
| 53-6-190 | enacted | Ch. 362 | SB 69 |
| 53-6-401 | amended | Ch. 68 | HB 123 |
| 53-6-402 | amended | Ch. 68 | HB 123 |
| 53-20-102 | amended | Ch. 68 | HB 123 |
| 53-20-127 | amended | Ch. 68 | HB 123 |
| 53-20-128 | amended | Ch. 68 | HB 123 |
| 53-20-141 | amended | Ch. 68 | HB 123 |
| 53-20-142 | amended | Ch. 68 | HB 123 |
| 53-20-146 | amended | Ch. 68 | HB 123 |
| 53-20-148 | amended | Ch. 68 | HB 123 |
| 53-20-161 | amended | Ch. 68 | HB 123 |
| 53-20-163 | amended | Ch. 258 | SB 43 |
| 53-20-164 | amended | Ch. 68 | HB 123 |
| 53-20-202 | amended | Ch. 68 | HB 123 |
| 53-21-102 | amended | Ch. 68 | HB 123 |
| | amended | Ch. 308 | HB 16 |
| 53-21-119 | amended | Ch. 308 | HB 16 |
| 53-21-129 | amended | Ch. 308 | HB 16 |
| 53-21-702 | amended | Ch. 120 | SB 49 |
| 53-21-1102 | amended | Ch. 353 | HB 583 |
| 53-21-1105 | enacted | Ch. 353 | HB 583 |
| 53-21-1106 | enacted | Ch. 353 | HB 583 |
| 53-21-1107 | enacted | Ch. 353 | HB 583 |
| 53-21-1108 | enacted | Ch. 353 | HB 583 |
| 53-21-1109 | enacted | Ch. 353 | HB 583 |
| 53-21-1110 | enacted | Ch. 353 | HB 583 |
| 53-21-1401 | enacted | Ch. 201 | HB 84 |
| 53-21-1402 | enacted | Ch. 201 | HB 84 |
| 53-21-1403 | enacted | Ch. 201 | HB 84 |
| 53-21-1404 | enacted | Ch. 201 | HB 84 |
| 53-21-1405 | enacted | Ch. 201 | HB 84 |
| 60-1-220 | enacted | Ch. 246 | HB 299 |
| 60-1-221 | enacted | Ch. 246 | HB 299 |
| 60-2-115 | amended | Ch. 348 | HB 494 |
| 60-2-118 | repealed | Ch. 188 | SB 116 |
| 60-2-244 | enacted | Ch. 223 | HB 488 |
| 60-3-211 | amended | Ch. 45 | SB 111 |
| 61-2-109 | amended | Ch. 120 | SB 49 |
| 61-2-302 | amended | Ch. 153 | HB 168 |
| 61-3-109 | amended | Ch. 358 | HB 607 |
| 61-3-116 | amended | Ch. 196 | SB 319 |
| 61-3-201 | amended | Ch. 370 | HB 414 |
| 61-3-205 | amended | Ch. 196 | SB 319 |
| 61-3-211 | amended | Ch. 116 | HB 367 |
| | amended | Ch. 196 | SB 319 |
| 61-3-225 | amended | Ch. 196 | SB 319 |
| 61-3-303 | amended | Ch. 142 | SB 99 |
| | amended | Ch. 196 | SB 319 |
| | amended | Ch. 370 | HB 414 |
| 61-3-311 | amended | Ch. 196 | SB 319 |
| 61-3-312 | amended | Ch. 142 | SB 99 |
| 61-3-321 | amended | Ch. 393 | HB 559 |
| 61-3-331 | amended | Ch. 196 | SB 319 |
| 61-3-332 | amended | Ch. 393 | HB 559 |
| 61-3-337 | amended | Ch. 393 | HB 559 |
| 61-3-338 | amended | Ch. 196 | SB 319 |
| 61-3-412 | amended | Ch. 106 | HB 270 |
| 61-3-414 | amended | Ch. 196 | SB 319 |
| 61-3-415 | amended | Ch. 196 | SB 319 |
| 61-3-424 | repealed | Ch. 393 | HB 559 |

61-3-458 . . . . . amended . . . . . Ch. 219 . . . . . HB 566
61-3-465 . . . . . amended . . . . . Ch. 196 . . . . . SB 319
61-3-467 . . . . . amended . . . . . Ch. 196 . . . . . SB 319
61-3-480 . . . . . amended . . . . . Ch. 196 . . . . . SB 319
61-3-562 . . . . . amended . . . . . Ch. 393 . . . . . HB 559
61-4-111 . . . . . amended . . . . . Ch. 196 . . . . . SB 319
61-4-112 . . . . . amended . . . . . Ch. 196 . . . . . SB 319
61-4-129 . . . . . amended . . . . . Ch. 86 . . . . . HB 305
61-4-206 . . . . . amended . . . . . Ch. 273 . . . . . SB 182
61-4-207 . . . . . amended . . . . . Ch. 273 . . . . . SB 182
61-4-208 . . . . . amended . . . . . Ch. 273 . . . . . SB 182
61-5-107. . . . . amended (not codified — referendum) . . . . . Ch. 270 . . . . . SB 405
61-5-110 . . . . . amended . . . . . Ch. 194 . . . . . SB 314
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61-5-111 . . . . . amended . . . . . Ch. 322 . . . . . SB 275
61-5-114 . . . . . amended . . . . . Ch. 322 . . . . . SB 275
61-5-123. . . . . enacted . . . . . Ch. 254 . . . . . HB 508
61-5-205 . . . . . amended . . . . . Ch. 153 . . . . . HB 168
61-5-208 . . . . . amended . . . . . Ch. 153 . . . . . HB 168
61-5-212 . . . . . amended . . . . . Ch. 153 . . . . . HB 168
61-5-231 . . . . . amended . . . . . Ch. 153 . . . . . HB 168
61-5-301 . . . . . amended . . . . . Ch. 194 . . . . . SB 314
61-6-105 . . . . . amended . . . . . Ch. 142 . . . . . SB 99
61-6-202. . . . . enacted . . . . . Ch. 108 . . . . . HB 347
61-7-108 . . . . . amended . . . . . Ch. 314 . . . . . HB 442
61-8-303 . . . . . amended . . . . . Ch. 393 . . . . . HB 559
61-8-309 . . . . . amended . . . . . Ch. 261 . . . . . SB 161
amended . . . . . Ch. 393 . . . . . HB 559
61-8-310 . . . . . amended . . . . . Ch. 393 . . . . . HB 559
61-8-351 . . . . . amended . . . . . Ch. 58 . . . . . HB 155
61-8-401 . . . . . amended . . . . . Ch. 153 . . . . . HB 168
61-8-402 . . . . . amended . . . . . Ch. 153 . . . . . HB 168
61-8-404 . . . . . amended . . . . . Ch. 153 . . . . . HB 168
61-8-405 . . . . . amended . . . . . Ch. 153 . . . . . HB 168
61-8-408 . . . . . amended . . . . . Ch. 153 . . . . . HB 168
61-8-411. . . . . enacted . . . . . Ch. 153 . . . . . HB 168
61-8-421 . . . . . amended . . . . . Ch. 153 . . . . . HB 168
61-8-442 . . . . . amended . . . . . Ch. 153 . . . . . HB 168
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61-8-465 . . . . . amended . . . . . Ch. 153 . . . . . HB 168
amended . . . . . Ch. 312 . . . . . HB 355
61-8-722 . . . . . amended . . . . . Ch. 153 . . . . . HB 168
61-8-725 . . . . . amended . . . . . Ch. 393 . . . . . HB 559
61-8-731 . . . . . amended . . . . . Ch. 153 . . . . . HB 168
61-8-732 . . . . . amended . . . . . Ch. 153 . . . . . HB 168
61-8-733 . . . . . amended . . . . . Ch. 153 . . . . . HB 168
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61-8-734 . . . . . amended . . . . . Ch. 153 . . . . . HB 168
amended . . . . . Ch. 312 . . . . . HB 355
61-8-741 . . . . . amended . . . . . Ch. 153 . . . . . HB 168
61-8-913 . . . . . amended . . . . . Ch. 185 . . . . . HB 455
61-9-431 . . . . . amended . . . . . Ch. 113 . . . . . SB 225
61-10-121 . . . . . amended . . . . . Ch. 218 . . . . . HB 513
61-11-101 . . . . . amended . . . . . Ch. 153 . . . . . HB 168
amended . . . . . Ch. 194 . . . . . SB 314
61-11-102 . . . . . amended . . . . . Ch. 123 . . . . . SB 71
61-11-105 . . . . . amended . . . . . Ch. 196 . . . . . SB 319
61-12-401 . . . . . amended . . . . . Ch. 117 . . . . . HB 422
61-12-502 . . . . . amended . . . . . Ch. 322 . . . . . SB 275
61-12-504 . . . . . amended . . . . . Ch. 315 . . . . . HB 498
67-1-214. . . . . enacted . . . . . Ch. 256 . . . . . HB 546
69-3-222. . . . . enacted . . . . . Ch. 391 . . . . . HB 477
69-3-223. . . . . enacted . . . . . Ch. 391 . . . . . HB 477

69-3-2003 . . . . . amended . . . . . Ch. 259 . . . . . SB 106
amended . . . . . Ch. 328 . . . . . SB 325
amended . . . . . Ch. 361 . . . . . SB 45
69-3-2004 . . . . . amended . . . . . Ch. 73 . . . . . SB 164
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69-3-2006 . . . . . amended . . . . . Ch. 361 . . . . . SB 45
69-3-2009 . . . . . amended . . . . . Ch. 25 . . . . . SB 52
69-3-2010 . . . . . amended . . . . . Ch. 25 . . . . . SB 52
69-7-111 . . . . . amended . . . . . Ch. 187 . . . . . SB 48
69-12-311 . . . . . amended . . . . . Ch. 35 . . . . . HB 55
69-12-312 . . . . . amended . . . . . Ch. 35 . . . . . HB 55
69-12-331 . . . . . repealed . . . . . Ch. 35 . . . . . HB 55
69-12-407 . . . . . amended . . . . . Ch. 35 . . . . . HB 55
69-12-408 . . . . . amended . . . . . Ch. 35 . . . . . HB 55
69-12-612 . . . . . repealed . . . . . Ch. 35 . . . . . HB 55
69-13-101 . . . . . amended . . . . . Ch. 44 . . . . . SB 141
69-13-102 . . . . . amended . . . . . Ch. 44 . . . . . SB 141
69-13-201 . . . . . amended . . . . . Ch. 44 . . . . . SB 141
69-13-301 . . . . . amended . . . . . Ch. 44 . . . . . SB 141
69-13-302 . . . . . amended . . . . . Ch. 44 . . . . . SB 141
69-13-303 . . . . . amended . . . . . Ch. 44 . . . . . SB 141
70-17-112 . . . . . amended . . . . . Ch. 180 . . . . . HB 291
70-18-202 . . . . . repealed . . . . . Ch. 210 . . . . . SB 18
70-18-206 . . . . . enacted . . . . . Ch. 210 . . . . . SB 18
70-24-303 . . . . . amended . . . . . Ch. 343 . . . . . HB 385
70-24-321 . . . . . amended . . . . . Ch. 343 . . . . . HB 385
70-24-422 . . . . . amended . . . . . Ch. 343 . . . . . HB 385
70-24-427 . . . . . amended . . . . . Ch. 343 . . . . . HB 385
70-24-430 . . . . . amended . . . . . Ch. 93 . . . . . HB 368
amended . . . . . Ch. 123 . . . . . SB 71
70-29-401 . . . . . enacted . . . . . Ch. 263 . . . . . SB 207
70-29-402 . . . . . enacted . . . . . Ch. 263 . . . . . SB 207
70-29-403 . . . . . enacted . . . . . Ch. 263 . . . . . SB 207
70-29-404 . . . . . enacted . . . . . Ch. 263 . . . . . SB 207
70-29-405 . . . . . enacted . . . . . Ch. 263 . . . . . SB 207
70-29-410 . . . . . enacted . . . . . Ch. 263 . . . . . SB 207
70-29-411 . . . . . enacted . . . . . Ch. 263 . . . . . SB 207
70-29-412 . . . . . enacted . . . . . Ch. 263 . . . . . SB 207
70-29-413 . . . . . enacted . . . . . Ch. 263 . . . . . SB 207
70-29-414 . . . . . enacted . . . . . Ch. 263 . . . . . SB 207
70-29-415 . . . . . enacted . . . . . Ch. 263 . . . . . SB 207
70-29-419 . . . . . enacted . . . . . Ch. 263 . . . . . SB 207
70-29-420 . . . . . enacted . . . . . Ch. 263 . . . . . SB 207
70-30-110 . . . . . amended . . . . . Ch. 371 . . . . . HB 417
70-30-111 . . . . . amended . . . . . Ch. 371 . . . . . HB 417
70-30-203 . . . . . amended . . . . . Ch. 103 . . . . . HB 45
amended . . . . . Ch. 371 . . . . . HB 417
70-30-206 . . . . . amended . . . . . Ch. 371 . . . . . HB 417
70-30-305 . . . . . amended . . . . . Ch. 371 . . . . . HB 417
71-3-564 . . . . . enacted . . . . . Ch. 152 . . . . . HB 469
71-3-1201 . . . . . amended . . . . . Ch. 124 . . . . . SB 86
71-3-1203 . . . . . amended . . . . . Ch. 186 . . . . . HB 462
71-3-1211 . . . . . enacted . . . . . Ch. 124 . . . . . SB 86
71-3-1212 . . . . . enacted . . . . . Ch. 124 . . . . . SB 86
71-3-1213 . . . . . enacted . . . . . Ch. 124 . . . . . SB 86
71-3-1214 . . . . . enacted . . . . . Ch. 124 . . . . . SB 86
72-1-103 . . . . . amended . . . . . Ch. 264 . . . . . SB 251
72-1-310 . . . . . amended . . . . . Ch. 264 . . . . . SB 251
72-1-311 . . . . . amended . . . . . Ch. 264 . . . . . SB 251
72-1-312 . . . . . amended . . . . . Ch. 264 . . . . . SB 251
72-3-1101 . . . . . amended . . . . . Ch. 85 . . . . . HB 89
72-5-444 . . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-5-445 . . . . . enacted . . . . . Ch. 264 . . . . . SB 251

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| 72-5-446 | enacted | Ch. 264 | SB 251 |
| 72-5-447 | enacted | Ch. 264 | SB 251 |
| 72-5-448 | enacted | Ch. 264 | SB 251 |
| 72-5-449 | enacted | Ch. 264 | SB 251 |
| 72-5-450 | enacted | Ch. 264 | SB 251 |
| 72-6-122 | repealed | Ch. 264 | SB 251 |
| 72-6-123 | enacted | Ch. 264 | SB 251 |
| 72-6-206 | amended | Ch. 264 | SB 251 |
| 72-6-214 | amended | Ch. 264 | SB 251 |
| 72-6-215 | repealed | Ch. 264 | SB 251 |
| 72-6-228 | enacted | Ch. 264 | SB 251 |
| 72-16-1001 | amended | Ch. 264 | SB 251 |
| 72-33-101 | repealed | Ch. 264 | SB 251 |
| 72-33-102 | repealed | Ch. 264 | SB 251 |
| 72-33-103 | repealed | Ch. 264 | SB 251 |
| 72-33-104 | repealed | Ch. 264 | SB 251 |
| 72-33-105 | repealed | Ch. 264 | SB 251 |
| 72-33-106 | repealed | Ch. 264 | SB 251 |
| 72-33-107 | repealed | Ch. 264 | SB 251 |
| 72-33-108 | repealed | Ch. 264 | SB 251 |
| 72-33-201 | repealed | Ch. 264 | SB 251 |
| 72-33-202 | repealed | Ch. 264 | SB 251 |
| 72-33-203 | repealed | Ch. 264 | SB 251 |
| 72-33-204 | repealed | Ch. 264 | SB 251 |
| 72-33-205 | repealed | Ch. 264 | SB 251 |
| 72-33-206 | repealed | Ch. 264 | SB 251 |
| 72-33-207 | repealed | Ch. 264 | SB 251 |
| 72-33-208 | repealed | Ch. 264 | SB 251 |
| 72-33-209 | repealed | Ch. 264 | SB 251 |
| 72-33-210 | repealed | Ch. 264 | SB 251 |
| 72-33-211 | repealed | Ch. 264 | SB 251 |
| 72-33-216 | repealed | Ch. 264 | SB 251 |
| 72-33-217 | repealed | Ch. 264 | SB 251 |
| 72-33-218 | repealed | Ch. 264 | SB 251 |
| 72-33-219 | repealed | Ch. 264 | SB 251 |
| 72-33-220 | repealed | Ch. 264 | SB 251 |
| 72-33-301 | repealed | Ch. 264 | SB 251 |
| 72-33-302 | repealed | Ch. 264 | SB 251 |
| 72-33-303 | repealed | Ch. 264 | SB 251 |
| 72-33-304 | repealed | Ch. 264 | SB 251 |
| 72-33-305 | repealed | Ch. 264 | SB 251 |
| 72-33-306 | repealed | Ch. 264 | SB 251 |
| 72-33-401 | repealed | Ch. 264 | SB 251 |
| 72-33-402 | repealed | Ch. 264 | SB 251 |
| 72-33-403 | repealed | Ch. 264 | SB 251 |
| 72-33-406 | repealed | Ch. 264 | SB 251 |
| 72-33-407 | repealed | Ch. 264 | SB 251 |
| 72-33-408 | repealed | Ch. 264 | SB 251 |
| 72-33-409 | repealed | Ch. 264 | SB 251 |
| 72-33-411 | repealed | Ch. 264 | SB 251 |
| 72-33-412 | repealed | Ch. 264 | SB 251 |
| 72-33-413 | repealed | Ch. 264 | SB 251 |
| 72-33-414 | repealed | Ch. 264 | SB 251 |
| 72-33-415 | repealed | Ch. 264 | SB 251 |
| 72-33-416 | repealed | Ch. 264 | SB 251 |
| 72-33-501 | repealed | Ch. 264 | SB 251 |
| 72-33-502 | repealed | Ch. 264 | SB 251 |
| 72-33-503 | repealed | Ch. 264 | SB 251 |
| 72-33-504 | repealed | Ch. 264 | SB 251 |
| 72-33-601 | repealed | Ch. 264 | SB 251 |
| 72-33-602 | repealed | Ch. 264 | SB 251 |
| 72-33-603 | repealed | Ch. 264 | SB 251 |
| 72-33-604 | repealed | Ch. 264 | SB 251 |

72-33-611 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-33-612 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-33-613 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-33-616 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-33-617 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-33-618 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-33-619 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-33-620 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-33-621 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-33-622 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-33-626 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-33-627 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-33-628 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-33-629 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-33-630 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-33-631 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-33-632 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-33-701 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-33-702 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-33-703 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-33-704 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-33-705 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-101 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-102 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-103 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-105 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-106 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-107 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-108 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-109 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-110 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-111 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-112 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-113 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-114 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-115 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-116 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-117 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-118 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-124 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-125 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-126 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-127 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-128 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-129 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-130 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-201 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-202 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-203 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-204 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-205 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-206 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-207 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-301 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-302 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-303 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-304 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-306 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-307 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-308 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-309 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-310 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-34-311 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251

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|---|---|---|---|
| 72-34-316 | repealed | Ch. 264 | SB 251 |
| 72-34-317 | repealed | Ch. 264 | SB 251 |
| 72-34-318 | repealed | Ch. 264 | SB 251 |
| 72-34-319 | repealed | Ch. 264 | SB 251 |
| 72-34-320 | repealed | Ch. 264 | SB 251 |
| 72-34-321 | repealed | Ch. 264 | SB 251 |
| 72-34-322 | repealed | Ch. 264 | SB 251 |
| 72-34-323 | repealed | Ch. 264 | SB 251 |
| 72-34-326 | repealed | Ch. 264 | SB 251 |
| 72-34-327 | repealed | Ch. 264 | SB 251 |
| 72-34-328 | repealed | Ch. 264 | SB 251 |
| 72-34-329 | repealed | Ch. 264 | SB 251 |
| 72-34-330 | repealed | Ch. 264 | SB 251 |
| 72-34-331 | repealed | Ch. 264 | SB 251 |
| 72-34-332 | repealed | Ch. 264 | SB 251 |
| 72-34-336 | repealed | Ch. 264 | SB 251 |
| 72-34-337 | repealed | Ch. 264 | SB 251 |
| 72-34-338 | repealed | Ch. 264 | SB 251 |
| 72-34-339 | repealed | Ch. 264 | SB 251 |
| 72-34-340 | repealed | Ch. 264 | SB 251 |
| 72-34-341 | repealed | Ch. 264 | SB 251 |
| 72-34-342 | repealed | Ch. 264 | SB 251 |
| 72-34-343 | repealed | Ch. 264 | SB 251 |
| 72-34-424 | amended | Ch. 264 | SB 251 |
| 72-34-446 | amended | Ch. 264 | SB 251 |
| 72-34-501 | repealed | Ch. 264 | SB 251 |
| 72-34-502 | repealed | Ch. 264 | SB 251 |
| 72-34-503 | repealed | Ch. 264 | SB 251 |
| 72-34-504 | repealed | Ch. 264 | SB 251 |
| 72-34-506 | repealed | Ch. 264 | SB 251 |
| 72-34-507 | repealed | Ch. 264 | SB 251 |
| 72-34-508 | repealed | Ch. 264 | SB 251 |
| 72-34-509 | repealed | Ch. 264 | SB 251 |
| 72-34-511 | repealed | Ch. 264 | SB 251 |
| 72-34-512 | repealed | Ch. 264 | SB 251 |
| 72-34-513 | repealed | Ch. 264 | SB 251 |
| 72-34-514 | repealed | Ch. 264 | SB 251 |
| 72-34-515 | repealed | Ch. 264 | SB 251 |
| 72-34-516 | repealed | Ch. 264 | SB 251 |
| 72-34-517 | repealed | Ch. 264 | SB 251 |
| 72-34-601 | repealed | Ch. 264 | SB 251 |
| 72-34-602 | repealed | Ch. 264 | SB 251 |
| 72-34-603 | repealed | Ch. 264 | SB 251 |
| 72-34-604 | repealed | Ch. 264 | SB 251 |
| 72-34-605 | repealed | Ch. 264 | SB 251 |
| 72-34-606 | repealed | Ch. 264 | SB 251 |
| 72-34-607 | repealed | Ch. 264 | SB 251 |
| 72-34-608 | repealed | Ch. 264 | SB 251 |
| 72-34-609 | repealed | Ch. 264 | SB 251 |
| 72-34-610 | repealed | Ch. 264 | SB 251 |
| 72-35-101 | repealed | Ch. 264 | SB 251 |
| 72-35-102 | repealed | Ch. 264 | SB 251 |
| 72-35-103 | repealed | Ch. 264 | SB 251 |
| 72-35-104 | repealed | Ch. 264 | SB 251 |
| 72-35-105 | repealed | Ch. 264 | SB 251 |
| 72-35-106 | repealed | Ch. 264 | SB 251 |
| 72-35-107 | repealed | Ch. 264 | SB 251 |
| 72-35-201 | repealed | Ch. 264 | SB 251 |
| 72-35-202 | repealed | Ch. 264 | SB 251 |
| 72-35-203 | repealed | Ch. 264 | SB 251 |
| 72-35-206 | repealed | Ch. 264 | SB 251 |
| 72-35-207 | repealed | Ch. 264 | SB 251 |
| 72-35-208 | repealed | Ch. 264 | SB 251 |

72-35-209 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-35-301 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-35-302 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-35-303 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-35-306 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-35-307 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-35-308 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-35-311 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-35-312 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-35-313 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-35-314 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-35-315 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-35-401 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-35-402 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-35-403 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-35-404 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-35-405 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-35-406 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-35-501 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-35-502 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-35-503 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-35-504 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-35-505 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-35-506 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-35-507 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-35-508 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-36-101 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-36-102 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-36-103 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-36-104 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-36-105 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-36-106 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-36-201 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-36-202 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-36-203 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-36-206 . . . amended and renumbered 72-38-1111 . . . . . Ch. 264 . . . . . SB 251
72-36-301 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-36-302 . . . . . repealed . . . . . Ch. 264 . . . . . SB 251
72-38-101. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-102. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-103. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-104. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-105. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-106. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-107. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-108. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-109. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-110. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-111. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-112. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-113. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-120. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-121. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-122. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-123. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-124. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-130. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-131. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-132. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-133. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-134. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-201. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-202. . . . . enacted . . . . . Ch. 264 . . . . . SB 251

72-38-203. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-204. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-205. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-206. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-207. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-208. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-209. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-210. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-211. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-212. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-213. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-214. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-215. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-216. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-217. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-218. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-219. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-220. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-221. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-301. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-302. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-303. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-304. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-305. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-401. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-402. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-403. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-404. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-405. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-406. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-407. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-408. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-409. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-410. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-411. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-412. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-413. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-414. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-415. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-416. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-417. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-501. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-502. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-504. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-505. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-506. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-507. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-601. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-602. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-603. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-604. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-605. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-606. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-701. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-702. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-703. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-704. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-705. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-706. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-707. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-708. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-709. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-801. . . . . enacted . . . . . Ch. 264 . . . . . SB 251

72-38-802. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-803. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-804. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-805. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-806. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-807. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-808. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-809. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-810. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-811. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-812. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-813. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-814. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
72-38-815. . . . . enacted . . . . . Ch. 264 . . . . . SB 251
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| Ch. 537, sec. 9 | amended | 317 | SB 108 |
| Laws of 1999 | | | |
| Ch. 495, sec. 6 | amended | 390 | HB 454 |
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| Ch. 226, sec. 5 | amended | 317 | SB 108 |
| Laws of 2005 | | | |
| Ch. 4, sec. 7 | amended | 317 | SB 108 |

Laws of 2007
Ch. 208, sec. 2, 3, 4, 7 . . . . . amended . . . . . 317 . . . . . SB 108

Laws of 2009
Ch. 321, sec. 37 . . . . . amended . . . . . 125 . . . . . SB 93
Ch. 345, sec. 4 . . . . . repealed . . . . . 107 . . . . . HB 273
Ch. 435, sec. 2 . . . . . amended . . . . . 120 . . . . . SB 49

Laws of 2011
Ch. 330, sec. 4 . . . . . amended . . . . . 36 . . . . . HB 60
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| Ch. | 220 | SB | 149 | | 10/01/2013 |
| Ch. | 221 | SB | 258 | | 04/17/2013 |
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| ? | Ch. | 199 | HB | 79 | (Effective upon approval by the electorate) |
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| ? | Ch. | 270 | SB | 405 | (Effective upon approval by the electorate) |

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| | 2 | Effective date |
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| 3 | 1 | 20-15-310 |
| | 2 | Effective date |
| 4 | 1 | 40-6-237 |
| | 2 | 40-6-238 |
| 5 | 1 | 44-2-301 |
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| 7 | 1 | 37-61-211 |
| 8 | 1 | 10-1-104 |
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| | 2 | 46-1-1203 |
| 10 | 1 | 39-11-103 |
| | 2 | 39-11-202 |
| | 3 | Effective date |
| 11 | 1 | 15-6-138 (Voided by sec. 38, Ch. 268) |
| | 2 | Effective date |
| 12 | 1 | 16-2-201 |
| | 2 | 16-3-307 |
| 13 | 1 | 87-1-304 |
| | 2 | 87-2-104 |
| | 3 | 87-2-523 |
| | 4 | 87-2-524 |
| | 5 | 87-6-401 |
| | 6 | 87-6-414 |
| | 7 | Effective date |
| 14 | 1 | 2-2-121 |
| 15 | 1 | 39-6-101 |
| | 2 | 39-6-102 |
| | 3 | 39-6-104 |
| | 4 | 39-6-106 |
| | 5 | 39-6-107 |
| | 6 | 39-6-108 |
| 16 | 1 | 37-22-412<br>37-23-312<br>37-37-302 |
| | 2 | Codification instruction |
| | 3 | Effective date |
| 17 | 1 | 10-2-603 |
| | 2 | 17-1-508 |
| | 3 | 17-7-502 |
| | 4 | 17-7-502 |
| | 5 | 20-9-516 |
| | 6 | 20-9-622 |
| | 7 | 77-1-109 |
| | 8 | 77-2-303 |
| | 9 | 77-2-304 |
| | 10 | Repealer |
| | 11 | Effective dates — contingency |
| 18 | 1 | 17-5-205 |
| | 2 | Effective date |
| 19 | 1 | 5-5-223 |
| | 2 | 5-5-228 |
| | 3 | Effective date |
| 20 | 1 | 5-5-228 |
| | 2 | Effective date |
| 21 | 1 | 15-30-2618 |
| | 2 | 53-2-211 |
| | 3 | Retroactive applicability |
| 22 | 1 | 15-1-121 |
| 23 | 1 | 90-1-201 |
| | 2 | 90-1-204 |
| | 3 | Notification to tribal governments |
| | 4 | Effective date |
| 24 | 1 | 76-13-145 |
| | 2 | Effective date |
| 25 | 1 | 69-3-2009 |
| | 2 | 69-3-2010 |
| | 3 | Effective date |
| | 4 | Retroactive applicability |
| 26 | 1 | Repealer |
| | 2 | Effective date |
| 27 | 1 | 81-6-104 |
| | 2 | 81-6-204 |
| | 3 | 81-6-209 |
| | 4 | Effective date |
| 28 | 1 | 2-15-2005 |
| | 2 | 2-15-2017 |
| | 3 | 50-65-102 |
| 29 | 1 | 41-3-425 |
| | 2 | Coordination instruction |
| | 3 | Effective date |
| 30 | 1 | 46-18-222 |
| | 2 | Effective date |
| 31 | 1 | 28-3-206 |
| 32 | 1 | 15-65-121 |
| | 2 | 15-65-131 |
| 33 | 1 | 20-1-212 |
| | 2 | Effective date |
| 34 | 1 | 15-30-2388 |
| | 2 | 15-30-2389 |
| 35 | 1 | 69-12-311 |
| | 2 | 69-12-312 |
| | 3 | 69-12-407 |
| | 4 | 69-12-408 |
| | 5 | Repealer |
| | 6 | Effective date |
| | 7 | Applicability |
| 36 | 1 | Sec. 4, Ch. 330, L. 2011 |
| 37 | 1 | Repealer |
| 38 | 1 | 20-9-504 |
| 39 | 1 | 20-26-103 |
| | 2 | 20-26-104 |
| | 3 | 20-26-201 |
| | 4 | 20-26-1101 |
| | 5 | Repealer |
| | 6 | Effective date |
| 40 | 1 | 7-4-2102 |
| 41 | 1 | 7-5-2131 |
| | 2 | 7-5-2133 |
| 42 | 1 | 2-17-803 |
| 43 | 1 | 46-23-210 |
| 44 | 1 | 69-13-101 |
| | 2 | 69-13-102 |
| | 3 | 69-13-201 |
| | 4 | 69-13-301 |
| | 5 | 69-13-302 |
| | 6 | 69-13-303 |
| | 7 | Effective date |
| 45 | 1 | 60-3-211 |
| 46 | 1 | 15-16-603 |
| | 2 | 15-36-315 |
| | 3 | 20-9-507 |
| | 4 | 20-10-144 |
| | 5 | 20-10-146 |
| 47 | 1 | 81-2-501 |
| 48 | 1 | 81-9-232 |
| | 2 | Effective date |
| 49 | 1 | 32-1-109 |
| | 2 | 32-1-212 |
| | 3 | 32-1-370 |
| | 4 | 32-1-371 |
| | 5 | 32-1-376 |
| | 6 | 32-1-381 |
| | 7 | 32-1-383 |
| | 8 | 32-1-384 |
| | 9 | 32-1-506 |
| | 10 | 32-1-516 |
| | 11 | 32-1-904 |
| | 12 | 32-1-907 |
| | 13 | 32-1-908 |
| | 14 | Repealer |
| 50 | 1 | 15-24-211 |
| | 2 | 15-24-212 |
| | 3 | 15-24-202 |
| | 4 | Codification instruction |
| | 5 | Effective date |
| 51 | 1 | 7-4-2206 |
| 52 | 1 | 7-6-206 |
| | 2 | Effective date |
| 53 | 1 | Repealer |
| | 2 | Transfer of funds |
| | 3 | Effective date |
| 54 | 1 | 87-2-815 |
| | 2 | 87-2-702 |
| | 3 | Codification instruction |
| | 4 | Effective date |
| 55 | 1 | 35-18-317 |
| | 2 | 35-18-318 |
| | 3 | Notification to tribal governments |
| | 4 | Saving clause |
| | 5 | Severability |
| | 6 | Effective date |
| | 7 | Applicability |
| 56 | 1 | 7-1-111 |
| | 2 | 7-31-301 |
| | 3 | 76-2-240 |

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| | 4 | 76-2-340 |
| | 5 | 76-2-206 |
| | 6 | 76-2-306 |
| | 7 | Codification instruction |
| | 8 | Effective date |
| 57 | 1 | 15-24-1402 |
| | 2 | 15-24-1501 |
| | 3 | 15-24-1502 |
| | 4 | 15-24-1603 |
| | 5 | 15-24-1605 |
| | 6 | 15-24-1802 |
| | 7 | 15-24-1902 |
| | 8 | 15-24-2002 |
| | 9 | Saving clause |
| | 10 | Effective date |
| | 11 | Applicability |
| 58 | 1 | 61-8-351 |
| 59 | 1 | 53-2-301 |
| | 2 | 53-2-304 |
| | 3 | 53-2-305 |
| | 4 | Effective date |
| 60 | 1 | 50-72-105<br>50-73-106 |
| | 2 | 50-72-106<br>50-73-107 |
| | 3 | 50-73-406 |
| | 4 | Codification instruction |
| | 5 | Effective date |
| 61 | 1 | 41-3-202 |
| | 2 | 41-3-205 |
| 62 | 1 | 7-4-2504 |
| | 2 | 7-6-4024 |
| | 3 | 7-6-4036 |
| | 4 | 7-11-1025 |
| | 5 | 20-9-152 |
| | 6 | 20-15-313 |
| | 7 | Effective date |
| 63 | 1 | 31-1-202 |
| | 2 | 31-1-203 |
| | 3 | 31-1-211 |
| | 4 | 31-1-221 |
| | 5 | 31-1-222 |
| | 6 | 31-1-231 |
| | 7 | 31-1-232 |
| | 8 | 31-1-235 |
| | 9 | 31-1-236 |
| | 10 | 31-1-241 |
| | 11 | 31-1-242 |
| | 12 | 31-1-223 |
| | 13 | Codification instruction |
| 64 | 1 | 23-5-312 |
| | 2 | 23-5-317 |
| | 3 | 23-5-318 |
| | 4 | 23-5-612 |
| | 5 | Effective dates |
| 65 | 1 | 76-1-607 |
| | 2 | 76-1-601 |
| | 3 | Codification instruction |
| 66 | 1 | 30-10-115 |
| | 2 | 30-10-209 |
| | 3 | 30-10-1004 |
| | 4 | Severability |
| | 5 | Effective date |
| 67 | 1 | 50-16-522 |
| | 2 | 50-16-804 |
| | 3 | 50-16-805 |
| | 4 | 50-19-401 |
| | 5 | 50-19-402 |
| | 6 | 50-19-403 |
| | 7 | 50-19-404 |
| | 8 | Notification to tribal governments |
| 68 | 1 | 15-67-101 |
| | 2 | 33-22-304 |
| | 3 | 33-22-506 |
| | 4 | 33-30-1003 |
| | 5 | 33-30-1004 |
| | 6 | 39-30-103 |
| | 7 | 50-8-101 |
| | 8 | 53-6-401 |
| | 9 | 53-6-402 |
| | 10 | 53-20-102 |
| | 11 | 53-20-127 |
| | 12 | 53-20-128 |
| | 13 | 53-20-141 |
| | 14 | 53-20-142 |
| | 15 | 53-20-146 |
| | 16 | 53-20-148 |
| | 17 | 53-20-161 |
| | 18 | 53-20-164 |
| | 19 | 53-20-202 |
| | 20 | 53-21-102 |
| | 21 | Nonapplicability |
| | 22 | Contingent voidness |
| 69 | 1 | 87-1-701 |
| | 2 | Effective date |
| 70 | 1 | 87-2-803 |
| 71 | 1 | 30-4A-108 |
| | 2 | Effective date |
| 72 | 1 | 37-67-306 |
| | 2 | 37-67-307 |
| | 3 | 37-67-311 |
| 73 | 1 | 69-3-2004 |
| | 2 | Saving clause |
| | 3 | Effective date |
| | 4 | Retroactive applicability |
| 74 | 1 | 39-71-402 |
| | 2 | Effective date — applicability |
| 75 | 1 | 30-2A-103 |
| | 2 | 30-9A-102 |
| | 3 | 30-9A-105 |
| | 4 | 30-9A-307 |
| | 5 | 30-9A-311 |
| | 6 | 30-9A-316 |
| | 7 | 30-9A-317 |
| | 8 | 30-9A-326 |
| | 9 | 30-9A-406 |
| | 10 | 30-9A-408 |
| | 11 | 30-9A-502 |
| | 12 | 30-9A-503 |
| | 13 | 30-9A-507 |
| | 14 | 30-9A-515 |
| | 15 | 30-9A-516 |
| | 16 | 30-9A-518 |
| | 17 | 30-9A-521 |
| | 18 | 30-9A-607 |
| | 19 | 30-9A-803 |
| | 20 | 30-9A-804 |
| | 21 | 30-9A-805 |
| | 22 | 30-9A-806 |
| | 23 | 30-9A-807 |
| | 24 | 30-9A-808 |
| | 25 | 30-9A-809 |
| | 26 | Savings provisions |
| | 27 | Codification instruction |
| | 28 | Effective date |
| 76 | 1 | 1-5-419 |
| | 2 | 1-5-420 |
| | 3 | Transition |
| 77 | 1 | 20-25-517 |
| | 2 | Codification instruction |
| | 3 | Effective date |
| 78 | 1 | 20-25-301 |
| | 2 | 20-25-424 |
| | 3 | Repealer |
| 79 | 1 | 85-8-361 |
| 80 | 1 | 23-5-503 |
| | 2 | Notification to tribal governments |
| 81 | 1 | 39-51-301 |
| | 2 | 39-51-1213 |
| | 3 | 39-51-1214 |
| | 4 | Retroactive applicability |
| 82 | 1 | 23-5-177 |
| | 2 | 23-5-310 |
| | 3 | 23-5-410 |
| | 4 | Effective date |
| 83 | 1 | 87-1-293 |
| | 2 | 87-1-628 |
| | 3 | 87-1-601 |
| | 4 | 87-2-903 |
| | 5 | Codification instruction |
| | 6 | Effective date |
| | 7 | Termination |
| 84 | 1 | 2-15-3308 |
| | 2 | Effective date |
| 85 | 1 | 72-3-1101 |
| 86 | 1 | 61-4-129 |
| 87 | 1 | 2-15-1758 |
| | 2 | Effective date |
| | 3 | Applicability |
| 88 | 1 | 40-4-105 |
| | 2 | 40-4-121 |
| | 3 | 40-4-201 |
| | 4 | 40-4-202 |
| | 5 | 40-4-203 |
| | 6 | 40-4-204 |
| | 7 | 40-4-205 |
| | 8 | 40-4-215 |
| | 9 | 40-4-219 |
| | 10 | 40-4-220 |
| | 11 | Applicability |
| | 12 | Contingent termination |
| 89 | 1 | 50-50-202 |
| | 2 | Effective date |
| 90 | 1 | 81-1-102 |
| | 2 | Effective date |
| 91 | 1 | 1-1-521 |
| | 2 | Codification instruction |
| 92 | 1 | 81-9-219 |
| | 2 | Effective date |
| 93 | 1 | 70-24-430 |
| 94 | 1 | 50-50-202 |
| | 2 | 81-20-206 |

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| | 3 | Effective date |
| 95 | 1 | 13-35-214 |
| 96 | 1 | 19-17-112 |
| | 2 | 31-1-705 |
| | 3 | 31-1-707 |
| | 4 | 31-1-714 |
| | 5 | 32-5-308 |
| | 6 | 32-5-310 |
| | 7 | 32-7-109 |
| | 8 | 77-3-205 |
| | 9 | 77-3-317 |
| | 10 | 82-4-222 |
| | 11 | 87-2-106 |
| 97 | 1 | 33-22-153 |
| | 2 | 2-18-704 |
| | 3 | 33-22-101 |
| | 4 | 33-31-111 |
| | 5 | 33-35-306 |
| | 6 | 53-4-1005 |
| | 7 | 53-6-101 |
| | 8 | Codification instruction |
| | 9 | Effective date |
| | 10 | Contingent termination |
| 98 | 1 | 82-4-222 |
| | 2 | 82-4-226 |
| | 3 | 82-4-227 |
| | 4 | 82-4-237 |
| | 5 | 82-4-253 |
| | 6 | Notification to tribal governments |
| 99 | 1 | 35-4-301 |
| 100 | 1 | 81-8-901 |
| | 2 | Applicability |
| 101 | 1 | 44-6-103 |
| | 2 | 46-23-504 |
| 102 | 1 | 2-15-1747 |
| | 2 | 37-31-305 |
| 103 | 1 | 70-30-203 |
| | 2 | Applicability |
| 104 | 1 | 87-2-511 |
| | 2 | 87-2-522 |
| 105 | 1 | 3-6-204 |
| 106 | 1 | 61-3-412 |
| 107 | 1 | 87-2-526 |
| | 2 | Repealer |
| | 3 | Effective date |
| 108 | 1 | 61-6-202 |
| | 2 | Codification instruction |
| | 3 | Effective date |
| | 4 | Applicability |
| 109 | 1 | 76-3-504 |
| | 2 | 76-3-601 |
| | 3 | 76-3-604 |
| | 4 | Severability |
| | 5 | Effective date |
| | 6 | Applicability |
| 110 | 1 | 7-5-2301 |
| | 2 | 7-5-4302 |
| | 3 | 20-9-204 |
| | 4 | Effective date |
| 111 | 1 | 45-8-322 |
| 112 | 1 | 76-3-608 |
| | 2 | Severability |
| | 3 | Effective date |
| | 4 | Applicability |
| 113 | 1 | 61-9-431 |
| 114 | 1 | 33-2-2001 |
| | 2 | 33-2-2002 |
| | 3 | 33-2-2003 |
| | 4 | 33-2-2004 |
| | 5 | 33-2-2005 |
| | 6 | 33-2-2006 |
| | 7 | Codification instruction |
| 115 | 1 | 16-1-106 |
| | 2 | 16-1-411 |
| | 3 | 16-3-218 |
| | 4 | 16-3-402 |
| | 5 | 16-4-108 |
| | 6 | 16-4-313 |
| | 7 | Effective date |
| 116 | 1 | 61-3-211 |
| 117 | 1 | 61-12-401 |
| 118 | 1 | 20-3-105 |
| | 2 | 20-9-328 |
| | 3 | 20-9-330 |
| 119 | 1 | 33-20-1601 |
| | 2 | 33-20-1602 |
| | 3 | 33-20-1603 |
| | 4 | 33-20-1604 |
| | 5 | 33-20-1605 |
| | 6 | 33-20-1606 |
| | 7 | Codification instruction |
| | 8 | Effective date |
| 120 | 1 | Sec. 2, Ch. 435, L. 2009 |
| | 2 | 2-17-101 |
| | 3 | 5-12-302 |
| | 4 | 17-1-102 |
| | 5 | 17-1-505 |
| | 6 | 17-2-107 |
| | 7 | 17-2-304 |
| | 8 | 17-5-820 |
| | 9 | 17-7-140 |
| | 10 | 17-8-101 |
| | 11 | 33-22-1514 |
| | 12 | 39-71-2363 |
| | 13 | 47-1-201 |
| | 14 | 50-4-805 |
| | 15 | 53-6-110 |
| | 16 | 53-21-702 |
| | 17 | 61-2-109 |
| | 18 | 75-1-1101 |
| | 19 | 85-1-605 |
| | 20 | 90-6-703 |
| | 21 | Repealer |
| | 22 | Effective date |
| 121 | 1 | 32-1-432 |
| | 2 | 32-1-433 |
| | 3 | Effective date |
| 122 | 1 | 32-1-1005 |
| 123 | 1 | 2-15-1028 |
| | 2 | 2-15-3113 |
| | 3 | 7-1-4121 |
| | 4 | 7-14-2826 |
| | 5 | 15-1-122 |
| | 6 | 15-1-216 |
| | 7 | 15-30-2604 |
| | 8 | 23-2-601 |
| | 9 | 23-2-614 |
| | 10 | 23-2-631 |
| | 11 | 23-2-634 |
| | 12 | 23-2-641 |
| | 13 | 23-2-642 |
| | 14 | 23-2-644 |
| | 15 | 30-18-117 |
| | 16 | 31-1-202 |
| | 17 | 32-1-402 |
| | 18 | 32-1-425 |
| | 19 | 32-9-103 |
| | 20 | 32-9-104 |
| | 21 | 50-40-103 |
| | 22 | 50-46-327 |
| | 23 | 61-11-102 |
| | 24 | 70-24-430 |
| | 25 | 76-4-125 |
| | 26 | 82-11-182 |
| | 27 | 90-3-1001 |
| | 28 | Directions to code commissioner |
| 124 | 1 | 71-3-1211 |
| | 2 | 71-3-1212 |
| | 3 | 71-3-1213 |
| | 4 | 71-3-1214 |
| | 5 | 71-3-1201 |
| | 6 | Codification instruction |
| 125 | 1 | 32-9-101 |
| | 2 | 32-9-102 |
| | 3 | 32-9-103 |
| | 4 | 32-9-104 |
| | 5 | 32-9-105 |
| | 6 | 32-9-107 |
| | 7 | 32-9-109 |
| | 8 | 32-9-110 |
| | 9 | 32-9-112 |
| | 10 | 32-9-116 |
| | 11 | 32-9-117 |
| | 12 | 32-9-134 |
| | 13 | 32-9-149 |
| | 14 | 32-9-118 |
| | 15 | 32-9-120 |
| | 16 | 32-9-121 |
| | 17 | 32-9-122 |
| | 18 | 32-9-123 |
| | 19 | 32-9-152 |
| | 20 | 32-9-124 |
| | 21 | 32-9-126 |
| | 22 | 32-9-129 |
| | 23 | 32-9-130 |
| | 24 | 32-9-133 |
| | 25 | 32-9-150 |
| | 26 | 32-9-151 |
| | 27 | 32-9-155 |
| | 28 | 32-9-160 |
| | 29 | 32-9-165 |
| | 30 | 32-9-167 |
| | 31 | 32-9-170 |
| | 32 | Sec. 37, Ch. 321, L. 2009 |
| | 33 | Repealer |
| | 34 | Codification instruction |
| 126 | 1 | 5-2-406 |
| | 2 | Effective date |
| 127 | 1 | 20-3-363 |
| 128 | 1 | 20-5-101 |
| | 2 | Effective date |
| 129 | 1 | 87-2-507 |
| | 2 | 87-2-508 |
| | 3 | Effective date |
| 130 | 1 | 7-8-2210 |
| | 2 | Codification instruction |
| 131 | 1 | 1-1-216 |

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| 132 | 1 | 87-4-530 |
| | 2 | 87-4-902 |
| | 3 | Codification instruction |
| | 4 | Effective date |
| 133 | 1 | Repealer |
| 134 | 1 | 85-7-1710 |
| | 2 | Effective date |
| 135 | 1 | 45-9-101 |
| | 2 | 45-9-102 |
| | 3 | 45-9-103 |
| | 4 | 45-9-110 |
| | 5 | 50-32-101 |
| | 6 | 50-32-222 |
| | 7 | 50-32-224 |
| | 8 | 50-32-226 |
| | 9 | 50-32-229 |
| | 10 | 50-32-232 |
| | 11 | 50-32-314 |
| 136 | 1 | 7-5-2303 |
| 137 | 1 | 87-3-145 |
| | 2 | 87-1-301 |
| | 3 | 87-6-202 |
| | 4 | Codification instruction |
| 138 | 1 | 10-3-312 |
| | 2 | Effective date |
| 139 | 1 | 13-2-110 |
| | 2 | 13-13-201 |
| | 3 | 13-13-211 |
| | 4 | 13-13-233 |
| | 5 | 13-15-201 |
| | 6 | 13-19-106 |
| | 7 | 13-19-306 |
| | 8 | 13-21-101 |
| | 9 | 13-21-102 |
| | 10 | 13-21-104 |
| | 11 | 13-21-213 |
| | 12 | 13-21-105 |
| | 13 | 13-21-106 |
| | 14 | 13-21-220 |
| | 15 | 13-21-221 |
| | 16 | 13-21-222 |
| | 17 | 13-21-223 |
| | 18 | 13-21-224 |
| | 19 | 13-21-225 |
| | 20 | 13-21-226 |
| | 21 | 13-21-227 |
| | 22 | 13-21-228 |
| | 23 | Repealer |
| | 24 | Codification instruction |
| | 25 | Effective date |
| 140 | 1 | 10-1-1201 |
| | 2 | Effective date |
| 141 | 1 | 75-11-503 |
| | 2 | Effective date |
| 142 | 1 | 61-3-303 |
| | 2 | 61-3-312 |
| | 3 | 61-6-105 |
| | 4 | Effective date |
| 143 | 1 | 3-10-201 |
| | 2 | 3-10-206 |
| | 3 | 7-4-2106 |
| | 4 | 7-4-2206 |
| 144 | 1 | 46-16-105 |
| | 2 | 46-17-203 |
| | 3 | Applicability |
| 145 | 1 | 19-50-101 |
| | 2 | 19-50-103 |
| | 3 | Effective date |
| 146 | 1 | 2-15-142 |
| | 2 | Notification to tribal governments |
| 147 | 1 | 13-37-126 |
| 148 | 1 | 39-71-413 |
| | 2 | Effective date |
| 149 | 1 | 45-5-503 |
| 150 | 1 | 39-3-406 |
| 151 | 1 | 87-2-702 |
| | 2 | Effective date |
| 152 | 1 | 71-3-564 |
| | 2 | Codification instruction |
| 153 | 1 | 61-8-411 |
| | 2 | 45-5-106 |
| | 3 | 46-16-130 |
| | 4 | 46-18-201 |
| | 5 | 46-18-236 |
| | 6 | 50-46-320 |
| | 7 | 61-2-302 |
| | 8 | 61-5-205 |
| | 9 | 61-5-208 |
| | 10 | 61-5-212 |
| | 11 | 61-5-231 |
| | 12 | 61-8-401 |
| | 13 | 61-8-402 |
| | 14 | 61-8-404 |
| | 15 | 61-8-405 |
| | 16 | 61-8-408 |
| | 17 | 61-8-421 |
| | 18 | 61-8-442 |
| | 19 | 61-8-465 |
| | 20 | 61-8-722 |
| | 21 | 61-8-731 |
| | 22 | 61-8-732 |
| | 23 | 61-8-733 |
| | 24 | 61-8-734 |
| | 25 | 61-8-741 |
| | 26 | 61-11-101 |
| | 27 | Codification instruction |
| 154 | 1 | 25-12-103 |
| | 2 | Codification instruction |
| | 3 | Effective date |
| 155 | 1 | 2-17-804 |
| | 2 | 2-18-1103 |
| | 3 | 10-2-102 |
| | 4 | 17-6-230 |
| | 5 | 19-2-405 |
| | 6 | 19-20-201 |
| | 7 | 30-9A-527 |
| 156 | 1 | 75-5-304 |
| | 2 | Effective date |
| 157 | 1 | 50-5-101 |
| | 2 | 50-5-103 |
| 158 | 1 | 52-3-803 |
| | 2 | 52-3-825 |
| | 3 | Effective date |
| | 4 | Applicability |
| 159 | 1 | 75-5-618 |
| | 2 | 75-10-234 |
| | 3 | 75-10-428 |
| | 4 | 75-11-322 |
| | 5 | 75-11-519 |
| | 6 | Codification instruction |
| | 7 | Saving clause |
| | 8 | Severability |
| | 9 | Two-thirds vote required |
| | 10 | Effective date |
| 160 | 1 | 33-22-115 |
| | 2 | Codification instruction |
| | 3 | Effective date |
| 161 | 1 | 45-5-206 |
| | 2 | Effective date |
| 162 | 1 | 37-15-102 |
| | 2 | 37-15-202 |
| | 3 | 37-15-314 |
| | 4 | 37-15-315 |
| | 5 | Codification instruction |
| 163 | 1 | 87-1-217 |
| | 2 | 87-1-301 |
| 164 | 1 | 33-22-138 |
| | 2 | 33-22-101 |
| | 3 | 33-31-111 |
| | 4 | 33-35-306 |
| | 5 | Codification instruction |
| | 6 | Effective date |
| 165 | 1 | 76-3-622 |
| | 2 | Applicability |
| 166 | 1 | 2-17-505 |
| 167 | 1 | 39-51-1214 |
| | 2 | Effective date |
| 168 | 1 | Appropriations for reclamation and development grants |
| | 2 | Coordination of fund sources for project grants |
| | 3 | Conditions of grants |
| | 4 | Other appropriations |
| | 5 | 90-2-1113 |
| | 6 | Notification to tribal governments |
| | 7 | Severability |
| | 8 | Effective date |
| 169 | 1 | 33-1-409 |
| | 2 | 33-1-1202 |
| | 3 | 33-2-604 |
| | 4 | 33-2-606 |
| | 5 | 33-2-611 |
| | 6 | 33-2-612 |
| | 7 | 33-2-1303 |
| | 8 | 33-3-401 |
| | 9 | 33-4-302 |
| | 10 | 33-10-104 |
| | 11 | 33-17-102 |
| | 12 | 33-17-214 |
| | 13 | 33-17-301 |
| | 14 | 33-17-503 |
| | 15 | 33-17-505 |
| | 16 | 33-17-1101 |
| | 17 | 33-22-1811 |
| | 18 | 33-22-2002 |
| | 19 | 33-28-104 |
| | 20 | 33-28-202 |
| | 21 | 33-28-301 |
| | 22 | Repealer |
| | 23 | Effective date |

| | | |
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| 170 | 1 | 15-70-101 |
| | 2 | Effective date |
| 171 | 1 | 7-11-1003 |
| | 2 | 7-11-1006 |
| | 3 | 7-11-1007 |
| | 4 | 7-11-1008 |
| | 5 | 7-11-1011 |
| | 6 | 7-11-1013 |
| | 7 | 7-11-1021 |
| | 8 | 7-11-1023 |
| | 9 | 7-11-1025 |
| | 10 | Saving clause |
| | 11 | Severability |
| | 12 | Effective date |
| | 13 | Applicability |
| 172 | 1 | 2-15-3110 |
| | 2 | 2-15-3111 |
| | 3 | 2-15-3112 |
| | 4 | 2-15-3113 |
| | 5 | 81-1-110 |
| | 6 | Saving clause |
| 173 | 1 | 32-5-102 |
| | 2 | 32-5-103 |
| | 3 | 32-5-201 |
| | 4 | 32-5-202 |
| | 5 | 32-5-205 |
| | 6 | 32-5-207 |
| | 7 | 32-5-301 |
| | 8 | 32-5-302 |
| | 9 | 32-5-303 |
| | 10 | 32-5-304 |
| | 11 | 32-5-305 |
| | 12 | 32-5-308 |
| | 13 | 32-5-209 |
| | 14 | 32-5-311 |
| | 15 | Repealer |
| | 16 | Codification instruction |
| | 17 | Effective date |
| 174 | 1 | 30-22-101 |
| | 2 | 45-6-320 |
| | 3 | Codification instruction |
| | 4 | Applicability |
| 175 | 1 | 7-11-1014 |
| | 2 | 7-11-1029 |
| | 3 | 76-6-212 |
| | 4 | 90-1-403 |
| | 5 | 90-1-404 |
| | 6 | 90-1-405 |
| | 7 | 90-1-406 |
| | 8 | 90-1-410 |
| | 9 | 90-1-411 |
| | 10 | 90-1-413 |
| | 11 | Effective date |
| 176 | 1 | 46-23-901 |
| | 2 | 46-23-902 |
| | 3 | 46-23-903 |
| | 4 | Codification instruction |
| | 5 | Effective date |
| 177 | 1 | 46-18-104 |
| | 2 | 46-18-201 |
| | 3 | Effective date |
| 178 | 1 | 19-2-303 |
| | 2 | 19-2-403 |
| | 3 | 19-2-406 |
| | 4 | 19-2-505 |
| | 5 | 19-2-706 |
| | 6 | 19-2-801 |
| | 7 | 19-2-907 |
| | 8 | 19-3-412 |
| | 9 | 19-3-512 |
| | 10 | 19-3-908 |
| | 11 | 19-3-1103 |
| | 12 | 19-3-1106 |
| | 13 | 19-3-1210 |
| | 14 | 19-3-1501 |
| | 15 | 19-3-2133 |
| | 16 | 19-3-2141 |
| | 17 | 19-5-601 |
| | 18 | 19-5-701 |
| | 19 | 19-5-801 |
| | 20 | 19-5-802 |
| | 21 | 19-6-601 |
| | 22 | 19-7-503 |
| | 23 | 19-7-601 |
| | 24 | 19-7-901 |
| | 25 | 19-7-1001 |
| | 26 | 19-8-302 |
| | 27 | 19-8-701 |
| | 28 | 19-8-801 |
| | 29 | 19-8-1002 |
| | 30 | 19-9-710 |
| | 31 | 19-9-1007 |
| | 32 | 19-13-104 |
| | 33 | 19-13-803 |
| | 34 | 19-17-605 |
| | 35 | Repealer |
| | 36 | Effective date |
| 179 | 1 | Funding |
| | 2 | Effective date |
| 180 | 1 | 70-17-112 |
| | 2 | Effective date |
| 181 | 1 | 87-2-730 |
| 182 | 1 | 46-23-509 |
| | 2 | Applicability |
| 183 | 1 | 35-8-102 |
| | 2 | 35-8-107 |
| | 3 | 35-8-108 |
| | 4 | 35-8-202 |
| | 5 | 35-8-205 |
| | 6 | 35-8-208 |
| | 7 | 35-8-304 |
| | 8 | 35-8-307 |
| | 9 | 35-8-503 |
| | 10 | 35-8-803 |
| | 11 | 35-8-804 |
| | 12 | 35-8-901 |
| | 13 | 35-8-902 |
| 184 | 1 | 16-4-1101 |
| | 2 | 16-4-1102 |
| | 3 | 16-4-1103 |
| | 4 | 16-1-411 |
| | 5 | 16-3-402 |
| | 6 | 16-3-411 |
| | 7 | 16-4-107 |
| | 8 | 16-4-901 |
| | 9 | 16-4-902 |
| | 10 | 16-4-903 |
| | 11 | 16-4-906 |
| | 12 | 16-6-301 |
| | 13 | Codification instruction |
| 185 | 1 | 61-8-913 |
| 186 | 1 | 71-3-1203 |
| | 2 | Effective date |
| | 3 | Applicability |
| 187 | 1 | 7-13-2275 |
| | 2 | 7-13-2301 |
| | 3 | 7-13-4307 |
| | 4 | 69-7-111 |
| | 5 | 75-6-304 |
| | 6 | 75-6-326 |
| 188 | 1 | 15-70-301 |
| | 2 | 15-70-311 |
| | 3 | 15-70-314 |
| | 4 | 15-70-321 |
| | 5 | 15-70-330 |
| | 6 | 15-70-356 |
| | 7 | 15-70-372 |
| | 8 | Repealer |
| | 9 | Effective date |
| 189 | 1 | 20-5-420 |
| | 2 | 20-5-421 |
| | 3 | Codification instruction |
| | 4 | Effective date |
| 190 | 1 | 35-2-114 |
| | 2 | 35-2-115 |
| | 3 | 35-2-119 |
| | 4 | 35-2-233 |
| | 5 | 35-2-520 |
| | 6 | 35-2-526 |
| | 7 | 35-2-527 |
| | 8 | 35-2-533 |
| | 9 | 35-2-535 |
| | 10 | 35-2-539 |
| | 11 | 35-2-542 |
| | 12 | 35-2-911 |
| 191 | 1 | 39-29-102 |
| | 2 | 39-29-103 |
| | 3 | 39-29-112 |
| | 4 | 39-30-103 |
| | 5 | 39-30-107 |
| | 6 | 39-30-201 |
| 192 | 1 | 46-5-105 |
| | 2 | Codification instruction |
| 193 | 1 | 46-18-608 |
| | 2 | Codification instruction |
| 194 | 1 | 61-5-110 |
| | 2 | 61-5-301 |
| | 3 | 61-11-101 |
| | 4 | Effective dates |
| 195 | 1 | 50-2-116 |
| | 2 | 76-3-608 |
| | 3 | 76-4-102 |
| | 4 | 76-4-104 |
| | 5 | Saving clause |
| 196 | 1 | 61-3-116 |
| | 2 | 61-3-205 |
| | 3 | 61-3-211 |
| | 4 | 61-3-225 |
| | 5 | 61-3-303 |
| | 6 | 61-3-311 |
| | 7 | 61-3-331 |
| | 8 | 61-3-338 |
| | 9 | 61-3-414 |
| | 10 | 61-3-415 |
| | 11 | 61-3-465 |
| | 12 | 61-3-467 |
| | 13 | 61-3-480 |
| | 14 | 61-4-111 |
| | 15 | 61-4-112 |
| | 16 | 61-11-105 |
| | 17 | Effective date |
| 197 | 1 | 69-3-2004 |
| | 2 | Saving clause |

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| | 3 | Effective date |
| | 4 | Retroactive applicability |
| 198 | 1 | 7-14-2124 |
| | 2 | 82-4-403 |
| | 3 | 82-4-425 |
| | 4 | 82-4-427 |
| | 5 | 82-4-431 |
| | 6 | 82-4-432 |
| | 7 | 82-4-433 |
| | 8 | 82-4-437 |
| 199 | | Not codified — referendum* |
| | 1 | Art. IV, sec. 8, Mont. Const* |
| | 2 | Art. VI, sec. 1, Mont. Const* |
| | 3 | Art. VI, sec. 2, Mont. Const* |
| | 4 | Art. VI, sec. 3, Mont. Const* |
| | 5 | Art. VI, sec. 4, Mont. Const* |
| | 6 | Art. VI, sec. 6, Mont. Const* |
| | 7 | Art. VI, sec. 7, Mont. Const* |
| | 8 | Art. X, sec. 4, Mont. Const* |
| | 9 | Two-thirds vote required |
| | 10 | Submission to electorate |
| 200 | 1 | 15-1-706 |
| | 2 | 25-13-402 |
| | 3 | 15-1-706(6) |
| | 4 | Codification instruction |
| 201 | 1 | 53-21-1401 |
| | 2 | 53-21-1402 |
| | 3 | 53-21-1403 |
| | 4 | 53-21-1404 |
| | 5 | 53-21-1405 |
| | 6 | Codification instruction |
| | 7 | Effective date |
| 202 | 1 | 13-37-206 |
| 203 | 1 | 39-51-605 |
| | 2 | 39-51-401 |
| | 3 | 39-51-1125 |
| | 4 | 39-51-1212 |
| | 5 | 39-51-1214 |
| | 6 | 39-51-3106 |
| | 7 | 39-51-3201 |
| | 8 | 40-5-901 |
| | 9 | Notification to tribal governments |
| | 10 | Codification instruction |
| | 11 | Contingent termination |
| 204 | 1 | 87-2-405 |
| | 2 | 87-1-246 |
| | 3 | 87-1-270 |
| | 4 | Codification instruction |
| | 5 | Effective date |
| | 6 | Termination |
| 205 | 1 | 90-1-501 |
| 206 | 1 | 7-33-2215 |
| | 2 | 76-13-104 |
| | 3 | Codification instruction |
| 207 | 1 | 7-4-2631 |
| | 2 | Effective date |
| 208 | 1 | 33-4-320 |
| | 2 | 33-2-1501 |
| | 3 | 33-4-502 |
| | 4 | Codification instruction |
| 209 | 1 | 2-15-2302 |
| | 2 | 46-9-108 |
| | 3 | 46-9-301 |
| | 4 | 46-14-101 |
| | 5 | 46-23-201 |
| | 6 | 46-23-1003 |
| | 7 | Applicability |
| 210 | 1 | 70-18-206 |
| | 2 | 77-1-102 |
| | 3 | Repealer |
| | 4 | Codification instruction |
| | 5 | Effective date |
| | 6 | Applicability |
| 211 | 1 | 16-4-205 |
| | 2 | 16-4-401 |
| | 3 | Notification to tribal governments |
| 212 | 1 | 13-14-115 |
| 213 | 1 | 17-6-308 |
| | 2 | 90-6-603 |
| | 3 | Effective date |
| 214 | 1 | 7-15-4277 |
| | 2 | 7-15-4278 |
| | 3 | 7-15-4279 |
| | 4 | 7-15-4280 |
| | 5 | 7-15-4282 |
| | 6 | 7-15-4283 |
| | 7 | 7-15-4284 |
| | 8 | 7-15-4285 |
| | 9 | 7-15-4286 |
| | 10 | 7-15-4287 |
| | 11 | 7-15-4288 |
| | 12 | 7-15-4289 |
| | 13 | 7-15-4290 |
| | 14 | 7-15-4291 |
| | 15 | 7-15-4292 |
| | 16 | 7-15-4293 |
| | 17 | 7-15-4294 |
| | 18 | 7-15-4301 |
| | 19 | 7-15-4302 |
| | 20 | 7-15-4304 |
| | 21 | 7-15-4305 |
| | 22 | 7-15-4306 |
| | 23 | 7-15-4322 |
| | 24 | 7-15-4324 |
| | 25 | Existing technology districts, aerospace transportation and technology districts, and industrial districts |
| | 26 | Repealer |
| | 27 | Codification instruction |
| | 28 | Effective date |
| 215 | 1 | Appropriation of cultural and aesthetic grant funds — priority of disbursement |
| | 2 | Appropriation of cultural and aesthetic grant funds |
| | 3 | Reversion of grant money |
| | 4 | Reduction of grants on pro rata basis |
| | 5 | Effective date |
| 216 | 1 | 32-7-102 |
| | 2 | 32-7-103 |
| | 3 | 32-7-108 |
| | 4 | 32-7-109 |
| | 5 | 32-7-110 |
| | 6 | 32-7-111 |
| | 7 | 32-7-115 |
| | 8 | 32-7-121 |
| | 9 | 32-7-122 |
| | 10 | 32-7-123 |
| | 11 | 32-7-124 |
| | 12 | 32-7-112 |
| | 13 | Transition |
| | 14 | Codification instruction |
| | 15 | Effective date |
| 217 | 1 | 30-14-144 |
| | 2 | 30-14-143 |
| | 3 | Codification instruction |
| | 4 | Saving clause |
| 218 | 1 | 61-10-121 |
| 219 | 1 | 61-3-458 |
| 220 | 1 | 37-7-101 |
| | 2 | 37-7-105 |
| 221 | 1 | 2-17-818 |
| | 2 | 2-17-807 |
| | 3 | 2-17-808 |
| | 4 | Effective date |
| 222 | 1 | 20-1-102 |
| | 2 | Effective date |
| 223 | 1 | 44-4-1501 |
| | 2 | 60-2-244 |
| | 3 | Codification instruction |
| 224 | 1 | 85-20-1801 |
| | 2 | Codification instruction |
| | 3 | Effective date |
| 225 | 1 | 27-2-216 |
| | 2 | 41-3-102 |
| | 3 | 45-1-205 |
| | 4 | 45-2-101 |
| | 5 | 45-5-505 (Renumbered 45-8-218) |
| | 6 | 46-1-502 |
| | 7 | 52-3-803 |
| | 8 | Directions to code commissioner |
| 226 | 1 | 19-18-402 |
| | 2 | Effective date |
| 227 | 1 | 85-20-1701 |

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| | 2 | Codification instruction |
| | 3 | Effective date |
| 228 | 1 | 45-5-206 |
| | 2 | Effective date |
| | 3 | Applicability |
| 229 | 1 | 75-10-115 |
| | 2 | Effective date |
| | 3 | Applicability |
| 230 | 1 | 75-20-303 |
| | 2 | Effective date |
| | 3 | Applicability |
| 231 | 1 | 50-16-108 |
| | 2 | Codification instruction |
| 232 | 1 | 7-6-1506 |
| | 2 | 7-6-1541 |
| | 3 | 7-6-1542 |
| | 4 | Effective date |
| 233 | 1 | 7-13-2351 |
| | 2 | 7-13-2352 |
| | 3 | Codification instruction |
| | 4 | Effective date |
| 234 | 1 | 2-2-136 |
| | 2 | 13-37-108 |
| | 3 | 13-37-111 |
| 235 | 1 | 2-15-3406 |
| | 2 | 23-1-111 |
| | 3 | 2-15-3110 |
| | 4 | 2-15-3113 |
| | 5 | 2-15-3401 |
| | 6 | 2-15-3402 |
| | 7 | 2-15-3404 |
| | 8 | 23-1-101 |
| | 9 | 23-1-102 |
| | 10 | 23-1-106 |
| | 11 | 23-1-108 |
| | 12 | 23-1-110 |
| | 13 | 23-1-121 |
| | 14 | 23-1-122 |
| | 15 | 23-2-301 |
| | 16 | 23-2-403 |
| | 17 | 23-2-404 |
| | 18 | 23-2-408 |
| | 19 | 23-2-410 |
| | 20 | 37-47-310 |
| | 21 | 75-1-220 |
| | 22 | 77-1-405 |
| | 23 | 85-2-102 |
| | 24 | 87-1-101 |
| | 25 | 87-1-106 |
| | 26 | 87-1-202 |
| | 27 | 87-1-209 |
| | 28 | 87-1-218 |
| | 29 | 87-1-301 |
| | 30 | 87-1-303 |
| | 31 | 87-1-401 |
| | 32 | 87-1-622 |
| | 33 | 87-4-432 |
| | 34 | Name change — directions to code commissioner |
| | 35 | Codification instruction |
| | 36 | Coordination instruction |
| | 37 | Coordination instruction |
| | 38 | Coordination instruction |
| | 39 | Coordination instruction |
| | 40 | Saving clause |
| | 41 | Effective date |
| 236 | 1 | 85-2-427 |
| | 2 | Codification instruction |
| | 3 | Effective date |
| | 4 | Termination |
| 237 | 1 | 2-15-2012 |
| | 2 | 2-15-2013 |
| | 3 | 46-15-411 |
| | 4 | Effective date |
| 238 | 1 | 19-20-731 |
| | 2 | 19-20-734 |
| | 3 | 19-20-733 (Voided and replaced by sec. 12, Ch. 366) |
| | 4 | Codification instruction |
| | 5 | Effective date |
| | 6 | Termination |
| 239 | 1 | 19-3-1113 |
| | 2 | 19-7-1101 |
| | 3 | 19-13-1101 |
| | 4 | Codification instruction |
| | 5 | Effective date |
| 240 | 1 | 19-2-303 |
| | 2 | 19-2-405 |
| | 3 | 19-2-1001 |
| | 4 | 19-2-1011 |
| | 5 | 19-2-1014 |
| | 6 | 19-3-901 |
| | 7 | 19-5-501 |
| | 8 | 19-6-501 |
| | 9 | 19-7-501 |
| | 10 | 19-8-601 |
| | 11 | 19-9-801 |
| | 12 | 19-13-701 |
| | 13 | 19-50-104 |
| | 14 | Effective date |
| | 15 | Retroactive applicability |
| 241 | 1 | 37-47-325 |
| | 2 | 37-47-405 |
| | 3 | 37-47-101 |
| | 4 | 37-47-201 |
| | 5 | 37-47-401 |
| | 6 | 37-47-403 |
| | 7 | 37-47-404 |
| | 8 | 39-3-406 |
| | 9 | 87-6-702 |
| | 10 | Effective date |
| | 11 | Termination |
| | 12 | Codification instruction |
| 242 | 1 | 80-2-208 |
| | 2 | 80-2-232 (Voided by sec. 3, Ch. 242) |
| | 3 | Coordination instruction |
| | 4 | Effective date |
| | 5 | Termination |
| 245 | 1 | 33-2-708 |
| | 2 | 33-17-241 |
| | 3 | 33-17-242 |
| | 4 | 33-17-243 |
| | 5 | 33-17-244 |
| | 6 | 33-17-102 |
| | 7 | 33-17-220 |
| | 8 | 33-17-231 |
| | 9 | Notification to tribal governments |
| | 10 | Codification instruction |
| | 11 | Effective date |
| 246 | 1 | 60-1-220 |
| | 2 | 60-1-221 |
| | 3 | Codification instruction |
| | 4 | Effective date |
| 247 | 1 | 80-4-419 |
| | 2 | Codification instruction |
| 248 | 1 | 3-10-231 |
| | 2 | Effective date |
| 249 | 1 | 13-35-601 |
| | 2 | 13-35-602 |
| | 3 | 13-35-603 |
| | 4 | 13-35-604 |
| | 5 | Codification instruction |
| 250 | 1 | 45-8-101 |
| 251 | 1 | 20-15-219 |
| | 2 | 20-15-221 |
| 252 | 1 | 19-18-602 |
| | 2 | Effective date |
| 253 | 1 | 3-10-302 |
| | 2 | Effective date |
| 254 | 1 | 61-5-123 |
| | 2 | 61-5-110 |
| | 3 | Codification instruction |
| 255 | 1 | 13-1-210 |
| | 2 | 13-13-212 |
| | 3 | 13-21-210 |
| 256 | 1 | 67-1-214 |
| | 2 | Transition |
| | 3 | Codification instruction |
| | 4 | Effective date |
| 257 | 1 | 5-11-1101 |
| | 2 | 5-11-1102 |
| | 3 | 5-11-1111 |
| 258 | 1 | 53-20-163 |
| 259 | 1 | 69-3-2003 |
| | 2 | Effective date |
| 260 | 1 | Short title |
| | 2 | 20-7-1301 |
| | 3 | 20-7-1302 |
| | 4 | 20-7-1303 |
| | 5 | 20-7-1304 |
| | 6 | Codification instruction |
| | 7 | Effective date |
| 261 | 1 | 61-8-309 |
| 262 | 1 | 20-9-533 |
| | 2 | Saving clause |
| | 3 | Effective date |
| | 4 | Applicability |
| 263 | 1 | 70-29-401 |

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| | 2 | 70-29-402 |
| | 3 | 70-29-403 |
| | 4 | 70-29-404 |
| | 5 | 70-29-405 |
| | 6 | 70-29-410 |
| | 7 | 70-29-411 |
| | 8 | 70-29-412 |
| | 9 | 70-29-413 |
| | 10 | 70-29-414 |
| | 11 | 70-29-415 |
| | 12 | 70-29-419 |
| | 13 | 70-29-420 |
| | 14 | Codification instruction |
| | 15 | Applicability |
| 264 | 1 | 72-38-101 |
| | 2 | 72-38-102 |
| | 3 | 72-38-103 |
| | 4 | 72-38-104 |
| | 5 | 72-38-105 |
| | 6 | 72-38-106 |
| | 7 | 72-38-107 |
| | 8 | 72-38-108 |
| | 9 | 72-38-109 |
| | 10 | 72-38-110 |
| | 11 | 72-38-111 |
| | 12 | 72-38-112 |
| | 13 | 72-38-113 |
| | 14 | 72-38-120 |
| | 15 | 72-38-121 |
| | 16 | 72-38-122 |
| | 17 | 72-38-123 |
| | 18 | 72-38-124 |
| | 19 | 72-38-130 |
| | 20 | 72-38-131 |
| | 21 | 72-38-132 |
| | 22 | 72-38-133 |
| | 23 | 72-38-134 |
| | 24 | 72-38-201 |
| | 25 | 72-38-202 |
| | 26 | 72-38-203 |
| | 27 | 72-38-204 |
| | 28 | 72-38-205 |
| | 29 | 72-38-206 |
| | 30 | 72-38-207 |
| | 31 | 72-38-208 |
| | 32 | 72-38-209 |
| | 33 | 72-38-210 |
| | 34 | 72-38-211 |
| | 35 | 72-38-212 |
| | 36 | 72-38-213 |
| | 37 | 72-38-214 |
| | 38 | 72-38-215 |
| | 39 | 72-38-216 |
| | 40 | 72-38-217 |
| | 41 | 72-38-218 |
| | 42 | 72-38-219 |
| | 43 | 72-38-220 |
| | 44 | 72-38-221 |
| | 45 | 72-38-301 |
| | 46 | 72-38-302 |
| | 47 | 72-38-303 |
| | 48 | 72-38-304 |
| | 49 | 72-38-305 |
| | 50 | 72-38-401 |
| | 51 | 72-38-402 |
| | 52 | 72-38-403 |
| | 53 | 72-38-404 |
| | 54 | 72-38-405 |
| | 55 | 72-38-406 |
| | 56 | 72-38-407 |
| | 57 | 72-38-408 |
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| | 59 | 72-38-410 |
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| | 61 | 72-38-412 |
| | 62 | 72-38-413 |
| | 63 | 72-38-414 |
| | 64 | 72-38-415 |
| | 65 | 72-38-416 |
| | 66 | 72-38-417 |
| | 67 | 72-38-501 |
| | 68 | 72-38-502 |
| | 69 | 72-38-504 |
| | 70 | 72-38-505 |
| | 71 | 72-38-506 |
| | 72 | 72-38-507 |
| | 73 | 72-38-601 |
| | 74 | 72-38-602 |
| | 75 | 72-38-603 |
| | 76 | 72-38-604 |
| | 77 | 72-38-605 |
| | 78 | 72-38-606 |
| | 79 | 72-38-701 |
| | 80 | 72-38-702 |
| | 81 | 72-38-703 |
| | 82 | 72-38-704 |
| | 83 | 72-38-705 |
| | 84 | 72-38-706 |
| | 85 | 72-38-707 |
| | 86 | 72-38-708 |
| | 87 | 72-38-709 |
| | 88 | 72-38-801 |
| | 89 | 72-38-802 |
| | 90 | 72-38-803 |
| | 91 | 72-38-804 |
| | 92 | 72-38-805 |
| | 93 | 72-38-806 |
| | 94 | 72-38-807 |
| | 95 | 72-38-808 |
| | 96 | 72-38-809 |
| | 97 | 72-38-810 |
| | 98 | 72-38-811 |
| | 99 | 72-38-812 |
| | 100 | 72-38-813 |
| | 101 | 72-38-814 |
| | 102 | 72-38-815 |
| | 103 | 72-38-816 |
| | 104 | 72-38-817 |
| | 105 | 72-38-820 |
| | 106 | 72-38-821 |
| | 107 | 72-38-822 |
| | 108 | 72-38-823 |
| | 109 | 72-38-824 |
| | 110 | 72-38-825 |
| | 111 | 72-38-826 |
| | 112 | 72-38-901 |
| | 113 | 72-38-902 |
| | 114 | 72-38-903 |
| | 115 | 72-38-904 |
| | 116 | 72-38-905 |
| | 117 | 72-38-906 |
| | 118 | 72-38-1001 |
| | 119 | 72-38-1002 |
| | 120 | 72-38-1003 |
| | 121 | 72-38-1004 |
| | 122 | 72-38-1005 |
| | 123 | 72-38-1006 |
| | 124 | 72-38-1007 |
| | 125 | 72-38-1008 |
| | 126 | 72-38-1009 |
| | 127 | 72-38-1010 |
| | 128 | 72-38-1011 |
| | 129 | 72-38-1012 |
| | 130 | 72-38-1013 |
| | 131 | 72-38-1101 |
| | 132 | 72-38-1102 |
| | 133 | 72-5-444 |
| | 134 | 72-5-445 |
| | 135 | 72-5-446 |
| | 136 | 72-5-447 |
| | 137 | 72-5-448 |
| | 138 | 72-5-449 |
| | 139 | 72-5-450 |
| | 140 | 72-6-123 |
| | 141 | 72-6-228 |
| | 142 | 31-2-209 |
| | 143 | 32-1-102 |
| | 144 | 32-3-506 |
| | 145 | 35-2-118 |
| | 146 | 72-1-103 |
| | 147 | 72-1-310 |
| | 148 | 72-1-311 |
| | 149 | 72-1-312 |
| | 150 | 72-6-206 |
| | 151 | 72-6-214 |
| | 152 | 72-16-1001 |
| | 153 | 72-34-424 |
| | 154 | 72-34-446 |
| | 155 | 72-36-206 (Renumbered 72-38-1111) |
| | 156 | 77-1-219 |
| | 157 | 77-1-229 |
| | 158 | 77-2-364 |
| | 159 | 82-1-304 |
| | 160 | Codification instruction |
| | 161 | Severability |
| | 162 | Repealer |
| | 163 | Effective date |
| | 164 | Application to existing relationships |
| 265 | 1 | 37-2-401 |
| | 2 | 50-16-201 |
| 266 | 1 | 20-3-324 |
| | 2 | Effective date |
| 267 | 1 | 41-3-304 |
| | 2 | Notification to tribal governments |
| | 3 | Codification instruction |
| 268 | 1 | 5-4-104 |
| | 2 | 15-1-121 |
| | 3 | 15-1-205 |
| | 4 | 15-6-138 |
| | 5 | 15-30-2110 |
| | 6 | 15-30-2328 |
| | 7 | 15-30-3301 |
| | 8 | 15-30-3312 |
| | 9 | 15-30-3313 |
| | 10 | 15-31-101 |
| | 11 | 15-31-102 |
| | 12 | 15-31-111 |
| | 13 | 15-31-112 |
| | 14 | 15-31-113 |
| | 15 | 15-31-114 |
| | 16 | 15-31-115 |

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| | 17 | 15-31-117 |
| | 18 | 15-31-125 |
| | 19 | 15-31-143 |
| | 20 | 15-31-161 |
| | 21 | 15-31-401 |
| | 22 | 15-31-402 |
| | 23 | 15-31-404 |
| | 24 | 15-31-406 |
| | 25 | 15-31-511 |
| | 26 | 15-31-522 |
| | 27 | 15-31-523 |
| | 28 | 15-31-531 |
| | 29 | 15-31-543 |
| | 30 | 15-31-551 |
| | 31 | 15-32-107 |
| | 32 | 15-50-207 |
| | 33 | 15-68-815 |
| | 34 | 20-9-630 |
| | 35 | 33-17-407 |
| | 36 | 33-27-103 |
| | 37 | Name change — directions to code commissioner |
| | 38 | Coordination instruction |
| | 39 | Saving clause |
| | 40 | Applicability |
| 269 | | Not codified — referendum* |
| | 1 | 2-16-615* |
| | 2 | 5-2-402* |
| | 3 | 5-2-403* |
| | 4 | 5-2-404* |
| | 5 | 5-2-406* |
| | 6 | 7-2-2219* |
| | 7 | 7-3-176* |
| | 8 | 7-3-218* |
| | 9 | 7-3-313* |
| | 10 | 7-3-412* |
| | 11 | 7-3-512* |
| | 12 | 7-3-704* |
| | 13 | 7-3-1256* |
| | 14 | 7-4-2106* |
| | 15 | 7-4-2206* |
| | 16 | 7-4-2302* |
| | 17 | 7-4-2310* |
| | 18 | 7-4-4112* |
| | 19 | 13-1-101* |
| | 20 | 13-1-103* |
| | 21 | 13-4-102* |
| | 22 | 13-10-201* |
| | 23 | 13-10-203* |
| | 24 | 13-10-204* |
| | 25 | 13-10-209* |
| | 26 | 13-10-211* |
| | 27 | 13-10-301* |
| | 28 | 13-10-325* |
| | 29 | 13-10-326* |
| | 30 | 13-10-327* |
| | 31 | Top two primary restrictions — exceptions |
| | 32 | 13-10-402* |
| | 33 | 13-10-403* |
| | 34 | 13-10-404* |
| | 35 | 13-10-405* |
| | 36 | 13-10-501* |
| | 37 | 13-10-504* |
| | 38 | 13-10-505* |
| | 39 | 13-12-201* |
| | 40 | 13-12-202* |
| | 41 | 13-12-203* |
| | 42 | 13-12-205* |
| | 43 | 13-12-207* |
| | 44 | 13-13-214* |
| | 45 | 13-13-225* |
| | 46 | 13-13-241* |
| | 47 | 13-14-111* |
| | 48 | 13-14-112* |
| | 49 | 13-14-113* |
| | 50 | 13-14-114* |
| | 51 | 13-14-115* |
| | 52 | 13-14-117* |
| | 53 | 13-14-118* |
| | 54 | 13-15-201* |
| | 55 | 13-15-205* |
| | 56 | 13-15-206* |
| | 57 | 13-15-208* |
| | 58 | 13-15-405* |
| | 59 | 13-15-406* |
| | 60 | 13-15-507* |
| | 61 | 13-16-101* |
| | 62 | 13-16-201* |
| | 63 | 13-16-211* |
| | 64 | 13-16-412* |
| | 65 | 13-16-418* |
| | 66 | 13-16-419* |
| | 67 | 13-16-501* |
| | 68 | 13-17-103* |
| | 69 | 13-19-205* |
| | 70 | 13-21-205* |
| | 71 | 13-25-101* |
| | 72 | 13-25-201* |
| | 73 | 13-25-205* |
| | 74 | 13-25-303* |
| | 75 | 13-35-106* |
| | 76 | 13-35-205* |
| | 77 | 13-35-206* |
| | 78 | 13-35-207* |
| | 79 | 13-35-214* |
| | 80 | 13-35-218* |
| | 81 | 13-35-221* |
| | 82 | 13-35-225* |
| | 83 | 13-35-226* |
| | 84 | 13-36-101* |
| | 85 | 13-36-102* |
| | 86 | 13-36-103* |
| | 87 | 13-36-104* |
| | 88 | 13-36-201* |
| | 89 | 13-36-202* |
| | 90 | 13-36-203* |
| | 91 | 13-36-206* |
| | 92 | 13-36-207* |
| | 93 | 13-36-209* |
| | 94 | 13-36-210* |
| | 95 | 13-36-211* |
| | 96 | 13-36-212* |
| | 97 | 13-37-127* |
| | 98 | 13-37-216* |
| | 99 | 13-37-218* |
| | 100 | 13-38-101* |
| | 101 | 13-38-201* |
| | 102 | Repealer |
| | 103 | Codification instruction |
| | 104 | Severability |
| | 105 | Coordination instruction |
| | 106 | Coordination instruction |
| | 107 | Coordination instruction |
| | 108 | Effective date |
| | 109 | Applicability |
| | 110 | Submission to electorate |
| 270 | | Not codified — referendum* |
| | 1 | 13-2-301* |
| | 2 | 13-2-304* |
| | 3 | 13-19-207* |
| | 4 | 61-5-107* |
| | 5 | Effective date |
| | 6 | Submission to electorate |
| | 7 | Coordination instruction |
| 271 | 1 | 45-5-102 |
| | 2 | 45-5-103 |
| | 3 | 45-5-116(3) |
| | 4 | 45-5-116(1) |
| | 5 | 45-5-116(2) |
| | 6 | Severability |
| | 7 | Codification instruction |
| 272 | 1 | 19-6-712 |
| | 2 | 19-2-303 |
| | 3 | 19-6-301 |
| | 4 | 19-6-402 |
| | 5 | 19-6-404 |
| | 6 | 19-6-502 |
| | 7 | 19-6-503 |
| | 8 | 19-6-601 |
| | 9 | 19-6-707 |
| | 10 | 19-6-710 |
| | 11 | 19-6-711 |
| | 12 | 19-6-801 |
| | 13 | 19-6-803 |
| | 14 | 19-6-804 |
| | 15 | 44-1-504 |
| | 16 | Codification instruction |
| | 17 | Effective date |
| 273 | 1 | 61-4-206 |
| | 2 | 61-4-207 |
| | 3 | 61-4-208 |
| | 4 | Saving clause |
| | 5 | Effective date |
| 274 | 1 | 76-2-216 |
| | 2 | Codification instruction |
| 275 | 1 | 37-35-102 |
| 276 | 1 | 20-7-320 |
| | 2 | Codification instruction |
| | 3 | Effective date |
| 277 | 1 | 31-1-705 |
| | 2 | 31-1-706 |
| | 3 | 31-1-707 |
| | 4 | 31-1-712 |
| | 5 | 31-1-713 |
| | 6 | 31-1-714 |
| | 7 | 31-1-710 |
| | 8 | Codification instruction |
| | 9 | Effective date |
| 278 | 1 | 31-1-106 |
| | 2 | 31-1-111 |
| | 3 | 31-1-112 |
| | 4 | 31-1-401 |

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| | 5 | 32-5-102 |
| | 6 | 32-5-103 |
| | 7 | Repealer |
| | 8 | Effective date |
| 279 | 1 | 7-1-2121 |
| | 2 | 7-1-4127 |
| | 3 | Effective date |
| 280 | 1 | 20-25-421 |
| | 2 | Notification to tribal governments |
| | 3 | Effective date |
| 281 | 1 | 20-5-104 |
| | 2 | 20-5-105 |
| | 3 | 20-5-106 |
| | 4 | 41-5-103 |
| | 5 | Effective date |
| | 6 | Applicability |
| 282 | 1 | 19-2-511 |
| | 2 | 19-3-112 |
| | 3 | 19-3-2101 |
| | 4 | 19-3-2106 |
| | 5 | 19-3-2112 |
| | 6 | 19-3-2113 |
| | 7 | 19-20-208 |
| | 8 | 19-20-302 |
| | 9 | 19-20-426 |
| | 10 | 19-20-621 |
| | 11 | 19-20-731 |
| | 12 | 19-21-101 |
| | 13 | 19-21-102 |
| | 14 | 19-21-211 |
| | 15 | 19-21-212 |
| | 16 | Instructions to code commissioner |
| 283 | 1 | 46-23-505 |
| | 2 | Effective date |
| 284 | 1 | 2-15-1021 |
| | 2 | 2-17-518 |
| | 3 | 5-11-401 |
| | 4 | 5-11-402 |
| | 5 | 5-11-403 |
| | 6 | 5-11-404 |
| | 7 | 5-11-405 |
| | 8 | 5-11-406 |
| | 9 | 5-11-407 |
| | 10 | Effective date |
| 285 | 1 | 7-6-1551 |
| | 2 | Codification instruction |
| | 3 | Effective date |
| 286 | 1 | 30-10-216 |
| | 2 | 30-10-301 |
| | 3 | 30-10-303 |
| | 4 | 30-10-324 |
| | 5 | 30-10-1004 |
| | 6 | Repealer |
| | 7 | Codification instruction |
| | 8 | Effective date |
| 287 | 1 | 39-51-201 |
| 288 | 1 | 77-5-222 |
| | 2 | 77-5-223 |
| | 3 | Effective date |
| 289 | 1 | 15-30-3315 |
| | 2 | Codification instruction |
| | 3 | Severability |
| | 4 | Effective date |
| | 5 | Applicability |
| 290 | 1 | 1-1-522 |
| | 2 | Authorization of other funding source |
| | 3 | Codification instruction |
| | 4 | Effective date |
| 291 | 1 | 50-63-104 |
| | 2 | 50-63-103 |
| | 3 | Codification instruction |
| | 4 | Saving clause |
| | 5 | Effective date |
| | 6 | Applicability |
| 292 | | Voided by sec. 16, Ch. 292 |
| | 1 | Short title |
| | 2 | Legislative purpose and findings |
| | 3 | Definitions |
| | 4 | Consent of parent or legal guardian required |
| | 5 | Consent form — disclosure — requirements for validity |
| | 6 | Proof of identification and relationship to minor — retention of records |
| | 7 | Exceptions |
| | 8 | Coercion prohibited |
| | 9 | Procedure for judicial waiver of consent |
| | 10 | Criminal and civil penalties |
| | 11 | Construction |
| | 12 | 41-1-405 (Voided by sec. 16, Ch. 292) |
| | 13 | 47-1-104 (Voided by sec. 16, Ch. 292) |
| | 14 | Repealer |
| | 15 | Codification instruction |
| | 16 | Coordination instruction |
| | 17 | Effective date |
| | 18 | Submission to electorate |
| 293 | 1 | Time limits |
| | 2 | Appropriations — authorization to expend money |
| | 3 | Effective date |
| 294 | 1 | Time limits |
| | 2 | Appropriations |
| | 3 | Effective date |
| 295 | 1 | 13-37-226 |
| 296 | 1 | 30-12-107 |
| | 2 | 30-12-306 |
| | 3 | 30-12-406 |
| | 4 | Codification instruction |
| | 5 | Effective date |
| 297 | 1 | 87-1-901 |
| | 2 | 87-2-104 |
| | 3 | 87-2-523 |
| | 4 | 87-2-524 |
| | 5 | 87-6-401 |
| | 6 | 87-6-414 |
| | 7 | Codification instruction |
| | 8 | Severability |
| | 9 | Effective date |
| 298 | 1 | 87-2-113 |
| | 2 | 87-2-730 |
| | 3 | Effective date |
| 299 | 1 | 87-1-283 |
| | 2 | 87-1-274 |
| 300 | 1 | Montana food policy modernization project — guidelines |
| | 2 | Appropriation |
| | 3 | Effective date |
| | 4 | Termination |
| 301 | 1 | 7-22-2131 |
| | 2 | 7-22-2132 |
| | 3 | 7-22-2133 |
| | 4 | 7-22-2134 |
| | 5 | Direction to department — notification of landowners |
| | 6 | 7-22-2117 |
| | 7 | 7-22-2144 |
| | 8 | 7-22-2146 |
| | 9 | 7-22-2148 |
| | 10 | Repealer |
| | 11 | Codification instruction |
| | 12 | Effective date |
| 302 | 1 | 50-50-102 |
| 303 | 1 | 33-2-1401 |
| | 2 | 33-2-1402 |
| | 3 | 33-2-1403 |
| | 4 | 33-2-1404 |
| | 5 | 33-2-1405 |
| | 6 | 33-2-1406 |
| | 7 | 33-2-1407 |
| | 8 | Codification instruction |
| | 9 | Effective date |
| | 10 | Applicability |
| 304 | 1 | 45-5-628 |
| | 2 | Codification instruction |
| | 3 | Effective date |
| | 4 | Applicability |
| 305 | 1 | 20-5-324 |
| | 2 | Effective date |
| 306 | 1 | 33-22-1706 |
| 307 | 1 | 50-20-501 |
| | 2 | 50-20-502 |
| | 3 | 50-20-503 |
| | 4 | 50-20-504 |
| | 5 | 50-20-505 |
| | 6 | 50-20-506 |
| | 7 | 50-20-507 |
| | 8 | 50-20-508 |

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| | 9 | 50-20-509 |
| | 10 | 50-20-510 |
| | 11 | 50-20-511 |
| | 12 | 41-1-405 |
| | 13 | 47-1-104 |
| | 14 | Repealer |
| | 15 | Codification instruction |
| | 16 | Severability |
| | 17 | Effective date |
| 308 | 1 | 53-21-102 |
| | 2 | 53-21-119 |
| | 3 | 53-21-129 |
| 309 | 1 | 44-4-1201 |
| | 2 | 44-4-1202 |
| | 3 | 44-4-1203 |
| | 4 | 44-4-1204 |
| | 5 | 44-4-1205 |
| | 6 | 44-4-1206 |
| | 7 | 46-18-201 |
| | 8 | 61-8-442 |
| | 9 | 61-8-733 |
| | 10 | Effective date |
| 310 | 1 | 37-1-145 |
| | 2 | Appropriation — reversion |
| | 3 | Codification instruction |
| | 4 | Effective date |
| 311 | 1 | 27-1-747 |
| | 2 | Codification instruction |
| | 3 | Saving clause |
| 312 | 1 | 61-8-465 |
| | 2 | 61-8-734 |
| | 3 | Effective date |
| | 4 | Applicability — retroactive applicability |
| 313 | 1 | 30-14-151 |
| | 2 | 30-14-152 |
| | 3 | 30-14-153 |
| | 4 | 30-14-154 |
| | 5 | 30-14-155 |
| | 6 | 30-14-156 |
| | 7 | 30-14-157 |
| | 8 | 33-1-102 |
| | 9 | Codification instruction |
| | 10 | Effective date |
| | 11 | Applicability |
| 314 | 1 | 61-7-108 |
| 315 | 1 | 61-12-504 |
| | 2 | Effective date |
| 316 | 1 | 10-4-101 |
| | 2 | 10-4-313 |
| | 3 | Saving clause |
| | 4 | Severability |
| | 5 | Effective date |
| 317 | 1 | 15-30-2327 |
| | 2 | Sec. 9, Ch. 537, L. 1997 |
| | 3 | Sec. 5, Ch. 226, L. 2001 |
| | 4 | Sec. 7, Ch. 4, L. 2005 |
| | 5 | Sec. 2, Ch. 208, L. 2007 |
| | 6 | Sec. 3, Ch. 208, L. 2007 |
| | 7 | Sec. 4, Ch. 208, L. 2007 |
| | 8 | Sec. 7, Ch. 208, L. 2007 |
| | 9 | Effective date |
| | 10 | Applicability |
| | 11 | Termination |
| 318 | 1 | 2-4-111 |
| | 2 | 2-4-102 |
| | 3 | Saving clause |
| | 4 | Codification instruction |
| | 5 | Effective date |
| | 6 | Termination |
| 319 | 1 | 87-2-511 |
| | 2 | Effective date |
| 320 | 1 | 37-1-145 |
| | 2 | Codification instruction |
| | 3 | Effective date |
| 321 | 1 | 20-1-230 |
| | 2 | 20-1-231 |
| | 3 | Codification instruction |
| | 4 | Termination |
| 322 | 1 | 10-2-1301 |
| | 2 | 61-5-111 |
| | 3 | 61-5-114 |
| | 4 | 61-12-502 |
| | 5 | Codification instruction |
| | 6 | Effective date |
| 323 | 1 | 85-2-222 |
| | 2 | 85-2-233 |
| | 3 | 85-2-234 |
| 324 | 1 | 33-17-212 |
| | 2 | 33-17-1203 |
| 325 | 1 | 20-9-343 (Line-item vetoed) |
| | 2 | 20-9-516 (Line-item vetoed) |
| | 3 | 20-9-620 (Line-item vetoed) |
| | 4 | 90-6-802 |
| | 5 | Appropriation from school facility and technology state special revenue account |
| | 6 | Approval of grants — completion of biennial appropriation |
| | 7 | Conditions of grants — disbursement of funds |
| | 8 | Appropriations from school facility and technology state special revenue account for emergency grants |
| | 9 | Appropriations from school facility and technology state special revenue account for planning grants |
| | 10 | 90-6-811 |
| | 11 | Transfer of funds |
| | 12 | Notification to tribal governments |
| | 13 | Effective date |
| 326 | 1 | 80-7-814 |
| | 2 | Effective date |
| 327 | 1 | 16-4-406 |
| 328 | 1 | 69-3-2003 |
| | 2 | Effective date |
| 329 | 1 | 20-3-363 |
| | 2 | 20-9-104 |
| | 3 | 20-9-208 |
| | 4 | 20-9-235 |
| | 5 | 20-9-517 |
| | 6 | 20-9-518 (Voided and replaced by sec. 8, Ch. 329) |
| | 7 | 20-9-534 |
| | 8 | Coordination instruction |
| | 9 | Effective date |
| | 10 | Applicability |
| 330 | 1 | 13-37-219 |
| | 2 | 13-37-216 |
| | 3 | Codification instruction |
| 331 | 1 | 33-22-2004 |
| | 2 | 33-22-2006 |
| | 3 | 33-22-2007 |
| | 4 | 33-22-2008 |
| | 5 | Effective date |
| 332 | 1 | 41-3-205 |
| | 2 | 41-3-208 |
| 333 | 1 | 41-3-1201 |
| | 2 | 41-3-1202 |
| | 3 | 41-3-1203 |
| | 4 | 41-3-1204 |
| | 5 | 41-3-1205 |
| | 6 | 41-3-1206 |
| | 7 | 41-3-1207 |
| | 8 | 41-3-205 |
| | 9 | Codification instruction |
| | 10 | Contingent voidness |
| | 11 | Effective date |
| | 12 | Termination |
| 334 | 1 | 33-22-156 |
| | 2 | 33-22-157 |
| | 3 | 33-22-158 |
| | 4 | 33-22-159 |
| | 5 | 33-31-111 |
| | 6 | Appropriation and authorization |
| | 7 | Codification instruction |
| | 8 | Severability |
| | 9 | Effective date — applicability |
| 335 | 1 | 85-2-102 |
| | 2 | 85-2-302 |

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| | 3 | 85-2-310 |
| | 4 | 85-2-311 |
| | 5 | 85-2-314 |
| | 6 | 85-2-320 |
| | 7 | 85-2-360 |
| | 8 | 85-2-361 |
| | 9 | 85-2-362 |
| | 10 | 85-2-369 |
| | 11 | 85-2-402 |
| | 12 | 85-2-424 |
| | 13 | Repealer |
| 336 | 1 | 5-2-402 |
| | 2 | 13-1-101 |
| | 3 | 13-1-210 |
| | 4 | 13-2-107 |
| | 5 | 13-2-108 |
| | 6 | 13-2-112 |
| | 7 | 13-2-115 |
| | 8 | 13-2-122 |
| | 9 | 13-2-207 |
| | 10 | 13-2-220 |
| | 11 | 13-2-301 |
| | 12 | 13-2-304 |
| | 13 | 13-10-201 |
| | 14 | 13-10-203 |
| | 15 | 13-10-209 |
| | 16 | 13-10-211 |
| | 17 | 13-10-302 |
| | 18 | 13-10-404 |
| | 19 | 13-10-405 |
| | 20 | 13-10-503 |
| | 21 | 13-10-507 |
| | 22 | 13-13-112 |
| | 23 | 13-13-118 |
| | 24 | 13-13-201 |
| | 25 | 13-13-204 |
| | 26 | 13-13-211 |
| | 27 | 13-13-212 |
| | 28 | 13-13-213 |
| | 29 | 13-13-214 |
| | 30 | 13-13-225 |
| | 31 | 13-13-226 |
| | 32 | 13-13-227 |
| | 33 | 13-13-228 |
| | 34 | 13-13-229 |
| | 35 | 13-13-230 |
| | 36 | 13-13-241 |
| | 37 | 13-13-244 |
| | 38 | 13-13-245 |
| | 39 | 13-13-301 |
| | 40 | 13-13-602 |
| | 41 | 13-13-603 |
| | 42 | 13-14-112 |
| | 43 | 13-14-113 |
| | 44 | 13-15-107 |
| | 45 | 13-15-108 |
| | 46 | 13-15-201 |
| | 47 | 13-15-206 |
| | 48 | 13-15-401 |
| | 49 | 13-16-201 |
| | 50 | 13-16-211 |
| | 51 | 13-16-417 |
| | 52 | 13-17-203 |
| | 53 | 13-17-211 |
| | 54 | 13-19-102 |
| | 55 | 13-19-106 |
| | 56 | 13-19-304 |
| | 57 | 13-21-210 |
| | 58 | 13-21-212 |
| | 59 | 13-35-218 |
| | 60 | 13-37-126 |
| | 61 | 13-38-201 |
| | 62 | Directions to code commissioner |
| | 63 | Coordination instruction |
| | 64 | Coordination instruction |
| | 65 | Effective date |
| 337 | 1 | 41-3-201 |
| | 2 | 41-3-205 |
| 338 | 1 | 87-6-415 |
| 339 | 1 | 25-31-112 |
| | 2 | 25-35-608 |
| | 3 | Effective date |
| | 4 | Applicability |
| 340 | 1 | 13-35-237 |
| | 2 | Codification instruction |
| 341 | 1 | 37-47-101 |
| | 2 | 37-47-201 |
| | 3 | 37-47-301 |
| | 4 | 37-47-302 |
| | 5 | 37-47-303 |
| | 6 | 37-47-304 |
| | 7 | 37-47-305 |
| | 8 | 37-47-306 |
| | 9 | 37-47-307 |
| | 10 | 37-47-310 |
| | 11 | 37-47-311 |
| | 12 | 37-47-341 |
| | 13 | 37-47-343 |
| | 14 | 37-47-401 |
| | 15 | 37-47-402 |
| | 16 | 37-47-403 |
| | 17 | 37-47-404 |
| | 18 | 87-6-702 |
| | 19 | Repealer |
| 342 | 1 | 75-10-706 |
| | 2 | 75-10-711 |
| 343 | 1 | 70-24-303 |
| | 2 | 70-24-321 |
| | 3 | 70-24-422 |
| | 4 | 70-24-427 |
| 344 | 1 | 7-4-2516 |
| | 2 | 25-1-201 |
| | 3 | 25-10-404 |
| | 4 | 25-10-405 |
| | 5 | Effective date |
| 345 | 1 | 82-10-502 |
| | 2 | 82-10-504 |
| 346 | 1 | 15-30-2380 |
| | 2 | 87-1-294 |
| | 3 | Codification instruction |
| | 4 | Effective date |
| | 5 | Applicability |
| | 6 | Termination |
| 347 | 1 | 20-20-420 |
| | 2 | 13-1-101 |
| | 3 | 13-16-101 |
| | 4 | 13-16-201 |
| | 5 | 13-16-203 |
| | 6 | 13-16-204 |
| | 7 | 13-16-205 |
| | 8 | 13-16-301 |
| | 9 | 13-16-417 |
| | 10 | 13-16-418 |
| | 11 | 13-16-420 |
| | 12 | Codification instruction |
| | 13 | Effective date |
| 348 | 1 | 60-2-115 |
| | 2 | Saving clause |
| 349 | 1 | 33-22-166 |
| | 2 | 15-30-2110 |
| | 3 | 33-22-1804 |
| | 4 | Codification instruction |
| | 5 | Effective date |
| 350 | 1 | 40-4-219 |
| | 2 | 40-4-301 |
| | 3 | 40-4-302 |
| | 4 | 40-4-307 |
| 351 | 1 | 76-3-207 |
| | 2 | Effective date |
| 352 | 1 | Appropriation |
| | 2 | Effective date |
| 353 | 1 | 53-21-1105 |
| | 2 | 53-21-1106 |
| | 3 | 53-21-1107 |
| | 4 | 53-21-1108 |
| | 5 | 53-21-1109 |
| | 6 | 53-21-1110 |
| | 7 | 50-16-522 |
| | 8 | 50-16-525 |
| | 9 | 50-16-804 |
| | 10 | 50-16-805 |
| | 11 | 53-21-1102 |
| | 12 | Appropriation |
| | 13 | Notification to tribal governments |
| | 14 | Codification instruction |
| | 15 | Effective date |
| | 16 | Termination |
| 354 | 1 | 80-7-1015 |
| | 2 | 80-7-1002 |
| | 3 | 80-7-1003 |
| | 4 | 80-7-1004 |
| | 5 | 80-7-1006 |
| | 6 | 80-7-1007 |
| | 7 | 80-7-1008 |
| | 8 | 80-7-1010 |
| | 9 | 80-7-1011 |
| | 10 | 80-7-1014 |
| | 11 | Appropriation |
| | 12 | Codification instruction |
| | 13 | Effective dates |
| 355 | 1 | 87-6-208 |
| | 2 | 87-6-207 |
| | 3 | Codification instruction |
| 356 | 1 | 30-12-203 |
| | 2 | Effective date |
| 357 | 1 | 15-7-103 |
| | 2 | 15-7-201 |
| | 3 | Applicability |
| 358 | 1 | 61-3-109 |
| 359 | 1 | 33-17-1401 |
| | 2 | 33-17-1402 |
| | 3 | 33-17-1403 |
| | 4 | 33-17-1404 |
| | 5 | 33-17-212 |
| | 6 | Codification instruction |
| 360 | 1 | 33-39-101 |

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| | 2 | 33-39-102 |
| | 3 | 33-39-103 |
| | 4 | 33-1-311 |
| | 5 | 33-1-501 |
| | 6 | Codification instruction |
| | 7 | Two-thirds vote required |
| 361 | 1 | 69-3-2003 |
| | 2 | 69-3-2006 |
| | 3 | Notification to tribal governments |
| | 4 | Coordination instruction |
| 362 | 1 | 53-6-190 |
| | 2 | Codification instruction |
| 363 | 1 | 33-40-101 |
| | 2 | 33-40-102 |
| | 3 | 33-40-103 |
| | 4 | 33-40-104 |
| | 5 | 33-40-105 |
| | 6 | 2-18-705 |
| | 7 | 20-25-1403 |
| | 8 | 33-1-102 |
| | 9 | 33-31-111 |
| | 10 | 33-35-306 |
| | 11 | 53-6-113 |
| | 12 | Codification instruction |
| | 13 | Effective date |
| | 14 | Termination |
| 364 | 1 | 2-6-102 |
| | 2 | 20-1-401 |
| | 3 | 20-1-402 |
| | 4 | 20-5-202 |
| | 5 | 41-3-205 |
| | 6 | 41-5-215 |
| | 7 | 52-2-211 |
| | 8 | 52-2-304 |
| | 9 | Transfer of funds — improvements to school safety and security |
| | 10 | Codification instruction |
| | 11 | Effective dates |
| | 12 | Termination |
| 365 | 1 | Approval of renewable resource projects and authorization to provide loans |
| | 2 | Projects not completing requirements — projects reauthorized |
| | 3 | Coal severance tax bonds authorized |
| | 4 | Conditions of loans |
| | 5 | Private and discount purchase of loans |
| | 6 | Appropriations established |
| | 7 | Creation of state debt — appropriation of coal severance tax — bonding provisions |
| | 8 | Notification to tribal governments |
| | 9 | Severability |
| | 10 | Effective date |
| 366 | 1 | 19-20-101 |
| | 2 | 19-20-201 |
| | 3 | 19-20-409 |
| | 4 | 19-20-716 |
| | 5 | 19-20-733 (Voided and replaced by sec. 12, Ch. 366) |
| | 6 | 19-20-801 (Voided and replaced by sec. 13, Ch. 366) |
| | 7 | 19-20-802 (Voided by sec. 14, Ch. 366) |
| | 8 | 19-20-805 |
| | 9 | 19-20-810 |
| | 10 | 19-20-1101 |
| | 11 | Codification instruction |
| | 12 | Coordination instruction |
| | 13 | Coordination instruction |
| | 14 | Coordination instruction |
| | 15 | Effective date |
| 367 | 1 | 13-35-225 |
| | 2 | 13-37-131 |
| 368 | 1 | 10-3-312 |
| | 2 | 17-7-140 |
| | 3 | 17-7-502 |
| | 4 | 76-13-150 |
| | 5 | Fund transfer |
| | 6 | Effective date |
| 369 | 1 | 2-15-3110 |
| 370 | 1 | 61-3-201 |
| | 2 | 61-3-303 |
| 371 | 1 | 70-30-110 |
| | 2 | 70-30-111 |
| | 3 | 70-30-203 |
| | 4 | 70-30-206 |
| | 5 | 70-30-305 |
| | 6 | Saving clause |
| | 7 | Severability |
| | 8 | Effective date |
| | 9 | Applicability |
| 372 | 1 | 10-2-118 |
| | 2 | Appropriation |
| | 3 | Codification instruction |
| | 4 | Effective date |
| 373 | 1 | 18-2-402 |
| | 2 | 18-2-411 |
| | 3 | 18-2-413 |
| | 4 | 18-2-414 |
| | 5 | 18-2-418 |
| | 6 | 18-2-419 |
| | 7 | Codification instruction |
| 374 | 1 | 45-5-305 |
| | 2 | 45-5-306 |
| | 3 | 45-5-310 |
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| | 5 | 45-5-601 |
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| | 8 | 46-18-111 |
| | 9 | 46-18-201 |
| | 10 | 46-18-203 |
| | 11 | 46-18-205 |
| | 12 | 46-18-207 |
| | 13 | 46-18-222 |
| | 14 | 46-18-231 |
| | 15 | 46-23-502 |
| | 16 | 46-23-1011 |
| | 17 | Codification instruction |
| | 18 | Effective date |
| | 19 | Applicability |
| 375 | 1 | 16-4-115 |
| 376 | 1 | 15-1-122 |
| | 2 | Effective date |
| 377 | 1 | 46-5-109 |
| | 2 | Codification instruction |
| 378 | 1 | 45-5-212 |
| | 2 | 46-18-111 |
| | 3 | Applicability |
| 379 | 1 | 76-8-101 |
| | 2 | 76-8-103 |
| | 3 | 76-8-106 |
| | 4 | 76-8-107 |
| | 5 | 76-8-108 |
| | 6 | 76-8-102 |
| | 7 | 76-8-113 |
| | 8 | 76-8-114 |
| | 9 | 76-3-103 |
| | 10 | 76-3-504 |
| | 11 | 76-4-125 |
| | 12 | 76-6-203 |
| | 13 | 76-7-203 |
| | 14 | Repealer |
| | 15 | Codification instruction |
| | 16 | Saving clause |
| | 17 | Severability |
| | 18 | Effective date |
| | 19 | Applicability |
| 380 | 1 | Short title |
| | 2 | First level expenditures |
| | 3 | Legislative intent |
| | 4 | Severability |
| | 5 | Appropriation control |
| | 6 | Program definition |
| | 7 | Totals not appropriations |
| | 8 | Effective date |
| | 9 | Appropriations |
| | 10 | Rates |
| 381 | 1 | Definitions |
| | 2 | Capital projects appropriations and authorizations |
| | 3 | Capital improvements |

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| | 4 | Land acquisition appropriations |
| | 5 | Planning and design |
| | 6 | Capital projects — contingent funds |
| | 7 | Review by department of environmental quality |
| | 8 | Conditions of projects |
| | 9 | Fund transfer |
| | 10 | Legislative consent |
| | 11 | Severability |
| | 12 | Effective date |
| 382 | 1 | Appropriations for renewable resource grants |
| | 2 | Coordination of fund sources for grants to political subdivisions and local governments |
| | 3 | Condition of grants |
| | 4 | Appropriations established |
| | 5 | Transfer of funds |
| | 6 | Notification to tribal governments |
| | 7 | Coordination instruction |
| | 8 | Severability |
| | 9 | Effective date |
| 383 | 1 | Definitions |
| | 2 | Appropriations and authorizations |
| | 3 | Fund transfer |
| | 4 | Legislative branch information technology capital projects appropriation |
| | 5 | Severability |
| | 6 | Effective date |
| 384 | 1 | Appropriation from treasure state endowment state special revenue account |
| | 2 | Approval of grants — completion of biennial appropriation |
| | 3 | Condition of grants — disbursements of funds |
| | 4 | Other powers and duties of department |
| | 5 | Appropriations from treasure state endowment state special revenue account for emergency grants |
| | 6 | Appropriations from treasure state endowment state special revenue account for infrastructure planning grants |
| | 7 | Appropriation from treasure state endowment regional water system special revenue account |
| | 8 | Approval of funds — completion of appropriation |
| | 9 | Conditions — manner of disbursements of funds |
| | 10 | Fund transfer |
| | 11 | Notification to tribal governments |
| | 12 | Effective date |
| 385 | 1 | 2-18-301 |
| | 2 | 2-18-303 |
| | 3 | 2-18-703 |
| | 4 | Appropriations |
| | 5 | Reporting of implementation of pay increase |
| | 6 | Effective date |
| 386 | 1 | 19-2-303 |
| | 2 | 19-2-1005 |
| | 3 | 19-3-108 |
| | 4 | 19-5-101 |
| | 5 | 19-6-101 |
| | 6 | 19-7-101 |
| | 7 | 19-8-101 |
| | 8 | 19-9-104 |
| | 9 | 19-13-104 |
| | 10 | Effective date |
| 387 | 1 | 53-6-131 |
| | 2 | Effective date |
| 388 | 1 | 17-8-402 |
| | 2 | 17-8-403 |
| | 3 | 17-8-404 |
| | 4 | 17-8-410 |
| | 5 | 17-8-411 |
| | 6 | 17-8-412 |
| | 7 | 17-8-416 |
| | 8 | Saving clause |
| | 9 | Severability |
| | 10 | Effective date |
| | 11 | Applicability |
| 389 | 1 | 19-20-101 |
| | 2 | 19-20-208 |
| | 3 | 19-20-409 |
| | 4 | 19-20-427 |
| | 5 | 19-20-602 |
| | 6 | 19-20-608 |
| | 7 | 19-20-605 |
| | 8 | 19-20-609 |
| | 9 | 19-20-607 |
| | 10 | 19-20-716 |
| | 11 | 19-20-719 |
| | 12 | 19-20-732 |
| | 13 | 19-20-801 (Voided and replaced by sec. 13, Ch. 366) |
| | 14 | 19-20-802 |
| | 15 | 19-20-804 |
| | 16 | 19-20-805 |
| | 17 | 19-20-901 |
| | 18 | 19-20-1001 |
| | 19 | 20-9-501 |
| | 20 | 19-20-216 |
| | 21 | 20-10-145 |
| | 22 | Transfer of excess retirement fund operating reserves |
| | 23 | Appropriations |
| | 24 | Codification instruction |
| | 25 | Severability |
| | 26 | Effective date |
| 390 | 1 | 15-35-108 |
| | 2 | 17-5-703 |
| | 3 | 19-3-315 |
| | 4 | 19-3-316 |
| | 5 | 19-3-1605 |
| | 6 | 19-3-2117 |
| | 7 | 19-3-117 |
| | 8 | Sec. 6, Ch. 495, L. 1999 |
| | 9 | Sec. 15, Ch. 389, L. 2011 |
| | 10 | Sec. 16, Ch. 389, L. 2011 |
| | 11 | Appropriations |
| | 12 | Codification instruction |
| | 13 | Severability |
| | 14 | Effective date |
| 391 | 1 | 69-3-222 |
| | 2 | 69-3-223 |
| | 3 | Codification instruction |
| | 4 | Severability |
| | 5 | Saving clause |
| | 6 | Effective date |
| | 7 | Applicability |
| 392 | 1 | 5-2-302 |
| | 2 | 5-2-303 |
| | 3 | Effective date |
| 393 | 1 | 61-3-321 |
| | 2 | 61-3-332 |
| | 3 | 61-3-337 |
| | 4 | 61-3-562 |
| | 5 | 61-8-303 |
| | 6 | 61-8-309 |
| | 7 | 61-8-310 |
| | 8 | 61-8-725 |
| | 9 | Repealer |
| | 10 | Effective dates |
| 394 | 1 | 46-5-110(1) |
| | 2 | 46-5-110(2) |
| | 3 | Codification instruction |
| 395 | 1 | Interim study — evaluation of hunting and |

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| | | fishing licensing — reporting |
| | 2 | Appropriation |
| | 3 | Effective date |
| | 4 | Termination |
| 396 | 1 | 15-1-123 |
| | 2 | 15-6-138 |
| | 3 | 15-6-141 |
| | 4 | 15-23-101 |
| | 5 | Notification to tribal governments |
| | 6 | Coordination instruction |
| | 7 | Coordination instruction |
| | 8 | Saving clause |
| | 9 | Effective date |
| | 10 | Applicability |
| 397 | 1 | 87-2-803 |
| | 2 | Effective date |
| 398 | 1 | 15-30-2110 |
| | 2 | Effective date |
| | 3 | Retroactive applicability |
| 399 | 1 | 80-2-203 |
| | 2 | 80-2-204 |
| | 3 | 80-2-206 |
| | 4 | 80-2-207 |
| | 5 | 80-2-208 |
| | 6 | 80-2-221 |
| | 7 | 80-2-222 |
| | 8 | 80-2-224 |
| | 9 | 80-2-225 |
| | 10 | 80-2-230 |
| | 11 | 80-2-232 |
| | 12 | 80-2-242 |
| | 13 | 80-2-243 |
| | 14 | 80-2-244 |
| | 15 | 80-2-220 |
| | 16 | Repealer |
| | 17 | Codification instruction |
| | 18 | Effective date |
| 400 | 1 | 20-7-105 |
| | 2 | 20-9-325 |
| | 3 | 20-7-102 |
| | 4 | 20-7-104 |
| | 5 | 20-9-141 |
| | 6 | 20-9-306 |
| | 7 | 20-9-308 |
| | 8 | 20-9-310 |
| | 9 | 20-9-310 |
| | 10 | 20-9-311 |
| | 11 | 20-9-314 |
| | 12 | 20-9-323 |
| | 13 | 20-9-326 |
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| | 15 | 20-9-344 |
| | 16 | 20-9-403 |
| | 17 | 20-9-406 |
| | 18 | 20-9-408 |
| | 19 | 20-9-422 |
| | 20 | 20-9-423 |
| | 21 | 20-9-426 |
| | 22 | 20-9-427 |
| | 23 | 20-9-430 |
| | 24 | 20-9-437 |
| | 25 | 20-9-438 |
| | 26 | 20-9-440 |
| | 27 | 20-9-473 |
| | 28 | 20-9-474 |
| | 29 | 20-9-517 |
| | 30 | 20-9-517 |
| | 31 | 20-9-518 (Voided and replaced by sec. 8, Ch. 329) |
| | 32 | 20-9-622 |
| | 33 | 20-9-376 |
| | 34 | 20-9-520 |
| | 35 | 20-9-521 |
| | 36 | Transfers of funds |
| | 37 | Appropriation |
| | 38 | Sec. 29, Ch. 418, L. 2011 |
| | 39 | Notification to tribal governments |
| | 40 | Codification instruction |
| | 41 | Coordination instruction |
| | 42 | Effective dates — applicability |
| | 43 | Termination |
| 401 | 1 | 76-13-104 |
| | 2 | 76-13-154 (Voided and replaced by sec. 5, Ch. 401) |
| | 3 | 76-13-115 |
| | 4 | Codification instruction |
| | 5 | Coordination instruction |
| 402 | 1 | 23-4-101 |
| | 2 | Directions to code commissioner |
| | 3 | Effective Date |
| 403 | 1 | 76-13-301 |
| | 2 | 76-13-303 |
| | 3 | 76-13-701 |
| | 4 | 76-13-702 |
| | 5 | 76-13-154 (Voided and replaced by sec. 5, Ch. 401) |
| | 6 | Codification instruction |
| 404 | 1 | 33-22-1501 |
| | 2 | 33-22-1502 |
| | 3 | 33-22-1504 |
| | 4 | Effective date |
| 405 | 1 | 15-6-201 |
| | 2 | Transition — existing property taxes not extinguished |
| | 3 | Notification to tribal governments |
| | 4 | Applicability |
| 406 | 1 | 33-24-201 |
| | 2 | 33-24-202 |
| | 3 | 33-24-203 |
| | 4 | 33-24-204 |
| | 5 | 33-24-205 |
| | 6 | 33-24-206 |
| | 7 | 33-24-207 |
| | 8 | 33-24-208 |
| | 9 | 33-24-209 |
| | 10 | 33-17-301 |
| | 11 | Codification instruction |
| | 12 | Effective date |
| 407 | 1 | 39-71-1110 |
| | 2 | Codification instruction |
| | 3 | Effective date |
| 408 | 1 | 85-2-145 |
| | 2 | Codification instruction |
| | 3 | Effective date |
| 409 | 1 | 85-2-102 |
| | 2 | Coordination instruction |
| 410 | 1 | 20-9-537 |
| | 2 | Appropriation (Voided by sec. 5, Ch. 410) |
| | 3 | Notification to tribal governments |
| | 4 | Codification instruction |
| | 5 | Coordination instruction |
| | 6 | Effective date |
| | 7 | Termination |
| 411 | 1 | 75-10-204 |
| | 2 | 75-10-214 |
| | 3 | Effective date |
| 412 | 1 | 7-33-4510 |
| | 2 | 7-6-621 |
| | 3 | 39-71-118 |
| | 4 | 39-71-123 |
| | 5 | 39-71-401 |
| | 6 | 39-71-745 |
| | 7 | Codification instruction |
| | 8 | Effective date |
| 413 | 1 | Transfers |
| | 2 | 53-1-215 |
| | 3 | 53-2-208 |
| | 4 | 2-15-247 |
| | 5 | 39-1-105 |
| | 6 | 17-7-502 |
| | 7 | Codification instruction |
| | 8 | Coordination instruction |
| | 9 | Effective date |
| | 10 | Termination date |
| 414 | 1 | 37-51-309 |
| | 2 | Effective date |
| 415 | 1 | 7-5-4209 |
| | 2 | 7-5-109 |
| | 3 | 7-5-4207 |
| | 4 | Codification instruction |
| 416 | 1 | 76-2-206 |
| 417 | 1 | 75-2-103 |
| | 2 | 75-2-402 |
| | 3 | Repealer |
| | 4 | Effective date |
| 418 | 1 | 15-70-321 |
| | 2 | 15-70-330 |
| 419 | 1 | 15-1-212 |
| | 2 | 15-1-213 |
| | 3 | 15-1-211 |
| | 4 | 15-1-402 |
| | 5 | 15-8-601 |

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| | 6 | 15-23-102 |
| | 7 | 15-23-104 |
| | 8 | 15-24-3112 |
| | 9 | Codification instruction |
| | 10 | Effective dates |
| 420 | 1 | 33-1-110 |
| | | 50-4-105 |
| | 2 | Codification instruction |
| | 3 | Severability |
| | 4 | Effective date |
| 421 | 1 | 85-2-102 |
| | 2 | 85-2-306 |
| | 3 | 85-2-380 |
| | 4 | 85-2-381 |
| | 5 | Codification instruction |
| 422 | 1 | 77-2-303 |
| | 2 | 77-2-311 |
| | 3 | 77-2-318 |
| | 4 | 77-2-363 |
| | 5 | 77-2-366 |
| | 6 | 77-2-317 |
| | 7 | Repealer |
| | 8 | Codification instruction |
| | 9 | Effective date |
| 423 | 1 | 13-35-225 |
| | 2 | Coordination instruction |
| | 3 | Applicability |

# 2012 BALLOT ISSUES TO CODE

Legislative Referendum

| LR | Sec. | MCA |
|---|---|---|
| 120 | 1 | 50-20-221 |
| | 2 | 50-20-222 |
| | 3 | 50-20-223 |
| | 4 | 50-20-224 |
| | 5 | 50-20-225 |
| | 6 | 50-20-228 |
| | 7 | 50-20-229 |
| | 8 | 50-20-232 |
| | 9 | 50-20-235 |
| | 10 | 41-1-405 |
| | 11 | 47-1-104 |
| | 12 | Repealer |
| | 13 | Codification instruction |
| | 14 | Coordination instruction |
| | 15 | Effective date |
| | 16 | Submission to electorate |
| 121 | 1 | 1-1-411 |
| | 2 | Codification instruction |
| | 3 | Coordination instruction |
| | 4 | Severability |
| | 5 | Effective date |
| | 6 | Applicability |
| | 7 | Submission to electorate |
| 122 | 1 | 50-4-901 |
| | 2 | 50-4-902 |
| | 3 | Codification instruction |
| | 4 | Effective date |
| | 5 | Submission to electorate |

Initiative Referendum

IR 124 offered voters the choice to affirm or reject the passage of Senate Bill 423 by the 62nd legislature in regular session (Ch. 419. L. 2011). The passage of the bill was affirmed. Please refer to the 2011 Laws of Montana (Session Laws) to see where Ch. 419 was codified.

Initiative

| Init. | Sec. | MCA |
|---|---|---|
| 166 | 1 | 13-35-501 |
| | 2 | 13-35-502 |
| | 3 | 13-35-503 |
| | 4 | 13-35-504 |
| | 5 | Saving clause |
| | 6 | Severability |
| | 7 | Effective date |
| | 8 | Codification instruction |

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